

**Two-way interactions
between the Union and the
national legislative processes**

The case of Poland

6th Sejm and 7th Senate 2007 – 2011

Wiesław Staśkiewicz

Deputy Director of the Parliamentary Library



National Parliament vis-a-vis EU Law

Implementation of the EU law in Poland

- In Poland the Sejm is the only body empowered to implement European directives and other legal acts of the EU as normative acts applying to every citizen.
- Sejm committees work on bills implementing the EU law

Participation of the Parliament in the creation of the EU law

- Both the Sejm and the Senate shall pronounce the opinion on draft legislative acts of the EU;
- Only draft legislative acts of the EU can be examined for conformity with the principle of subsidiarity as defined in Art. 5 paragraph 3 of the Treaty on European Union.
- The European Union Affairs Committee (EUAC) pronounces its opinion on draft legislative acts

Implementation of EU Law - Procedure 1

- **THE ROLE OF THE COUNCIL OF MINISTERS**
- *Act of 8 October 2010 on the cooperation of the Council of Ministers with the Sejm and the Senate in matters relating to the Republic of Poland's membership of the European Union*
- **Article 18.**
- 1. The Council of Ministers shall submit to the Sejm a bill implementing European Union law no later than 3 months before the expiry of a time limit for implementation prescribed by European Union law.
- 2. If the time limit for implementation referred to in paragraph 1 exceeds 6 months, the Council of Ministers shall submit to the Sejm a bill implementing European Union law no later than 5 months before the expiry of that time limit.

Implementation of EU Law – Procedure 2

- **THE ROLE OF THE COUNCIL OF MINISTERS**
- 3. In exceptionally justified cases, the Council of Ministers, having sought the opinion of the competent body under the rules of procedure of the Sejm, may submit a bill implementing European Union law without observing the time limits referred to in paragraph 1 or 2.
- 4. The Council of Ministers shall present to the Sejm and the Senate, no less than once every 6 months, information on legislative work related to the implementation of acts of European Union law, for which the time limit for implementation has expired or will expire within 3 months of the presentation of such information.

Implementation of EU: Law – Procedure 3

- **THE ROLE OF THE SEJM**
- *The Standing Orders of the Sejm of the Republic of Poland of 30th July 1992*
- **ARTICLE 95A**
- 2. When introducing a bill, the Council of Ministers shall declare whether or not it is a bill implementing European Union law.
- 3. In cases of bills other than those referred to in para. 2, the Marshal of the Sejm shall resolve, before referring the bill to the first reading, whether or not it is a bill implementing European Union law.

Implementation of EU: Law – Procedure 4

- **THE ROLE OF THE SEJM - THE FIRST READING**
- **ARTICLE 95B**
- When initiating the proceedings in relation to a bill implementing European Union law, the Marshal of the Sejm shall establish a schedule of work of the Sejm on that bill, taking into account deadlines for implementing European Union law.
- **ARTICLE 95C**
- 1. Before undertaking a detailed consideration of a bill implementing European Union law, an appropriate committee shall establish a timetable of work on that bill consistent with the schedule of work of the Sejm referred to in Article 95b.
- 2. The committee shall make such timetable known to the Marshal of the Sejm.

Implementation of EU Law – Procedure 5

- **ARTICLE 95D**
- 1. An amendment to a bill implementing European Union law may be proposed, in written form, at the sitting of the committee by a group of at least 3 Deputies.
- 2. Proposals of amendments, rejected by the committee, after they have been submitted in written form, shall, at the request of at least 3 sponsors, be included in the report as minority motions; a minority motion concerning a particular provision or part thereof, shall specify the consequences of this motion for the text of the bill implementing European Union law.

