

EUROPEANISATION OF THE TRADITIONAL ORDINARY FUNCTIONS OF THE PARLIAMENT OF THE REPUBLIC OF POLAND AFTER THE LISBON

Mgr Maciej Serowaniec

Department of Constitutional Law Faculty of Law and Administration
Nicolaus Copernicus University in Toruń

As a result of the Polish accession to the European Union not only traditional concepts have changed significantly, but also tasks and competence of the Polish parliament. This phenomenon is a consequence of changes to system of government, resulting from delegation of authority to the European Union. As a result of this process, there has been a change in the performance of the various functions carried out by the Polish parliament, transformation of its traditional functions has occurred and some elements of "European" functions of the parliament have emerged. This phenomenon has embraced almost all the functions of the national parliament, including above all the legislative and supervising function¹.

Keywords: European Union, Polish parliament, system of government.

A new, dynamic role of national parliaments in European integration has been designated by the provisions of Article 12 of the Treaty on European Union², as well as by two Protocols attached to the Lisbon Treaty: Protocol (No 1) on the Role of National Parliaments in the European Union and Protocol (No 2) on the application of the principles of subsidiarity and proportionality³.

The Lisbon Treaty has put particular emphasis on the participation of national parliaments in the democratic development of the European Union and the strengthening of the democratic legitimacy of EU bodies⁴. Thanks to the provisions set out in the Treaty of Lisbon, national parliaments receive, directly from the EU authorities, draft legislative acts. By the same token, they ensure compliance with

¹ Por. C. Mik, B. Pawłowski, glosa do wyroku TK z dnia 12 I 2005 r. (sygn. akt K24/04), Przegląd Sejmowy 2005, nr 3 (68), s.137-138. Por także D. Lis – Staranowicz, J. Galster, O zjawisku europeizacji polskiego prawa konstytucyjnego, „Przegląd Sejmowy” 2010, nr 2 (97), s. 36.

² Dz. U. UE 2010/C 83/01, 30 marca 2010 roku.

³ Zob. Protokół (nr 1) w sprawie roli parlamentów narodowych w Unii Europejskiej oraz Protokół (nr 2) w sprawie stosowania zasad pomocniczości i proporcjonalności (Dz. Urz. UE 2010/ C 83/206 z 30.03.2010)

⁴ Por. R. Balicki, Parlament narodowy w systemie decyzyjnym Unii Europejskiej (po wejściu w życie postanowień Traktatu z Lizbony), [w:] Instytucje prawa konstytucyjnego w dobie integracji europejskiej : księga jubileuszowa dedykowana prof. Marii Kruk-Jarosz, red. J. Wawrzyniak, M. Laskowska, Wydawnictwo Sejmowe, Warszawa 2009, s.339 i n.

the principle of subsidiarity. They also participate in the evaluation mechanisms for the implementation of EU policies in the area of freedom, security and justice, and participate in the political monitoring of Europol and the evaluation of Eurojust's activities⁵. National parliaments have been also given the opportunity to influence the pace and scope of the enlargement processes, since in fact they have been involved in revision process of EU primary law and the accession process. In addition, they contribute to the development of multifaceted cooperation between parliaments, including in particular cooperation with the European Parliament⁶.

In Poland, with a view to implementing the Lisbon treaty, a new law has been prepared, i.e., the so-called Act on Cooperation (the 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 Union⁷) whereas the Rules of Procedure of the Sejm and the Rules of Procedure of the Senate have been revised.⁸ The model of cooperation between the Parliament and the Council of Ministers in matters relating to EU membership, introduced by the abovementioned Act on Cooperation, has established detailed rules for determining how the legislative branch can influence the EU matters.

At the outset, it should be emphasized that it is difficult to admit that the procedure of implementation of EU law into national law can be considered manifestation of the performance of the classic legislative function of the parliament⁹. In the case of transposition of EU rules the national parliament in fact is bound to implement a particular rule and it is not sovereign to decide about the essential material or procedural matters of the legislation. The Polish Parliament, acting strictly as an entity performing the will of the EU legislator is mediated only in the process of implementation of EU standards into the Polish legal system, without the possibility to take in this area fully autonomous and creative actions.

It should be noted that the abovementioned Act on Cooperation of 2010 has strengthened the procedure of cooperation between the Parliament and the Council of Ministers in making laws which implement EU legislation. The Council of Ministers is obliged to notify, at least once every six months, the Sejm and the Senate of legislative works related to the implementation of EU legislation, whose date of implementation has expired or will expire within three months from the

⁵ Por. E. Górniewicz, Wzmocnienie roli parlamentów narodowych w konstrukcji europejskiej, Biuro Analiz 2009, nr 23, Urząd Komitetu Integracji Europejskiej, s. 1-2.

