



**EU COMPLIANCE CHECK
OF THE DRAFT LAWS:
EXPERIENCE OF
LITHUANIA AND POLAND**

NOTE ON THE HANDLING OF THE EUROPEAN UNION (INTEGRATION) ISSUES IN THE SEIMAS (PARLIAMENT) OF LITHUANIA

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This note was drafted at the request of *Rada za Evropu* technical assistance project to the Ukrainian *Verkhovna Rada* to address three main issues, namely, the role of the Parliamentary Committee on European Integration, compliance check of the draft laws with the EU law submitted by Members of Parliament, requirements to the documents accompanying a draft law.

A. *Origins of the European Affairs Committee in the Parliament of Lithuania*

- 1) European Affairs Committee (EAC) in the Lithuanian Parliament (*Seimas*) was established in 1997 to co-ordinate parliament's work on Lithuania's accession to the European Union. In 2004 its (as well as Foreign Affairs Committee's) role was raised up to represent the whole parliament ("mini-parliament") vis-à-vis the Government while interacting with the latter on the draft legislative proposals of the institutions of the European Union¹. However, already during the accession to the EU stage its scope of work, rules of procedure and composition were in fact very similar to those in the conditions of the EU membership.

B. *Composition, scope of work and powers of the European Affairs Committee of the Seimas*

- 2) The composition, scope of work, powers (remit) of EAC and its interaction with standing (specialised) parliamentary committees are defined in the Articles 44', 49, 61 and 180 of the *Statute of the Seimas*.² Composition of the EAC is determined by article 44' of the Statute of the Seimas (Parliament). It has to represent parliamentary parties (groups) on the proportional basis and, through them, to draw senior MPs (chairs or deputy chairs of parliamentary parties (groups) or other standing (sectoral) parliamentary committees members) to the EAC.
- 3) Although rules of procedure allow an MP to be just the member of EAC and not to belong to any other parliamentary committee, in practice all members of EAC are members of

¹ Article 3 of *The Law Supplementing the Constitution of the Republic of Lithuania with the Constitutional Act "On Membership of the Republic of Lithuania in the European Union"* and Supplementing Article 150 of the Constitution of the Republic of Lithuania (No. IX-2343) of 13 July 2004, *Valstybės žinios (Official Gazette)*, 2004, No. 111-4123 (<https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.239806?jfwid=-wd7z6wi06> (in English), <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.241859?jfwid=-wd7z6wi06> (in Russian, download doc format).

² It can be downloaded from <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/8ed565f0d7f811e69c5d8175b5879c31?jfwid=-wd7z6whnp> (in Russian) or <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/fcc930a0b57a11e6a3e9de0fc8d85cd8?jfwid=-wd7z6whnp> (in English).

other standing committees. As a rule every parliamentary party holds position of deputy chair of EAC. The current EAC has 25 members, of whom two are former Prime Ministers, six former ministers, one current minister, four chairs and one deputy chair of other standing committees (note that among the mentioned members there is only one overlap in posts).

- 4) EAC is chaired by the deputy speaker of the parliament in charge of European Union Affairs, as a rule from the governing (parliamentary) majority. Chairman of Foreign Affairs Committee is always a member of EAC.
- 5) As a rule, EAC meets twice weekly, on Wednesdays and Fridays.³ Its office draws the EAC's work-plans for each parliamentary session and for periods between sessions in advance. EAC follows it, although, of course, emerging issues are added to the EAC agenda along the way. This plan is publicly available from the website of the parliament.⁴

C. *Interaction between European Affairs Committee of the Seimas with other standing (specialised) committees and the Government*