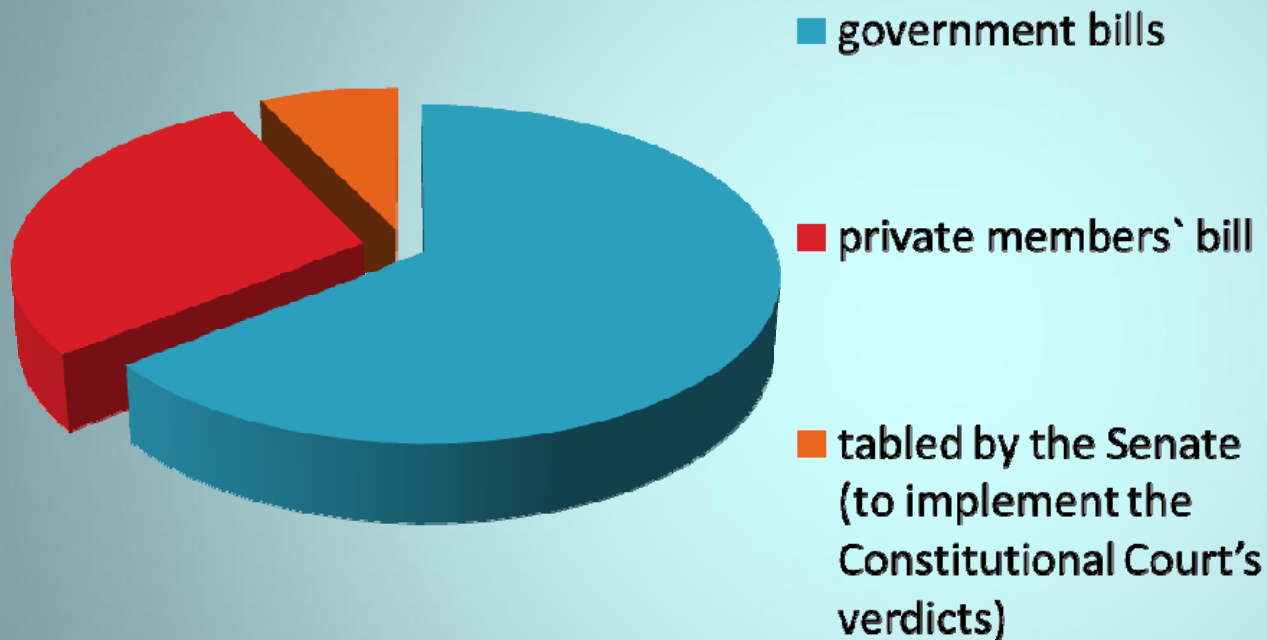
Implementation of EU Law - Procedure 6

- **THE ROLE OF THE SEJM - THE SECOND AND THE THIRD READING**
- **ARTICLE 95E**
- The second reading of a bill implementing European Union law shall be held at the first sitting of the Sejm, occurring after the delivery of the committee's report to the Deputies, unless the Marshal of Sejm fixes, after seeking an opinion of the presidium of the committee, longer time limit for the second reading.
- **ARTICLE 95F**
- Consideration of the Senate's amendments shall occur at the first sitting of the Sejm, occurring after the delivery of the Committee's report.

Laws Enacted - 6th Sejm

Laws Enacted - 6th Sejm

- 1511 bills were tabled.



Comments:

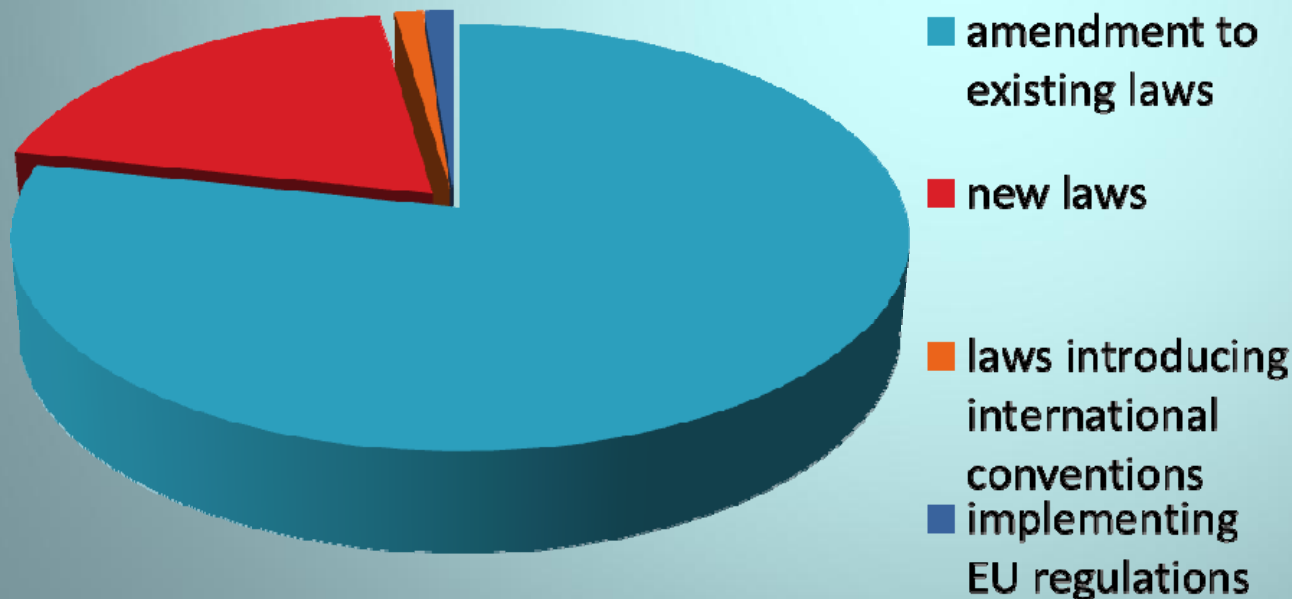
- 1. The Polish government has no right to issue decrees.*
- 2. Every amendment must be passed by the Sejm.*
- 3. As a result-74.7% of the laws adopted in 2007-2011 were laws amending the laws already in force.*