⁶ Por. szerzej E. Popławska, Rola parlamentów narodowych w świetle Traktatu z Lizbony, „Przegląd Sejmowy” 2010, nr 5(100), s. 157-174.

⁷ Zob. Ustawa z 8 października 2010 r. o współpracy Rady Ministrów z Sejmem i Senatem w sprawach związanych z członkostwem Rzeczypospolitej Polskiej w Unii Europejskiej (Dz. U. Nr 213, poz. 1395).

⁸ Zob. Regulamin Sejmu RP (M. P. z 2009 r. Nr 5, poz. 47, ze zm.) oraz Regulamin Senatu RP (M. P. z 2000 r. Nr 8 poz. 170 ze zm.).

⁹ Por. D. Lis – Staranowicz, Komisja śledcza i Komisja ds. Unii Europejskiej w systemie organów Sejmu, [w:] Zagadnienia z prawa parlamentarnego, Materiały z XLVIII Ogólnopolskiego Zjazdu Kół i Zakładów Prawa Konstytucyjnego, Serock 1-3 czerwca 2006 r., red. M. Granat. Warszawa 2007, s. 231 i n.

date of notification¹⁰, and thus parliament performs a kind of parliamentary control over timely implementation (transposition) of EU law¹¹.

In light of the above, the procedure of the implementation of EU legislation should not be considered in terms of the powers of Parliament to make law in a strict sense, but as a kind of duty of the parliament which consist in making law not contrary to EU law [which complies with EU law] and the obligation to implement EU rules into national law. This duty has been additionally secured in EU law by Member State's liability for damages in the event of missing or incorrect transposition of EU legislation into national law¹².

The phenomenon of europeanisation of the traditional tasks of the Polish parliament has left its mark, above all on the control (exercised by the Parliament) over the Council of Ministers in the field of implementation of European policies. In the light of the provisions of the Act on Cooperation currently in force, it is obvious that the process of europeanisation of the traditional tasks of the legislative branch in the procedure of making EU law is principally performed through information and consultative activities.

It has rightly been emphasized in the literature that the establishment of a parliament effective mechanisms for acquisition and processing of information relating to the membership in the European Union is what truly determines both the "European" role of national parliament, as well as other forms of its cooperation with the government on matters relating to the membership in the EU,¹³ giving thus the national parliament the opportunity to influence on EU legislative acts. With a view to ensuring that the parliament has the greatest impact on the decision-making process the Act on Cooperation has imposed a duty in the Council of Ministers to present at the plenary session of the Sejm and the Senate, not less frequently than once every six months, reliable information about the current activities undertaken within the European Union. The information concerns not only the most important problems, which is currently being faced by the EU, but also the important actions and initiatives taken by the EU bodies¹⁴. The act has obliged the Polish government to preset appropriate information on current issues relating to the membership of

¹⁰ Zob art. 18 ust. 4 Ustawy z 8 października 2010 r. o współpracy Rady Ministrów z Sejmem i Senatem w sprawach związanych z członkostwem Rzeczypospolitej Polskiej w Unii Europejskiej.

¹¹ Do przedłożonej informacji półrocznej o udziale Rzeczypospolitej Polskiej w pracach Unii Europejskiej Rada Ministrów zobowiązana została także dołączyć plany prac nad projektami ustaw wykonujących prawo UE, w których określone zostały przez Radę Ministrów terminy ich wniesienia do Sejmu (art. 125 ust. 1a rS).

¹² Por. J. Szymanek, „Funkcja europejska” Sejmu i Senatu jako ustrojowy efekt członkostwa w Unii Europejskiej [w:] Polska w Unii Europejskiej, XLVI Zjazd Katedr i Zakładów Prawa Konstytucyjnego, Wierzbą 3-5 czerwca 2004 r., red. M. Kruk, J. Wawrzyniak, Wydawnictwo Zakamycze, Kraków 2005, s. 347 i n.

¹³ Ibidem, s. 355-358. Tak też J. Marszałek-Kawa, Pozycja ustrojowa i funkcje Sejmu Rzeczypospolitej Polskiej po akcesji do Unii Europejskiej, Wydawnictwo Elipsa, Warszawa 2012, s. 526.