6. This interaction is in great detailed specified in the Article 180 of the *Statute of Seimas* as well as in the decision of the Board of Seimas of 4 May 2007 on the *Rules of Procedure for Deliberation of European Union Issues in the Seimas of Republic of Lithuania*.⁵ Article 180 of the Statute almost exclusively focuses on the procedures for positioning of Lithuania in the Council of the European Union. Rules of Procedure also describe the work of the parliament in transposing the EU law into the national legislation. Specifically, they oblige the competent executive body, the European Law Department under the Ministry of Justice to submit quarterly progress reports on transposition of the EU law into the national legislation to European Affairs Committee (EAC) of the Parliament. If necessary, the EAC may take action, for example, issue recommendations to the Government, work with the specialised (lead) committees in the parliament to solve outstanding issues (they are usually related to delays and missed deadlines). This quarterly reporting on transposition and implementation of the EU law dates back from the pre-accession times (to 1997).

³ Article 180²¹ of the Statute of the Seimas.

⁴ See, for example, the EAC work plan for spring parliamentary session (March –June 2017, in Lithuanian) http://www.lrs.lt/sip/portal.show?p_r=15893&p_k=1 -> [Seimo Europos reikalų komiteto 2017 m. II \(pavasario\) sesijos darbo planas](#)

⁵ This decision has been repealed since and replaced with a new one in 2014. It can be accessed from <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/c57d34900d9611e48595a3375cdcc8a3/UbCBaYrklb?positionInSearchResults=0&searchModelUUID=5de25e64-fa42-47fb-b280-11c0e32e4d04> (in Lithuanian only).

D. Work of the European Affairs Committee of the Seimas

7. The European Affairs Committee does not discuss transposition and implementation of individual EU legislation and does not discuss issues of compliance (unless they fall, as happens occasionally, among strategic priorities of the EAC) with the EU law other than the general management of the process in the Parliament and parliamentary oversight of activities in this regard by the Government. It has never done so even during pre-accession times – this is the remit of lead specialised committees of the Parliament. However, in the event of delays of transposition of the EU law into the national laws in the Parliament (the drafts submitted by the Government), the Office of the EAC works out step-by-step procedural timetables in co-operation with the offices of the lead committees and the Secretariat of the Seimas Sitzings, in other words, it proposes solutions to the bottlenecks in the Parliament. These are rare nowadays, in the conditions of the EU memberships, but were important issues to be solved during the accession period (1998-2003).

8. As mentioned already, among the many functions of the European Affairs Committee the most important role is that of internal co-ordination in the parliament as regards (in no order of priority):

- European integration policy of Lithuania, for example, through parliamentary oversight of European integration issues of strategic importance to Lithuania (typically 5-8 issues during the semester);
- monitoring of transposition and implementation of the EU law;
- mandating of the Government to take positions on legislative initiatives by the EU in the Council (this currently takes up about 2/3 of all working time of the EAC, thus by far the most sizeable, though routine work);
- issues related to the European semester (structural reforms, fiscal discipline and competitiveness issues in Lithuania within the EU framework)

E. Accession to the EU: political commitments operationalised in the Parliament

9. During the pre-accession phase, parliamentary political parties reaffirmed their commitment to Lithuania's EU membership by signing a short agreement (political and policy statement). In operational terms, this commitment meant consideration and adoption, in a priority order, of draft laws submitted by the Government according to a specific list presented to the Parliament before every parliamentary session. An example could be found in the Seimas' (Parliament's) resolution of 19 January 2001 "On integration of the Republic of Lithuania into the European Union", through which in the first half of 2001 the Parliament

made a commitment to pass six laws and to advance adoption, as far as possible of another 24 laws, all of which were listed in the resolution.⁶

F. Manpower to help the Parliament and MPs deal with the European integration issues

10. The advisory capacity on the issues of European integration in the parliament comes mainly from four sources. Office (bureau) of the European Affairs Committee of the Seimas currently has eight (8) staff.⁷ All standing committees have specially dedicated European integration advisors – all in all 14 currently.⁸ These posts were introduced in late 1990s and over time advisors occupying them acquired significant expertise both content-wise and legal to help standing committees handle European integration related issues. Finally, Legal Department of the Seimas has 24 staff.⁹ This department has two vertical units dealing with public and private law and one horizontal unit overseeing legislative aspects related to or resulting from the European Union law. It currently has two posts – after accession to the EU this unit was halved. The last important source is parliamentary assistants to individual MPs and parliamentary parties (groups), though their capacity does not lend itself easily to qualitative assessment when it comes to European integration and legal drafting issues (it varies).

