

NOTES

ON THE SENATE



SENATE
OF THE REPUBLIC
OF POLAND

How an Act is made?

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An act is an attempt to solve a problem concerning the society, economy, politics or culture. The authors of drafts who have the constitutional right to initiate legislation (deputies, the Senate, the Council of Ministers, the President of the Republic of Poland and 100,000 citizens eligible to vote in elections to the Sejm, and in the case of a draft amendment to the Constitution – 92 deputies, the Senate or the President) consider it necessary to add new rules to the generally applicable law or to modify or abolish the currently existing rules. This may be proposed by voters or made take place under the influence of social organisations, experts, the media or special interest groups. It may also be caused by the obligation to enforce a decision of the Constitutional Tribunal or it may be necessitated by Poland's membership in the European Union.

The authors of a draft act are usually convinced that the arguments contained in their proposal are sound and right, especially when they have carried out the required consultations in accordance with the constitutional principle of social dialogue, and the draft fulfils the expectations of citizens. However, there are no perfect solutions that will suit everybody in a pluralist society. It may also be a challenge to design solutions which are the best from the point of view of fundamental constitutional values, equally taking into account the wishes of citizens, economic realities, specialist knowledge and political considerations. In spite of this, in a democratic state based on the rule of law, one must look for such solutions and, where possible, find them by using rational principles of the law-making process to limit the risk of one-sided decisions.

The law-making can be compared to a cognitive process in which one accumulates knowledge about the reality. It is just as complex as searching for truth. The law-making process in a democratic State based on the rule of law, especially in relation to the generally binding law, should aim at practical implementation of the core constitutional values and principles. These values include: the common good, dialogue, human dignity as the foundation of the democratic state of law, rationality of activities taken by law-making bodies in the system of separation and balance of the powers of public authorities. As envisaged in the Constitution, the law-making process should be organized in such a way so as to make sure that it is a complex, multi-stage process, progressing in successive stages, duly formalised and defined by law, transparent and democratic, i.e. based on dialogue and cooperation, ruling out any arbitrariness when setting the legislator's objectives and deciding on specific wording of provisions. This process must also be contradictory, i.e. it should make it possible to present opposing viewpoints for the purpose of reaching a compromise. Finally, it must lead to the adoption of provisions which are consistent with the basic law and European law.

The legislative process begins with **SUBMISSION OF A DRAFT ACT TO THE MARSHAL OF THE SEJM**. A draft initiated by citizens must be accompanied by signatures of 100 thousand citizens who are eligible to vote in elections to the Sejm. These signatures should be collected by a legislative initiative committee set up for this purpose. A draft proposed by deputies requires the support of 15 deputies or a committee of the Sejm. A budget act (an act on the interim budget or acts that have a direct effect on the State finances) may only be put forward by the Council of

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(Photo by T. Paczka)

Ministers. Every **DRAFT ACT** is accompanied by a **STATEMENT OF REASONS**, which outlines the financial consequences of its implementation, explains its rationale and purpose, presents the current state of affairs in the area to be regulated, demonstrates the differences between the current legal situation and the one contemplated by the legislators and provides detailed information on the social, economic and legal consequences of the draft being passed. Drafters must also indicate the sources of financing, when the draft involves a burden for the State budget or for budgets of local authorities, and present the basic assumptions underlying its implementation. A draft proposed by the Council of Ministers must be accompanied by drafts of its implementing acts. The author of the draft must also ensure that the draft is consistent with the law of the European Union or that it is not the subject-matter of any other regulation. The author of the draft should also present the results of consultations. The draft may be returned by the Marshal of the Sejm if its statement of reasons fails to meet these requirements. If there are doubts as to whether a given draft is consistent with the law, including the law of the European Union, the Marshal of the Sejm may request their clarification. If a Committee expresses a negative opinion on the draft, the Marshal of the Sejm may decide not to proceed any further.