¹⁴ Por. szerzej P. Sarnecki, Współpraca Rady Ministrów z Sejmem i Senatem przy wykonywaniu przez Polskę praw członkowskich w UE, „Przegląd Sejmowy” 2004, nr 5(64), s. 13-15.

the Republic of Polish in the EU at the request of the Sejm, the Senate or the competent body under the rules of procedure of the Sejm or the competent body under the rules of procedure of the Senate. Thus, the Act on Cooperation clearly states that the Council of Ministers shall not refuse to present this sort of information. When it comes to disclosure obligation towards the Sejm and the Senate, the Council of Ministers has been obliged to transmit to the both chambers of the parliament, immediately upon receipt thereof, draft acts of the European Union adopted under Article 352 (1) of the Treaty on the Functioning of the European Union (Article 7 Paragraph 2) and the draft acts of the European Union¹⁵ (Article 8 Paragraph 1). The Act on Cooperation has obliged the Council of Ministers to transmit to the Sejm and the Senate, taking into consideration time limits prescribed by the Act¹⁶ (Article 7 Paragraphs 1, 2 and Article 8 Paragraph 2), draft positions of the Republic of Poland on the abovementioned draft legislative acts of the European Union. The Council of Ministers shall also append substantiation of abovementioned draft legislative acts, including an evaluation of the anticipated legal consequences of the legislative act of the European Union for the Polish legal system as well as its social, economic and financial consequences for the Republic of Poland. In addition, the Council of Ministers shall append information on the type of law-making procedure concerning the adoption of a legislative act of the European Union, as specified by the provisions of the Treaty on European Union and the Treaty on the Functioning of the European Union and on the voting procedure in the Council and information on the compliance of a draft legislative act of the European Union with the principle of subsidiarity (Article 7 Paragraph 3). The abovementioned substantiation appended to draft positions of the Republic of Poland should present to the parliament the impact of new legislative acts of the EU on the Polish legal order and social and economic system. Whereas the abovementioned information on the compliance with the principle of subsidiarity is an auxiliary material in the process of testing the compatibility of the EU draft legislative acts with the principle of subsidiarity. Article 10 states that “the Council of Ministers shall inform the Sejm and the Senate on the progress achieved in the process of making European Union law and on the Republic of Poland’s positions taken in the course of the process”. The obligation of the Council of Ministers set out in Article 10 has ensured the participation of the Sejm and Senate in monitoring of the process of making European Union law. Under the consultation procedure, the Council of Ministers

¹⁵ Projekty aktów prawnych UE, inne niż akty o których mowa w art. 7 ust. 1 i 2 ustawy kooperacyjnej.

¹⁶ Zgodnie z art. 7 ust. 1 i 2 ustawy kooperacyjnej Rada Ministrów została zobligowana do przekazania Sejmowi projektów stanowisk RP odnośnie powyższych projektów aktów prawnych UE, biorąc pod uwagę terminy wynikające z prawa UE, nie później jednak niż w terminie 14 dni od dnia otrzymania tych projektów. Z kolei w przypadku tzw. aktów nieustawodawczych, jako organu właściwego na podstawie regulaminu Sejmu, Rada Ministrów zobligowana została do przedstawienia na żądanie Komisji SUE projektu stanowiska Rzeczypospolitej odnośnie tych projektów w terminie 14 dni, od dnia otrzymania żądania (art.8 ust. 1 ustawy).

shall also present information on the position of the Republic of Poland which the Council of Ministers intends to take during the consideration of the draft act in the Council. The Council of Ministers shall append, to the abovementioned information, a substantiation of the position of the Republic of Poland and an evaluation of the anticipated legal consequences of the legal act of the European Union for the Polish legal system as well as its social, economic and financial consequences for the Republic of Poland (Article 11 Paragraphs 1 and 2). Under the current Act on Cooperation (which has extended the scope of the information procedure), the Council of Ministers is obliged to present to the parliament written information on the position of the Republic of Poland which the Council of Ministers intends to take during the consideration of the draft act in the Council (Article 12 Paragraph 1) or in the Council of ministers (Article 12 Paragraph 2), appending also written information containing a substantiation of the position of the Republic of Poland. The Council of Ministers shall also transmit to the Sejm and the Senate, immediately upon receipt thereof, the 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 (Article 4 Paragraph 1), along with work programmes of the Council and evaluations of annual legislative programmes of the European Commission drawn up by the European Parliament and by the Council (Article 5). Moreover, the Council of Ministers shall immediately transmit to the Sejm and the Senate information on a position of a Member State other than the Republic of Poland, taken as provided for in Article 6 of the Act on Cooperation¹⁷. In addition, the obligation to provide information also applies to draft international agreements to which the European Union or the European Atomic Energy Community are to be parties, draft decisions of representatives of the governments of the Member States, assembled in the Council, draft acts of the European Union having no legal effect, in particular