G. Requirements applicable to draft laws and compliance checking on conformity with the EU law

11. Members of the Parliament are not restricted in their right of legislative initiative and therefore individual MPs can table draft laws. Draft laws (regardless of their sponsorship)¹⁰, however, must be accompanied by explanatory note consisting of 15 requirements (Article 135). Attachments to the explanatory note must contain, *inter alia*, a concordance table which on the article by article basis shows equivalence of the draft law to the relevant EU legislation. In practice individual sponsoring MPs do not always observe the latter requirement, especially when the primary purpose of their legislative initiatives is not transposition of the EU law to the national legislation and such draft laws are registered and further processed through the legislative deliberation and adoption procedure. On the other hand, the absence of tables of concordance or statements about compliance assessment is not a routine infringement of this procedural requirement.

⁶ <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.119350?positionInSearchResults=32&searchModelUUID=340073b7-34f3-4c95-8060-82cda796a300> (in Lithuanian only).

⁷ http://www.lrs.lt/sip/portal.show?p_r=15257&p_k=1&p_a=6&p_pad_id=680

⁸ See, for example, the list of staff of the Office of Economics Committee http://www.lrs.lt/sip/portal.show?p_r=15257&p_k=1&p_a=6&p_pad_id=699 (note the (ES) sign attached to the name of advisor on the European Union issues).

⁹ The list of staff can be seen here http://www.lrs.lt/sip/portal.show?p_r=15257&p_k=1&p_a=6&p_pad_id=16

¹⁰ The right of legislative initiative is vested with MPs, the Government, the President of Lithuania and 50 thousand citizens (Article 68 of the Constitution of Lithuania).

12. All draft laws are registered with the Secretariat of Seimas sittings and published on the website of the Seimas at <https://e-seimas.lrs.lt/portal/documentSearch/lt>. This portal contains all draft decisions and all accompanying materials of the Parliament, Government, other executive institutions and municipal administrations. As such, it is one of the best in the European Union.

13. Then all draft laws are subject to assessment by the Legal Department of the Seimas (within 7 working days; Article 136 of the Statute of the Parliament). Although not stipulated by the Statute of the Parliament, in practice conclusion on compliance with the EU law by the horizontal unit on EU and international law is incorporated in the overall assessment of the Legal Department (by statute, it must mainly aim at the constitutionality assessment, but also has an obligation to assess conformity to the requirements for draft legislation as stipulated in Article 135 of the Statute of the Parliament, which indirectly means also compliance assessment with the EU law).¹¹ All draft laws are also sent to the European Law Department under the Ministry of Justice (ELD MoJ)¹² which within 10 working days must assess compliance with the EU law. The ELD under MoJ is addressed directly, without the recourse to the executive hierarchy and, *vice versa*, it submits its assessment also directly to the Parliament. In practice, in the opinion of staff involved in the process, the workload would demand extra five working days for the working comfort of expert staff.

H. Workload of expert staff on compliance assessment of draft laws

14. Although of course the intensity of registration varies, on average, 75 draft laws are registered in the Parliament per month (based on the data for 2012-2016, please see below). This results in 4.4 expert assessment per expert staff per month for the European Law Department under the Ministry of Justice¹³ and slightly over 3 expert assessments per month per working staff in the Legal Department of the Parliament.