- 952 bills became law, including 711 amendments to the existing laws; 139 new laws; moreover 85 were ratification laws and 16 were laws changing the respective names of tertiary schools.

Implementation of EU Law – Sejm

Laws Implementing EU Law

- 183 bills implementing the EU law were tabled.
- 171 bills became law:



Comments:

78,4% were amendments

8 bills were adopted under the urgent procedure

2 bills implementing EU law were private members' bills; they were discussed by the Sejm together with the relevant government bills.

Laws implementing the EU law made up *18% of all laws adopted by the Sejm.*

Subject Matter of Laws Implementing the EU Law

Number of laws considered by a given Committee (more than 5)

- 23 – Agriculture, fishery
- 15 – Financial institutions
- 12 – Border protection, foreigners
- 10 – Transport: roads, railways
- 8 – Environment protection
- 7 – EU funds
- 7 – vocational groups
- 7 – Excise taxes
- 6 - Telecommunications

Comments:

- 1. Dominance of agricultural matters.*
- 2. Preoccupation with foreigners, immigration, passports, border protection.*
- 3. Many laws dealt with EU funds.*
- 4. Many laws concerned the legal status of different vocational groups.*
- 5. The Sejm implemented: 262 directives, 78 regulations and 27 decisions.*

Implementation of EU Law – Sejm Committees

Bills implementing EU law (171) considered by Sejm committees (more than 10):

- 37 – Agriculture and Rural Development
- 33 – Infrastructure
- 23 – Public Finances
- 22 – Economic
- 17 – Administration and Internal Affairs
- 17 – Environmental Protection, Natural Resources and Forestry
- 14 – Health
- 14 – Justice and Human Rights

Comments:

Within the Polish Sejm there are highly specialized committees (26 standing + extraordinary ones) which usually work in subcommittees.

The Infrastructure Committee is the only exception as it deals with construction, transport, telecommunications, marine economy and land surveying.

Participation in Drafting EU Law (1)

- *Protocol (No 1) ON THE ROLE OF NATIONAL PARLIAMENTS IN THE EUROPEAN UNION*
- *Article 2: Draft legislative acts sent to the EP and to the Council shall be forwarded to national Parliaments*
- *Draft legislative acts originating from the Commission shall be forwarded to national Parliaments directly by the Commission, at the same time as to the EP and the Council.*
- *Draft legislative acts originating from the EP shall be forwarded to national Parliaments directly by the EP.*

Participation in Drafting EU Law(2)

Act of 8 October 2010 on the cooperation of the Council of Ministers with the Sejm and the Senate in matters relating to the Republic of Poland's membership of the European Union (enter into force 13 February 2011 r.)

- **Article 4.**

- 1. The Council of Ministers shall transmit to the Sejm and the Senate, immediately upon receipt thereof, with documents of the European Union which are subject to consultation with Member States, excluding any documents transmitted to the Sejm and the Senate directly by the European Parliament, the Council and the European Commission.
- 2. The Council of Ministers shall transmit to the Sejm and the Senate, immediately upon receipt thereof, evaluations of the documents referred to in paragraph 1, made by competent institutions or bodies of the European Union.