¹⁷ Wymóg ten będzie zatem dotyczył przedłożenia stanowiska innego państwa członkowskiego zajętego w trybie art. 3 ust. 2 Protokołu (nr 36) w sprawie postanowień przejściowych dołączonego do TUE, TfUE oraz TWEA (możliwość zmiany formuły głosowania większością kwalifikowaną w Radzie, pomiędzy 1 listopada 2014 r. a 31 marca 2017 r., z tzw. podwójnej większości na formułę nicejską), art. 1 albo 4 decyzji Rady odnoszącej się do wykonania art. 16 ust. 4 TUE i art. 238 ust. 2 TfUE w okresie między 1 listopada 2014 r. a 31 marca 2017 r. i od 1 kwietnia 2017 r. (możliwość czasie trwania okresu przejściowego z tzw. mechanizmu z Joaniny). Obowiązek ten będzie dotyczył również stanowisk innych państw członkowskich występujących z żądaniem przedłożenia Radzie Europejskiej : projektu aktu ustawodawczego przyjętego w dziedzinie zabezpieczenia społecznego dotyczącego środków niezbędnych do ustanowienia swobodnego przepływu pracowników (art. 48 akapit drugi zdanie pierwsze TfUE), projektu dyrektywy ustanawiającej normy minimalne w zakresie niezbędnym dla ułatwienia wzajemnego uznawania wyroków i orzeczeń sądowych, jak również współpracy policyjnej i wymiarów sprawiedliwości w sprawach karnych o wymiarze transgranicznym (art. 82 ust. 3 zdanie pierwsze), projektu dyrektywy ustanawiającej normy minimalne odnoszące się do określania przestępstw oraz kar w dziedzinach szczególnie poważnej przestępczości o wymiarze transgranicznym oraz projektu dyrektywy ustanawiającej normy minimalne odnoszące się do określania przestępstw oraz kar w danej dziedzinie (art. 83 ust. 3 zdanie pierwsze TfUE).

proposals for guidelines adopted on the economic and monetary union and on employment and acts of the European Union bearing significance on the interpretation or application of European Union law. (Article 9). This obligation is purely informative, as the rules of procedures of the Sejm and the rules of procedures of the Senate do not set out any special powers of respective chambers. The statutory 'duty to co-operate' which applies to the Council of Ministers, the Sejm and the Senate and relates to the exercise by representatives of the Council of Ministers of the presidency of the Council is also a strengthening of the powers of control of parliament in the EU decision-making procedures (Article 21). Indeed, the Council of Ministers has been obliged to present to the competent body under the rules of procedure of the Sejm and to the competent body under the rules of procedure of the Senate (respectively, the European Affairs Committee of the Sejm and the European Affairs Committee of the Senate), no later than a month before the commencement of the exercise by representatives of the Council of Ministers of the presidency of the Council, information on its priorities on this respect (Article 21 Paragraph 1). During the exercise by representatives of the Council of Ministers of the presidency of the Council, a representative of the Council of Ministers shall, each month, inform the European Union Matters Committee of the Sejm and the European Union Matters Committee of the Senate on the progress in the exercise of the presidency (Article 21 Paragraph 2). The selection of parliamentary sectoral committees responsible for the organization of working meetings during the Polish presidency in the European Union is a very important part of the parliamentary dimension of the Presidency of the European Union in transnational dimension. As experience shows, close cooperation between sectoral committees of both chambers of the Polish Parliament with the relevant ministries is the foundation of creating and implementing priorities for the exercised presidency¹⁸. With regard to consultative powers of the Polish parliament, when the formal legislative process begins the European Affairs Committee of the Sejm and the European Affairs Committee of the Senate (as the competent body under the rules of procedure of the Sejm and the competent body under the rules of procedure of the Senate) may express their opinions on the draft act of the European Union adopted under Article 352 (1) of the Treaty on the Functioning of the European Union (Article 7 Paragraph 4) or draft EU legal acts other than legislative acts (Article 8 Paragraph 2). Then, depending on the phase of the EU legislative process, the European Affairs Committee of the Sejm and the European Affairs Committee of the Senate may express their opinions on the Republic of Poland's positions taken in the course of process of making European Union law (Article 10 Paragraph 2), as well as they may express their opinions on the position of the Republic of Poland which the Council of Ministers intends to take during the consideration of the draft act in the Council (Article 11 Paragraph 1 and Article 12 Paragraph 1) or in the European Council (Article 12 Paragraph 2). According to the

¹⁸ Por. szerzej R. Grzeszczak, Prezydencja rotacyjna w Radzie i jej parlamentarny wymiar, „Przegląd Sejmowy” 2011, nr 2 (103), s. 65-81.