¹¹ For example, see the assessment of the Legal Department of 4 March 2013 on draft temporary law (amendments) on acquisition of agricultural land submitted by five MPs (assessment is here <https://e-seimas.lrs.lt/portal/legalAct/lt/TAK/54339630a5fe11e383c0832a9f635113?positionInSearchResults=7&searchModelUUID=fd95b6c5-3c72-4ec3-9930-291af36d822d> and the assessed draft law is here <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/c33f57f0954411e3ace2d2b54a10cab5?jfwid=-wd7z6waap>). For the sake of comparison, assessment of the European Law Department under the Ministry of Justice about the same draft law can be found here <https://e-seimas.lrs.lt/portal/legalAct/lt/TAK/3d818640ae8c11e39054dc0fb3cb01ae?positionInSearchResults=6&searchModelUUID=fd95b6c5-3c72-4ec3-9930-291af36d822d>

¹² Currently it employs 17 expert staff. <http://www.etd.lt/lit/Struktura-ir-kontaktai/4/187>

¹³ It should be noted that, although important as it is, assessment of draft laws for compliance with the EU law is only one of the functions of the ELD. Other functions are about compliance checking of draft Governmental decisions and secondary legislation, analysis of subsidiarity of issues discussed in the Council of the European Union and representation of Lithuania before the European Court of Justice.

Table 1. Legislative agenda of the Seimas of the previous convocation, November 2012 – November 2016

	Registered draft laws	Percent of all registered draft laws	Passed laws	Percent of all passed laws	Ratio between adopted and initiated within a group in percent
Total	3566	100,0	1724	100,0	
Initiated by MPs	2100	58,9	605	35,1	28,8
Initiated by the Government	1351	37,9	1021	59,2	75,6
Initiated by the President	46	1,3	36	2,1	78,3
Initiated by the President and the Government	69	1,9	62	3,6	89,9

Note: own calculations based on data presented in the Lithuanian Statistical Yearbook 2016, <http://osp.stat.gov.lt/services-portlet/pub-edition-file?id=24580>

Table 2. Lithuania: the scope of legal approximation (beginning of negotiations to EU accession)

	2000	2001	2002	2003	Total
Laws	10	65	37	70	182
Governmental Resolutions	6	53	33	38	130
Ministerial Orders	81	202	190	233	706
Total Lithuanian legal acts adopted	97	320	260	341	1018
Total EU legal acts transposed	481	747	569	715	2512

Source: European Committee under the Government of Lithuania, 2003. Note: as far as compliance checking is concerned, the legal expertise in the European Law Department and the Seimas' Legal Department has not changed much numerically, so the estimates of workload can be calculated accordingly.

POLISH SEJM IN THE PRE-ACCESSION PERIOD: ROLE AND FUNCTIONS OF THE EUROPEAN INTEGRATION COMMITTEE

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I. Introductory remarks

Defining the role of the committee whose task were to be European integration issues is the vital part as it defines the role and structure of the parliamentary oversight over Government in the pre-accession period as well as the role of the Parliament towards EU relations and EU accession.

In the Polish example one has to see the role of the committee dealing with European integration in a dynamic scenario of evolving process of Poland`s accession road towards membership. Therefore the introduction of the time framework in the very basic terms is necessary:

- in 1991 Poland signed the Association Treaty also known to be called the Europe Agreement. That Treaty entered into force in 1994 and it began lasting 10 years process of Poland way to EU accession.
- in 1998 there was the start of accession negotiations and it ended in 2002 followed by the signing of the Accession Treaty together with 9 other candidate states in 2003
- after successful ratification the whole process resulted in membership as of 1 May 2004.