It is the Marshal of the Sejm who decides whether or not the **WORK ON THE DRAFT ACT ON THE BILL** should begin. This initial work is carried out in three stages in the Lower House, which are referred to as readings. **THE FIRST READING**, depending on the subject matter of the draft act is held either at a sitting of the Sejm or one of its committees. In the former case, the draft act may be rejected at this early stage. During the first, the promoter of the draft presents an explanatory statement on the draft, answers questions of deputies. This is followed by a discussion on the assumptions of the draft. After the first reading is closed, and before the draft is examined in detail, it is possible to hold a public hearing. Then, competent committees or subcommittees, which also include representatives of the bodies and institutions concerned, non-governmental organisations, lobbyists and experts – prepare a report on the draft, usually in the presence of representatives of the media. Sometimes, they introduce significant changes thereto or propose that it should be rejected. Afterwards, at a Sejm sitting, the **SECOND READING** takes place. During the second reading, the report on the draft is presented and amendments are proposed. The above can be done by a group of 15 deputies, the promoter and the Council of Ministers. The content of the amendments should not go beyond the scope of the initial draft. When amendments are proposed, the draft is usually forwarded to a committee, which then presents its opinion on the draft.

The next stage is the **THIRD READING**, which involves presentation of the opinion of the committee or the deputy-rapporteur on submitted amendments and voting on these amendments and on the draft act as a whole. To adopt an act, a simple majority of votes (more votes in favour of the draft act than against it) in the presence of at least half of the statutory number of deputies is required. Upon adoption, the draft becomes an act and is forwarded to the Senate by the Marshal of the Sejm.

IN THE SENATE, the Marshal of the Senate forwards the act to the competent committee, which proposes the opinion which should be adopted by the Senate with re-

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spect to that act. This is followed by a sitting of the Senate, during which a debate and a vote on the act is held. In this way, senators may either decide to **ADOPT THE ACT WITHOUT AMENDMENTS, TO REJECT THE ACT** (unless it is a budget act) or to **INTRODUCE AMENDMENTS** to the act. Any such amendments, however, may not go beyond the scope of the act submitted to the Senate.

The Sejm has 30 days to adopt an opinion. If the Senate proposes to reject the act or to amend it, the Senate's resolution on this issue is considered by the Sejm committee which worked on that act. The committee provides the Sejm with a report on the Senate's opinion. The Sejm – by an absolute majority of votes (the number of votes in favour must be higher than the number of votes against and abstentions) in the presence of at least half of the statutory number of deputies – **MAY REJECT BOTH THE AMENDMENTS PROPOSED BY THE SENATE AND THE MOTION TO REJECT THE ACT**. Without the consent of the Senate, however, no amendment can be made to Constitution and no act can be adopted which authorizes the ratification of an international agreement under which the competences of state authorities are transferred to an international body or organisation.

THE MARSHAL OF THE SEJM PRESENTS THE ACT SO ADOPTED TO THE PRESIDENT OF THE REPUBLIC OF POLAND FOR SIGNATURE. The President has 21 days to sign the document. The **PRESIDENT THEN HAS THE ACT ANNOUNCED** by the President of the Council of Ministers.

BEFORE SIGNING THE ACT, THE PRESIDENT MAY SUBMIT A MOTION REQUESTING THE CONSTITUTIONAL TRIBUNAL TO EXAMINE THE CONSTITUTIONAL CONSISTENCY OF THE ACT. IF THE PRESIDENT DECIDES NOT TO SUBMIT SUCH A MOTION, THE ACT MAY BE RETURNED TO THE SEJM FOR RECONSIDERATION. The act is reconsidered by the committee of the Sejm which worked on the document concerned. The committee (or committees) may propose to readopt the act. However, no amendments may be introduced to an act vetoed by the President. The Sejm may overturn the presidential veto by re-adopting the act by a three-fifths majority in the presence of at least half of the statutory number of deputies. In such a case, the act must be signed by the President of the Republic of Poland.

Ordinary adoption of an act is very time-consuming. The Constitution makes it possible to shorten this process, allowing the **COUNCIL OF MINISTERS TO PUT FORWARD ITS OWN DRAFT ACT UNDER THE URGENT PROCEDURE** (this does not apply to draft acts on: taxes, elections of the President, the Sejm, the Senate and local government, draft act on the structure and competences of public authorities, as well as codes). Under the urgent procedure, the **SENATE HAS 14 DAYS TO CONSIDER THE ACT, AND THE PRESIDENT HAS 7 DAYS TO SIGN IT**. Irrespective of the urgent procedure, the Sejm – “in duly justified cases” – may take steps to adopt an act faster than it is envisaged in its Rules and Regulations.

TO ENTER INTO FORCE, AN ACT MUST BE FIRST PUBLISHED IN THE “JOURNAL OR LAWS”. It does not become effective until 14 days after its publication, unless otherwise provided for in that act.



(Photo by T. Ozdoba)

Ryszard Piotrowski

THE LEGISLATIVE PROCESS (SIMPLIFIED)