Constitutional Tribunal, the expression of opinion by the Polish Parliament on draft EU legislation is an important form of co-participation in making EU law. Establishing the procedure for issuing opinions on draft EU legislation and draft positions of the Council of Ministers legislative authority has been granted the power to influence on the development across the EU, which is also a catalyst of credibility and democratic legitimacy of EU bodies. According to the Constitutional Tribunal, a fundamental change to the current law-making process in the Republic of Poland, which has followed the accession to the EU, justifies the conclusion that the exercise of legislative power has also entailed the possibility of exercising, even if only indirectly, influence on the content of EU legislation. Thus, giving opinion by the European Affairs Committee of the Sejm, on behalf of the Sejm, is an important form of the participation in making EU law. Legislative function of Parliament, according to the Tribunal, today consists of two competencies. The first is making national laws, whereas the other consists in exercising at least a minimum impact on EU legislation¹⁹.

It has rightly been emphasized in the literature that the traditional understanding of the legislative function of Parliament seems to be in this specific case extremely difficult to accept because of the position of the legislative body in the political system in which the Parliament should be given a real impact on the content of legislation. The right of the Sejm to express relatively binding opinions and the right of the Senate to express non-binding opinions certainly do not fulfill that constitutional requirement.²⁰ The opinions, in fact, are not 'protected' by any legal sanction, which is normally attributed to the classic power of the control granted to parliament. In addition, the Council of Ministers is not bound by the opinion given by the respective Committees of the parliament. The government is only obliged to preset its position to the Sejm's Committees and explain the reasons why the Council of Ministers does not take into consideration the opinion of Committee (Article 13). However, the impossibility to apply to the Council of Ministers any legal sanctions and the non-binding nature of opinions encourage us to define the entire process purely as a mechanism for information and consultation, rather than the typical instrument of parliamentary control, which is mentioned in the Constitution in Article 95 Paragraph 2. The adoption of this practice makes possible on the one hand to view the opinion as performance of the parliament's power of control; on the other hand, it should be strongly emphasized that this supervision is exercised exclusively within the sphere of making EU law. Therefore, according to J. Jaskiernia, it seems reasonable to consider this

¹⁹ Zob. Wyrok TK z 12 stycznia 2005 r. sygn. akt K 24/04, OTK ZU 2005, nr 1A, poz.3.

²⁰ Por. M. Kruk, Tryb przystąpienia Polski do UE i konsekwencje członkostwa dla funkcjonowania organów państwa, [w:] Otrawcie Konstytucji RP na prawo międzynarodowe i procesy integracyjne, red. K. Wójtowicz, Warszawa 2006, s. 153 i n. Nadal aktualne pozostają w tym względzie uwagi poczynione przez W. Sokolewicza, Formy oddziaływania polskiego parlamentu na prawodawstwo Unii Europejskiej. Wybrane problemy prawne, [w:], Polska w Unii Europejskiej. XLVI Zjazd Katedr i Zakładów Prawa Konstytucyjnego, Wierzba 3-5 czerwca 2004 r., red. M. Kruk, J. Wawrzyniak, Wydawnictwo Zakamycze, Kraków 2005, s. 74.

competence of the parliament as a modification of the classical power of control, performed towards the Council of Ministers on matters other than legislation. It is an manifestation of the new parliament function, i.e. function or power of control of making EU law. Through the right to express opinions on draft EU legislation, the legislative authority has received only a limited impact on the process of development of the European Union²¹.

The Treaty of Lisbon has expanded national parliaments' powers of supervision in EU law making, entrusting them the role of "guardian of the principle of subsidiarity". A new early warning system (ex ante subsidiarity control) has given national parliaments, and hence also the Sejm and the Senate, the possibility of effective control of the conformity of EU legislative acts with the principle of subsidiarity. The provisions of the Lisbon Treaty and of the Protocol (2) on subsidiarity and proportionality are the first regulations in the history of the integration process which aim at ensuring the national parliaments to exert direct influence on EU legislation.