Before description of Polish model certain questions have to be reintroduced which determined the solutions which deputies and administration of the Sejm decided to adopt and these are the questions which Ukrainian parliamentary administration may consider as helpful in designing their parliamentary oversight and legislative mechanisms including the role of European integration committee:

- The first general question is if the Parliament wants to have minimum involvement (and influence) on European integration issue and as a consequence leave most things to the Government and its administration or if the Parliament wants to be an active partner and full player in the process using to maximum its constitutional control power over Government and engage on international and diplomacy sphere.
- Another question to be answered regards the role for European integration committee and sectoral committees whether there should be hierarchy in relations between them or not, in other words whether to choose a centralised model (with European integration committee as a main player) or de-centralised model with considerable sectoral committees` engagement.
- Then it remains to be determined whether all issues connected with European integration should be divided institutionally into two bodies, one dealing with political oversight agenda and the other dealing with purely legislative agenda or one body in the Parliament should be in charge of both matters. The last question regards the overall role and

placement of the European integration committee within the Parliament and its structures and its relations concerning EU undertaken by Parliament acting in plenary.

In Poland the European integration committee structure and organization of work were strictly connected with the Sejm`s constitutional terms:

- Therefore from chronological Sejm term`s angle between 1991 and 1993 there was the **Committee on Association Treaty** was set up.
- Then in the second term between 1993 and 1997 there existed **the Committee on European Integration**.
- In the third term of 1997 – 2001 there were two committees established: **Committee on European Integration** and **Extraordinary Committee – Committee on European Law** and thus one can observe here the division of political oversight and legislative tasks between two committees.
- In the last Parliament`s term directly before accession (2001-2005) there was again only one committee set up namely **European Committee** which was in charge of both political oversight and legislative tasks.

II. Political oversight activities

Throughout that over 10 years period of functioning of European integration related structures in the Polish Parliament one can clearly distinguish the tasks and activity related to political oversight of European integration process and legislative adjustment tasks.

The first category within the competence remit of European integration committee was activities and actions related to political oversight of the Government and European integration process. Among those one should enlist:

- oversight of the Association Treaty and Adjustment Program
- motions and opinions for the Government concerning European integration issues
- consultations and negotiations with European institutions
- giving „green light” for crucial decision i.e. application for membership
- policy debates on EU affairs
- supervision of EU assistance (PHARE, SAPARD, ISPA)
- monitoring negotiations in the screening phase and in regard to respective chapters (mandating Ministers)
- accepting and monitoring Government Strategic documents i.e National Program for Preparation to Membership and its implementation, National Integration Strategy etc.

III. Legislative activity overview

The second category distinguished would be the tasks related to enormous legislative adjustment work which needed to be accomplished before accession being in fact a pre-condition for provisional closing of respective negotiations chapters and as a consequence of signing Accession Treaty and then successful membership. Those tasks started to be of crucial importance when accession negotiations started.

Two important information:

- in Poland legislative initiative belongs to the Council of Ministers, the President of the Republic, the Senate (as the whole chamber), the Sejm's committees, the group of 15 deputies and citizens (100 000). No bill can be presented by a single deputy.
- in practice, the possibility to introduce bills by the groups of deputies is very of ten used. However, in the pre-accession period, the problem of harmonization was considered rather to be the task of the Council of Ministers, so deputies' bills were hardly used for that purpose.

In Polish Sejm they were the centre of work firstly of the Extraordinary Committee – Committee on European Law in the years 2000 – 2001 and then of European Committee in the Parliament's term of 2001 and 2005.

In Polish Parliament as far as legislative adjustment is concerned two models were tested:

- firstly a separate Extraordinary Committee on European Law (III term) was dealing with all legislative issues.
- secondly those issues were incorporated into the tasks in European Committee set up in IV term.