Participation in Drafting EU Law(3)

- **Article 7.**
- 1. The Council of Ministers shall transmit to the Sejm and the Senate draft positions of the Republic of Poland on draft legislative acts of the European Union, taking into consideration time limits prescribed by European Union law, but no later than within 14 days of the receipt of such drafts.
- Detailed regulations in: article 7.2. to article 16 of the act.



QUALIFIED MECHANISM OF COOPERATION

Art. 12, 14, 15, 16 and 23 of the Act

- *passerelle* procedures (simplified procedures for changes) – special procedures which allow EU institutions to make changes in a definite area without new Treaty
- other actions undertaken by EU bodies, which the lawmaker has isolated as a set of decisions where one may depart from lawmaking based on the unanimity rule or from a simple lawmaking procedure (equated with *passerelle* procedures)
- other EU legal acts which in keeping with the Treaty of Lisbon enter into force only after being ratified by the Member States

The President of the Republic of Poland shall take the decision on proposal of the Council of Ministers, with consent granted by law.

Participation in Drafting EU Law

EUROPEAN UNION AFFAIRS COMMITTEE

- **EUROPEAN UNION AFFAIRS COMMITTEE**
- **ARTICLE 148A**
- 1. The European Union Affairs Committee, hereinafter in this chapter called the “Committee”, shall be composed of no more than 46 members

The Committee’s problem is not only the large number of its members and lack of lawyers, but, above all, the „algorithm.” The Committee’s composition should reflect the party representation in the Sejm. This causes continuous changes in the Committee’s composition (a few hundred changes during the term).

Participation in Drafting EU Law

EUROPEAN UNION AFFAIRS COMMITTEE

- **THE STANDING ORDERS OF THE SEJM - ARTICLE 148B (AMONG OTHER THINGS)**
- **1. On receipt of the following, the Marshal of the Sejm shall immediately refer them to the Committee:**
- 1) information from the Council of Ministers about the participation of the Republic of Poland in the work of the European Union;
- 3) operational programmes of activities of the Council of European Union, the European Commission's annual legislative plans and appraisals of annual legislative plans made by the European Parliament and the Council of European Union;
- 4) The European Union's legislative proposals;
- 8) draft decisions by representatives of the governments of the Member States, gathered in the Council of European Union;
- 9) draft acts of the European Union which have no legal effect, particularly proposals for guidelines adopted in the sphere of economic and monetary union and in that of employment;
- 12) other documents related to the subject matter of the activities of the European Union Affairs Committee.

Outline of the parliamentary cooperation in the EU matters

national
parliaments
(eudoc
database)

EUAC expresses
opinion regarding draft
legal act of the EU
(Art. 7 par. 4 and Art. 8
par. 2 of the Act*)

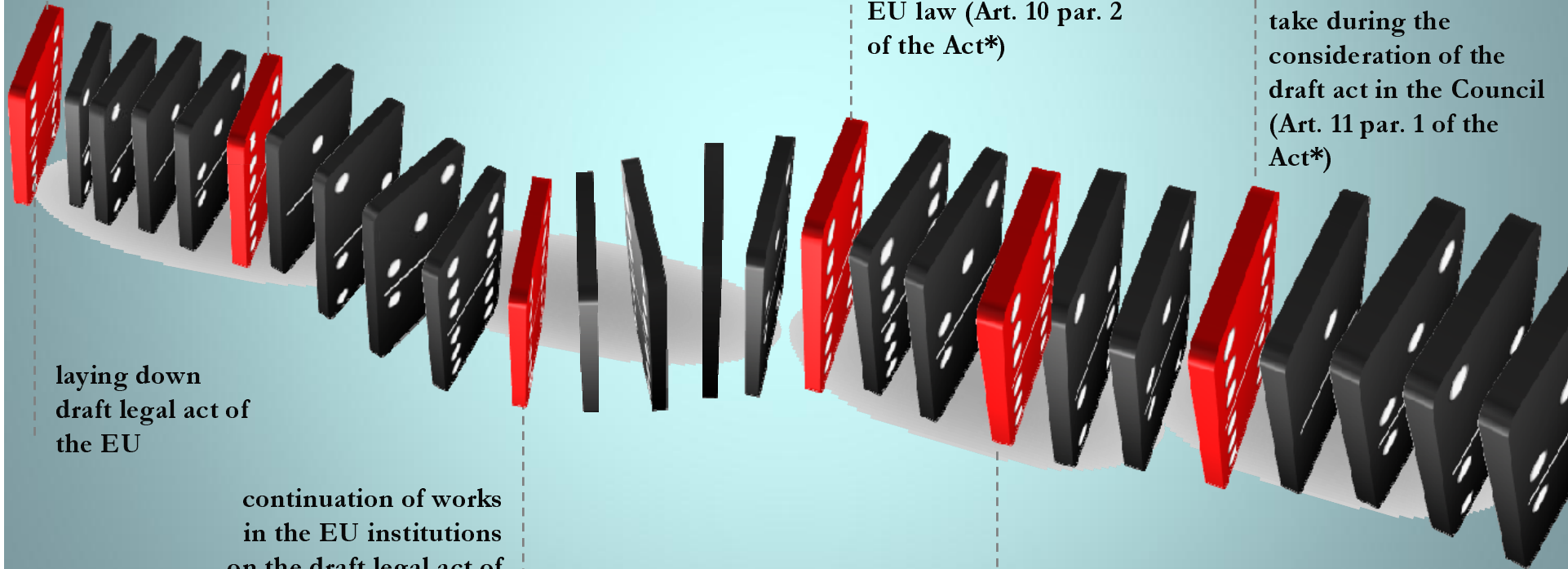
EUAC expresses
opinion regarding
position of the
Republic of Poland
taking in the course of
the process of making
EU law (Art. 10 par. 2
of the Act*)