Indeed, the ex ante subsidiarity control enables both chambers of the Polish parliament to issue reasoned opinions which express their disapproval of a draft legislative act. At the same time the ex ante subsidiarity control to be effective requires that the individual national parliaments or chambers take a collective action, so that the amount of issued reasoned opinions is a certain qualified majority, which is specified in the provisions of the treaties²². Parenthetically, it is worthwhile to point out that since the entry into force of the Treaty of Lisbon the Polish Sejm issued ten reasoned opinions, and the Senate issued eleven reasoned opinions. Both chambers of the Polish parliament are therefore the most active chambers of national parliaments in testing European legislation for compliance with the principles of subsidiarity.²³ In turn, in the framework of an ex post subsidiarity control mechanism for EU legislation, the Act on Cooperation has ensured that both the Sejm and the Senate may lodge the complaints with the Court of Justice of the European Union concerning the breach by a legislative act of the principle of subsidiarity. Article 17 of the Act on Cooperation specifies the manner

²¹ M. Dobrowolski, glosa do wyroku TK z dnia 12 I 2005 r. (sygn. akt K24/04), „Przegląd Sejmowy” 2005, nr 3 (68), s. 147-148.

²² W ramach procedury „żółtej kartki”, aby uzasadnione opinie parlamentów narodowych o niezgodności projektu aktu ustawodawczego z zasadą pomocniczości były skuteczne konieczne jest by stanowiły one przynajmniej jedną trzecią głosów przyznanych parlamentom narodowym (18 głosów), natomiast w przypadku w projekcie aktu prawodawczego dotyczącego przestrzeni wolności, bezpieczeństwa i sprawiedliwości, przedłożonego na podstawie artykułu 76 TfUE próg ten wynosi co najmniej jedną czwartą głosów (14 głosów). W przypadku zaś procedury „pomarańczowej kartki” jest ona uruchamiania, gdy przynajmniej zwykła większość głosów przyznanych parlamentom narodowym sprzeciwia się przyjęciu akt.

²³ Por. K. Wójtowicz, Rola parlamentów narodowych w świetle postanowień Traktatów stanowiących podstawę Unii Europejskiej [w:] Parlamentarny system rządów. Teoria i praktyka, red. T. Mołdawa, J. Szymanek, M. Mistygacz, Wydawnictwo Elipsa, Warszawa 2012, s. 190-195. Por. szerzej M. Słok - Wódkowska, Zakres przedmiotowy kompetencji parlamentu narodowego do badania zasady pomocniczości w świetle Traktatu z Lizbony, Przegląd Sejmowy 2010, nr 4 (99), s.141-152.

in which the right may be exercised by the Sejm, obligating the Prime Minister to lodge a complaint with the Court immediately upon receipt from the Marshal of the Sejm of a resolution together with a document confirming a mandate to represent the Sejm in proceedings before the Court. It is worth noting that the Prime Minister is obliged to respect the content of the resolution, passed respectively by the Sejm or the Senate, hence only the chamber which has lodged the complaint concerning the breach by a legislative act of the principle of subsidiarity may decide to withdraw the complaint²⁴.

The phenomenon of europeanisation of classical or ordinary functions of parliament does not exhaust exclusively in creation of new legal rules or in their execution. A kind of complement, as a whole, are powers of parliament to take political decisions relating to the interests of the Republic of Poland in the EU and the powers to make political decisions concerning the whole EU. The Polish parliament, as an integral part of the European *pouvoir constituant*, is involved in the creation of the EU treaties, both in the ordinary revision procedure, which requires ratification by all Member States in accordance with their constitutionally specified requirements, as well as in the simplified Treaty revision procedure (general passerelle clause), which enable to amend certain parts or provisions of the treaties by a decision of the European Council or the Council. Thus, the Sejm and the Senate have a real impact on the scope and pace of the integration process.

With a presentation a formal proposal for the initiation of the ordinary revision procedure Council shall notify the national Parliaments. Then, the Sejm and the Senate elect their representatives to the Convention, in accordance with the procedure set out in the rules of procedure, respectively, of the Sejm and the Senate. According to the provisions of the Act on Cooperation, the Sejm and the Senate have been also granted the right to express opinions if the Convention is not convened, as prior to the European Council's decision not to convene the Convention, the Prime Minister shall seek the opinion of the Sejm and the Senate (Article 16 Paragraph 1). It should be noted that the Council of Ministers is obliged to take into account, for its position in the European Council, only an opinion issued by the Sejm. This opinion is, however, not absolutely binding, because if the position of the Council of Ministers does not take into consideration an opinion of the Sejm, the Prime Minister is required to immediately explain to the Sejm the reasons for discrepancy.