EU legislative adjustment works and necessity for speed and accuracy of the process resulted in Poland in introducing **special legislative procedure for EU related legislation**, so called European track or fast track. It was based on the traditional system of adopting legal acts in Polish Parliament. However "the European track" introduced some modifications to facilitate and guarantee effectiveness of the process:

- first reading of the draft proposed was possible within 3 days (instead of 7) providing there is a translation of the acquis in question. That needs to be underlined that deputies did not work without having possibility to know and study the EU legislation in Polish language. The translation was delivered either by the Council of Ministers (if the bill was proposed by the CoM) or the special unit in the Bureau of Research which was responsible for translations;
- in order to adopt drafts in necessary time, the Committee was obliged to adopt a detailed procedural plan for each draft and present it to the Speaker of the House.
- the Committee also became entitled with possibility of requesting an opinion from a respective sectoral committee and that committee was obliged to present its opinion on the draft law in a given time framework.
- the reports of the Committee were to be considered in the Plenary during the very next session of the Sejm so they could not be postponed or blocked.

- In order to speed up the process it was decided that amendments to a draft could be proposed in writing by minimum three deputies in the first reading and minimum five deputies in the second reading. That ensured that the works would not be blocked by not necessary and not substantial proposals for amendments.
- Each draft should be accompanied by justification for applying „European track“. That prevented obviously non EU related legislation to omit traditional legal track:
 - o no specific template used – additional point in explanatory memorandum; in practice: very often one sentence stating that “This law implements directive...” . This statement was later on checked and analysed by the Bureau of Research that prepared the more elaborated opinion on it.
 - o no specific requirement for MPs drafts. However, the bills presented by the Council of Ministers, according to the Rules of Procedure should be accompanied by a table of conformity of the proposed provisions with the provisions of European Union law.
- Each bill (even not the one which goal was to implement EU law) should be accompanied by the legal opinion on accordance with the acquis (or justification when it was not in line with the acquis). If the draft was prepared by deputies, then such an opinion was prepared by the parliamentary experts within the Chancellery of the Sejm (Legislative Bureau, Sejm’s Bureau of Research):
 - o the draft directed by MPs to the Speaker of the Sejm was directed to the Bureau of Research before the first reading for the opinion on conformity with EU law and to the Legislative Bureau for the general legislative opinion (technique, conformity with the Constitution);
 - o there was no time limit for such an opinion – in practice 2 weeks; shorter if necessary;
 - o The Speaker was responsible for ordering delivery to the MPs of a printed copy of the opinion and it was attached to the paper.
 - o in case the opinion was negative, the Speaker after seeking the opinion of the Presidium of the Sejm, could refer any bills or draft resolutions which raised doubts as to their consistency with the EU law to the European Committee for its opinion. The Committee might, by a 3/5 majority vote in the presence of at least half of the members of the Committee, find the bill inadmissible. The Marshal of the Sejm was free not to initiate the proceedings in relation to any bill (draft resolution) which has been found inadmissible. That means the the negative opinion did not necessarily end up with the end of procedure.
 - o the next steps of the legislative procedure (second and third reading) the governmental bodies were responsible for assisting the legislative work.

The above mentioned tasks and procedures were common for both committees in questions. In order to get the full picture of organization methods and the work accomplished it is necessary to present some statistical data.

Extraordinary Committee on European Law (26 July 2000 – 21 September 2001):

- ☒ 88 meetings (200 subcommittees meetings) were held;
- ☒ 67 drafts were considered – legislative procedure accomplished for 52 drafts;

☒ Areas of the acquis: finance (10 drafts), agriculture (10 drafts), health protection (10 drafts), education (3 drafts), economic activity (5 drafts), transport (3 drafts), consumer protection (3 drafts), culture, environment, building law, property acquisition;

☒ Overall: 30 new laws were adopted, 80 existing laws were amended.

European Committee (24 October 2001 – 29 July 2004):

☒ 176 meetings (out of 276) (398 subcommittees meetings) were held;

☒ 135 drafts were considered – legislative procedure accomplished for 135 drafts;

☒ Areas of the acquis: finance (7 drafts), agriculture (37 drafts), health protection (12 drafts), economic activity (15 drafts), transport, education, social policy, justice, consumer protection, public administration, internal affairs culture, environment, building law, property acquisition;

☒ Overall: 57 new laws were adopted, 200 existing laws were amended.