EUAC expresses
opinion regarding
position of the
Republic of Poland
which Council of
Ministers intends to
take during the
consideration of the
draft act in the Council
(Art. 11 par. 1 of the
Act*)

laying down
draft legal act of
the EU

continuation of works
in the EU institutions
on the draft legal act of
the EU

continuation of works
in the EU institutions
on the draft legal act
of the EU



GENERAL MECHANISM OF COOPERATION

violation of the principle of subsidiarity – EUAC opinion
(8 weeks deadline)



draft of the resolution prepared by the Bureau of Research



EUAC's meeting - adoption the draft of the resolution



adoption the resolution by the Sejm of the Republic of Poland



forwarding the resolution to the EU institutions

**BUREAU OF RESEARCH
CHANCELLERY OF THE
SEJM**

**EUROPEAN UNION
AFFAIRS
COMMITTEE**

- Selection of documents
- Drafts of lists A and B

Approval of lists A and B
possible changes → Council of
Ministers

Factual and legal opinion

Meeting → Opinion
Possibly the issue of subsidiarity

Draft of a substantiated opinion
- proposals

Draft of a substantiated opinion

Sejm → Substantiated opinion

Participation in Drafting EU Law -Sejm

EUROPEAN UNION AFFAIRS

COMMITTEE

- **ARTICLE 148C**

- 1. The Committee may adopt a resolution concerning an opinion about the proposal of the European Union and an opinion on the information from the Council of Ministers about the position the Council of Ministers intends to take during the consideration of the proposal in the Council of European Union.
- 2. The opinion shall include the Committee's position on the matter, expressed in the form of either acceptance or non-acceptance of the position of the Council of Ministers. In such an opinion, the Committee may formulate recommendations to the Council of Ministers.

*During the 6th Sejm, the Committee pronounced **92** opinions concerning EU, including:*

- ***64** concerned EU documents. More often than not those were reservations to EU draft legal acts proposed.*
- ***7** opinions became Polish Sejm's resolutions re violations of the principle of subsidiarity.*

Participation in Drafting EU Law - Senat

EUROPEAN UNION AFFAIRS

COMMITTEE

A detailed course of the Committee's work does not ensue directly from the law or the Standing Orders of the Senate, but has been worked out by the Committee. The first stage of work comprises the selection of documents received by the Committee. It takes place prior to the Committee sitting, during a meeting of the Chairman and his two deputies. The meeting is also attended by Senate Chancellery's analysts charged with preparing information and opinion on draft EU laws. During the Committee meeting, upon hearing representatives of the government, the opinion of the Senator-Rapporteur, and sometimes also that of experts, the Committee either decides not to enter any objections or formulates an opinion which is next published as a Senate paper.