The structure adopted by the Act on Cooperation implies a tacit autonomy of both chambers to express an opinion, but the rules of procedures of the Sejm and the rules of procedures of the Senate do not contain any provision concerning the manner or form in which an opinion should be expressed. It is therefore necessary to determine under the rules of procedure of the Sejm whether the Chamber *in corpore* or the competent body under the rules of procedure of the Sejm, thus *de*

²⁴ Por. R. Chruściak, Skarga Sejmu i Senatu do Trybunału Sprawiedliwości UE – prace parlamentarne, [w:] Parlamentarny system rządów. Teoria i praktyka, red. T. Mołdawa, J. Szymanek, M. Mistygacz, Wydawnictwo Elipsa, Warszawa 2012, s. 296-308.

facto the European Affairs Committee of the Sejm, is entitled to give an opinions. Ultimately, the two chambers of the Polish parliament are involved in the procedure of ratification in the framework of the ordinary revision procedure in accordance with the procedures established in Article 89 Paragraph 1 or Article 90 of the Polish Constitution.

Whereas in case of simplified revision procedure the Polish legislator, who had taken inspiration from the German solutions, has included the Sejm and the Senate in the process of acceptance of decisions taken in the framework of procedure set out in Article 46 (6) of the Treaty on European Union. Under Polish law, those decisions require ratification and shall be ratified with consent granted by statute, in accordance with the procedures established by the Polish Constitution in Article 89 or 90 (Article 23 of the Act of Cooperation, which has amended the Act of 14 April 2000 on International Agreements²⁵).

When the general passerelle clause in the strict sense is applied, in accordance with Articles 14 and 15 of the Act on Cooperation a decision on the position of the Republic of Poland, is made by the President of the Republic of Poland at the request of the Council of Ministers with the consent granted by statute. Taking into account the active role of the Sejm and the Senate in the national decision-making on the position of the Republic of Poland in the framework of the general passerelle clause in the strict sense, the Polish parliament is granted with a *de facto* specific *veto* power, which manifests itself as an opportunity not to express approval by the parliament for ratification of treaty revisions²⁶.

By involving the legislative branch in selecting candidates representing Poland in the EU institutions, europeanisation of ‘traditional’ parliamentary tasks refers, to a certain extent, also to the so-called ‘creative function’ of parliament. Although, according to Article 146 Paragraph 4.9 of the Constitution of the Republic of Poland, the Council of Ministers «shall exercise general control in the field of relations with other States and international organizations». However, taking into account the principle of democratic rule of law and the need to enhance the democratic legitimacy of the EU institutions, the Council of Ministers shall submit to the Committee on European Affairs of the Sejm a proposal for the appointment of a member of the European Commission and the Court of Auditors, a members of the Economic and Social Committee and the Committee of the Regions, a judge of the Court Justice of the EU, the director of the European Investment Bank and the Permanent Representative of the Polish Republic to the European Union (Article 19 of the Act). The competent body under the rules of procedure of the Sejm (i.e. the Committee) may express its opinion within 21 days of the presentation of proposed candidatures by the Council of Ministers (Article

²⁵ Zob. Ustawa z dnia 14 kwietnia 2000 r. o umowach międzynarodowych (Dz. U. Nr 39, poz. 443 ze zm.)

²⁶ Por. J. Barcz, Traktat z Lizbony. Wybrane aspekty prawne działań implementacyjnych, LexisNexis, Wyd. I, Warszawa 2012, s. 427.

20 paragraph 2). The expression of an opinion is indispensable condition for taking further steps to appoint above indicated candidates. As it is emphasised in the literature, the statutory reservation of powers to express opinions on candidates only to the organs of the Sejm may result from the assumption that these powers concern the sphere of parliamentary control over the government²⁷. Moreover, it should be noted that provisions of the Act on Cooperation of 8 October 2010 have clarified the legal character of Committee's opinion on the candidatures. Indeed, Article 20 Paragraph 4 states that if the opinion of the Committee is not taken into consideration, the Council of Ministers shall provide the Committee with information on the designation of the candidate concerned, including an explanation of the reasons why the opinion has not been taken into consideration. The structure adopted by the Act on Cooperation implies that the opinion on the candidatures expressed by the European Affairs Committee of the Sejm should be a basis for the decision concerning the candidatures proposed by the Council of Ministers for the posts in EU bodies. In the light of the provision of the Act on Cooperation, the opinion expressed by the European Affairs Committee of the Sejm is however not absolutely binding, since it is in fact an expression of the political will of the Committee, which is a body acting on behalf of Parliament.

Adaptation of national regulations to the changes introduced by the Lisbon Treaty, in particular by adopting a new Act on Cooperation and by amending the rules of procedure of Sejm and the Senate, has influenced significantly positively the intensification of the Sejm's and the Senate's involvement in the EU decision-making and strengthened the position of the Polish Parliament in the European Union. Having now nine years of experience as a Member State, the Polish legislator in the new Act on Cooperation has strengthened the role of national parliament in EU decision-making. As a result of the institutional reform of the EU, resulting from the entry into force of the Treaty of Lisbon, there has been another important step in the transformation of the classical functions performed by national parliament. The extension of the prerogatives of national parliaments in EU decision-making process has led to the emergence of new, separate forms of parliamentary activity in the process of European integration, which are more and more inclined to identify a new - "European" function of national parliaments.

