

NOTES ON THE SENATE

How an act is made?

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, 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 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 be necessitated by Poland's membership in the European Union.

The authors of a draft act are usually convinced about the rightness of their proposal, in particular when they fulfilled their obligation to consult the public, which is derived from the constitutional principle of social dialogue, and when the proposal reflects citizens' expectations. In a pluralistic society, however, there are no fit-for-all solutions. It is also difficult to find solutions that are equally satisfying from the perspective of values at the core of the constitutional system, citizens' wishes, economic opportunities, expertise, and political conditions. In a democratic state governed by the rule of law, it is necessary to search for compromise by applying reasonable principles of legislative procedures, aimed at limiting the risk of unilateral decisions.

The process of law-making in the democratic state governed by the rule of law, in particular when it comes to the law of general application, should support the realisation of values and constitutional norms that define the shape of law-making. These values and norms include: the common good, dialogue, human dignity, and reasonable actions taken by law-making bodies within the system characterised by the division and balance of powers. According to the Constitution, the process of adopting a statutory act should be arranged in a manner that the procedure is thorough, multi-step and sequential, duly official and legally defined, transparent and democratic, namely based on dialogue, cooperation, and rejection of arbitrary approach in defining the objectives of law-makers and drafting provisions, adversarial, namely allowing opposite views to be presented to reach a compromise, as well as oriented towards law-making that is compliant with the Constitution and European law.

The legislative procedure begins with a **LEGISLATIVE PROPOSAL (DRAFT ACT) BEING SUBMITTED TO THE MARSHAL OF THE SEJM**. A citizens' proposal should be accompanied by signatures of 100,000 citizens who enjoy the right to vote in parliamentary elections, collected by a citizens' initiative committee established for this purpose. A deputies' proposal must be supported by at least 15 deputies or a Sejm committee. As far as the budget act is concerned (being an act on the State budget and acts directly shaping the State's finances), the right of initiative is held exclusively by the Council of Ministers. An explanatory **MEMORANDUM FOR A DRAFT ACT** must always describe the financial impact of its implementation, and it must disclose the need and objective of adopting the act, present the current status quo in the area to be regulated, indicate differences between the existing and proposed



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legal situation, and explain social, economic and legal consequences of adopting the proposed act. It is also necessary to indicate the sources of financing that are to be used if the proposed act implies a burden for the State's budget or local government units' budgets, and to present the guidelines for basic implementing acts. The Council of Ministers has to attach drafts of such acts to its proposal. The sponsor of the proposed act is also required to confirm that the proposed act is compliant with the law of the European Union and it does not cover the area falling within the competence of the EU. Such an initiator should also present the outcome of consultations. The Marshal of the Sejm may return the draft act if the explanatory memorandum does not meet the requirements. The Marshal may also refer the draft act to the Legislative Committee if there are any doubts about its compliance with EU law. If the Legislative Committee issues a negative opinion, the Marshal of the Sejm cannot continue to proceed with the proposal.

It is the Marshal of the Sejm who decides about the start of **LEGISLATIVE WORK** which is divided into three stages known as 'readings' in the Lower Chamber of the Parliament. The first reading, depending on the subject matter of a legislative proposal, takes place during the Sejm's sitting, at which the proposal may be already rejected, or during a committee meeting. The **FIRST READING** consists of the presentation of the rationale behind the legislative proposal by its initiator, who also answers questions asked by deputies, and the discussion about the guidelines for the draft act. After the first reading and before the legislative proposal is considered in detail, public hearings must be organised. Then, the competent committees and sub-committees of the Sejm, in cooperation with the representatives of affected bodies and institutions, NGOs, lobbyists, and experts, usually accompanied by the representatives of the media, draft a report on the legislative proposal, occasionally introduce significant modifications or propose that it be rejected. Then, **SECOND READING** takes place during the Sejm's sitting. This stage consists of the presentation of a report on the draft act and the tabling of amendments. Amendments can be proposed by: a group of 15 deputies, the initiator or the Council of Ministers. The amendments should not include any content exceeding the original scope of the draft act. When amendments are tabled in an ordinary procedure, the draft act is referred to the competent committee for an opinion.

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 respect 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.

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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 OF THE REPUBLIC OF POLAND MAY REFER THE PROPOSAL TO THE CONSTITUTIONAL TRIBUNAL AND REQUEST THAT THE TRIBUNAL VERIFY ITS CONSTITUTIONALITY, OR, IF HE DECIDES NOT TO USE THIS OPTION, HE MAY REFER THE ACT BACK TO THE SEJM FOR RECONSIDERATION. The act is reconsidered by the same Sejm committee that worked on it on the first occasion. The Committee (or a number of committees) may propose that the act be adopted again. However, it is not allowed to introduce any changes to the text vetoed by the President of the Republic of Poland. For the act to be adopted (and to effectively reject the President's veto), a majority of 3/5 votes in the presence of at least half of the statutory number of deputies is required. If this threshold is reached, the President of the Republic of Poland must sign the act.

Adopting an act usually takes a lot of time. The Constitution provides for the possibility of shortening this timeline as it stipulates that the **COUNCIL OF MINISTERS MAY CONSIDER ITS OWN LEGISLATIVE PROPOSAL AS URGENT** (except for proposals regarding tax matters, presidential elections, elections to the Sejm, elections to the Senate, local government elections, State system arrangements, competence of public authorities, and codes). The Senate must consider an urgent legislative proposal within 14 days and the President of the Republic of Poland has 7 days to sign it. Irrespective of this fast-track procedure, "in particularly justified cases" the Sejm may adopt an act earlier than provided for in its Standing Orders.

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

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(photo by Łukasz Kamiński)

THE LEGISLATIVE PROCESS