- *In the years 2007-2011 the Committee adopted 55 motions concerning draft Council regulations, directives and decisions, and also framework decisions, in which it included its own comments on the drafts.*
- *7 opinions became Polish Senate's resolutions concerning a violation of the principle of subsidiarity.*

Opinion No. 55
of the European Union Affairs Committee
of the Sejm of the Republic of Poland
on the “Proposal for a Regulation of the European Parliament and of the
Council on jurisdiction, applicable law, recognition and enforcement of
decisions and authentic instruments in matters of succession and the
creation of a European Certificate of Succession (COM(2009) 154 final)”
adopted at its 157th meeting on 11 December 2009

The European Union Affairs Committee of the Sejm of the Republic of Poland: finds that “Proposal for a Regulation of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession and the creation of a European Certificate of Succession (COM(2009) 154 final)” to be consistent with the subsidiarity principle; makes no objections to the proposed Regulation mentioned in point 1 and to the Government’s draft position relating thereto.

Participation in Drafting EU Law

The Role of the Sejm and The Senat

The Resolutions of the Sejm

- 4 concerned the Treaty of Lisbon
- 1 Poland's entry into the Schengen zone
- 6 concerned government information on Poland's participation in the EU work.
- In the years 2007-2011 the Sejm passed 18 resolutions concerning EU matters:
- 7 included an opinion on EU draft regulations' and directives' incompatibility with the principle of subsidiarity.

The Resolutions of the Senat

- In the years 2007-2011 the Senate passed 15 resolutions concerning EU matters :
- 8 concerned government information on Poland's participation in the EU work.
- 7 included an opinion on EU draft regulations' and directives' incompatibility with the principle of subsidiarity.

Participation in Drafting EU Law

The Role of the Sejm – The Opinions

- **COM(2010) 537** – *The opinion regarding proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)*
- **COM(2010) 539** – *The opinion regarding proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 73/2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers*
- **COM(2010) 738** – *The opinion regarding proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1234/2007 as regards marketing standards*
- **COM(2010) 728** – *The opinion regarding proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1234/2007 as regards contractual relations in the milk and milk products sector*
- **COM(2010) 799** – *The opinion regarding proposal for a Regulation of the European Parliament and of the Council establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)*
- **COM(2011) 121** – *The opinion regarding proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB)*
- **COM(2011) 127** – *The opinion regarding proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships*

Participation in Drafting EU Law

The Role of the Senat – The Opinions

- **COM(2010) 799** – *The opinion regarding proposal for a Regulation of the European Parliament and of the Council establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)*
- **COM(2010) 745** – *The opinion regarding Proposal for a Regulation (EU) No ?/ of the European Parliament and of the Council of ? amending Council Regulation (EC) No 1290/2005 on the financing of the common agricultural policy and repealing Council Regulation (EC) No 165/94 and Council Regulation (EC) No 78/2008*
- **COM(2010) 738** – *The opinion regarding proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1234/2007 as regards marketing standards*
- **COM(2010) 537** – *The opinion regarding proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)*
- **COM(2010) 539** – *The opinion regarding proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 73/2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers*
- **COM(2010) 379** – *The opinion regarding proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment*
- **COM(2010) 61** – *The opinion regarding Proposal for a regulation of the European Parliament and the Council amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX)*

Participation in Drafting EU Law

The Role of the Sejm

- The 6th Sejm debated EU matters 26 times. Including:
- - 9 debates on government information on its participation in the work of UE agencies,
- - 5 meetings dedicated to the Treaty of Lisbon,
- - 4 meetings dedicated to Polish Presidency.
- - None of the **debates was dedicated to the implementation of the EU law into the Polish law system.**
- - In absence of a legal definition, formally the content of the term „opinion of the parliament” has not yet been settled. Are committee opinions legally opinions of the Sejm within the mechanism of "*political dialogue*"?

Conclusions:

- The new law on cooperation between the government and the Sejm and the Senate in the area of Poland's EU membership has regulated mutual relations precisely and in detail.
- All procedures provided for by the new law have been successfully introduced, both in the Sejm and in the Senate.
- A Polish model of law-making remains a challenge. Although the government reformed it two years ago, the Sejm procedures are still governed by the standing orders issued before 1989.
- There has been an increasingly strong tendency to change the Polish constitution, both as regards EU matters as well as legislative powers of the government.



Thank you for the attention!

wieslaw.staskiewicz@sejm.gov.pl