It should be noted that provisions of the Lisbon Treaty and of the accompanying protocols (No 1, 2) have guaranteed equal position for the Polish Senate and the Sejm in exercising parliamentary control over the European Union law-making²⁸. In the Polish constitutional system there has evolved the principle of

²⁷ Por. P. Sarniecki, op. cit., s. 25. Na kontrolny charakter uprawnienia Komisji do Spraw Unii Europejskiej do opiniowania kandydatów na niektóre stanowiska w UE zwraca także uwagę K. Wójtowicz, *Funkcja kontrolna*, s. 87-88. Por. także M. Serowaniec, *Uczestnictwo polskiego parlamentu w aktualnej fazie rozwoju europejskiego procesu prawotwórczego*, [w:] *Dwadzieścia lat transformacji ustrojowej w Polsce*, red. M. Zubik, Wydawnictwo Sejmowe, Warszawa 2010, s.399.

²⁸ Por. M. Stębel, *Rola polskiego parlamentu po transformacji ustrojowej*, [w:] *XV lat obowiązywania Konstytucji z 1997 r.* Księga jubileuszowa dedykowana Zdzisławowi Jaroszowi, red. M. Zubik, Wydawnictwo Sejmowe, Warszawa 2012, s.153 oraz s.158.

“asymmetrical” bicameralism, indicating the predominance of the Sejm over the Senate and the Constitution of the Republic of Poland of 2 April 1997 has not granted the Senate the right to exercise control, but the entry into force of the Treaty of Lisbon has made that the “upper chamber, in spite of the fact that it has limited impact on the performance of the most important functions of parliament, it has gained a significant, or even, equal share in the tasks relating to the ongoing process of European integration”²⁹. This argument in the future may become an important contribution to the discussion on the transformation of the current bicameral parliament in Poland.

The 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 has undoubtedly enhanced the Polish Parliament’s participation in the European integration process, strengthening also the role of the national parliament as such and enhancing cooperation between supreme bodies of state authority in matters relating to Polish membership in the European Union. Furthermore, the Act has completed some legal loopholes existing under former law (the previous Act of 2004) and confronted a number of issues arising directly from the institutional and procedural reforms implemented under the Treaty of Lisbon³⁰.

Summing up the above considerations we arrive at the conclusion that it is impossible to disagree with prof. J. Galster’s remark that “the Constitution of the Republic of Poland still remains indifferent to the emergence of a European function of the legislative branch. Such an European function of the Parliament is not yet hypostasis, since tasks within this function are systematically carried out”³¹. Another conclusion that could be drawn is that there is a clearly visible need to strengthen the role of the Polish Parliament in the European decision-making process by determining its prerogatives in the Constitution. Such a step could certainly contribute to strengthen constitutional values such as sovereignty, democracy and fairness of actions of state bodies, which lie at the basis of united Europe. On the other hand, if the Constitution grants new prerogatives to the Polish Parliament then such a solution might form the basis for a possible change of the position of the Senate in the Polish political system³², as under current law the Senate *de facto* exercises control over the Council of Ministers in matters relating to the membership in the EU, in spite of the fact that *de jure* the Senate is not granted any power to control the Council of Ministers in those matters.

²⁹ Ibidem, por także A. Pudło, Umocnienie statusu Senatu RP na podstawie Traktatu z Lizbony, Przegląd Sejmowy 2011, nr 6(107), s. 47-60.

³⁰ Por. A. Fuksiewicz, Sejm i Senat rok po wejściu w życie traktatu lizbońskiego – dostosowanie do reformy instytucjonalnej, Instytut Spraw Publicznych, Warszawa 2011, s. 18-20.

³¹ D. Lis – Staranowicz, J. Galster, op. cit., s.44.

³² Podjęte próby przygotowania i uchwalenia stosownej noweli konstytucyjnej nie zakończyły się powodzeniem. Wprawdzie projekt nowelizacji konstytucji został wniesiony do Sejmu przez Prezydenta RP 12 listopada 2010 r. (druk nr 3598), to nie został on do końca VI kadencji Sejmu rozpatrzony i uchwalony. Por. także Zmiany w Konstytucji RP dotyczące członkostwa Polski w Unii Europejskiej. Dokumenty z prac zespołu naukowego powołanego przez Marszałka Sejmu, Biuro Analiz Sejmowych, Warszawa 2010.