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Legislative Services in Parliaments:

Operation of select legislative departments and examples of legislative opinions

Central and Eastern Europe Regional Programs:

Western Balkans Legislative Strengthening Initiative

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The following publication provides an introduction to the operation of legislative services in parliaments, a summary of recommendations adopted at legislative services workshops, an outline of the operations of select legislative departments, and examples of different legislative opinions produced by parliamentary services. The information used for the preparation of this publication was compiled during the legislative services workshops NDI hosted in cooperation with the Slovak Parliament in 2014 in Casta-Papiernicka and in Durres, Albania in 2016 with the suport of reserach and legislative deparments from the Albanian, Bosnian, Czech, Kosovar, Latvian, Lithuanian, Macedonian, Montenegrin, Polish, Serbian, Slovak, and Slovene parliaments.

In 2014 the legislative services survey summary was compiled to inform discussion at a regional workshop entitled "Roles and Responsibilities of Legislative Services in Parliaments" organized by the National Council of the Slovak Republic (NCSR) and National Democratic Institute (NDI) in Casta-Papiernicka, Slovakia from November 5-7, 2014. From June 1-6, 2016, a second workshop for legal staff from the Western Balkan parliaments took place in Durres, Albania entitled "Legal Assistance during the Legislative Process", bringing together legislative experts from the region and the parliaments of the Czech Republic, Latvia, Poland and Slovakia. After both workshops, leading recommendations were summarized and are included in this publication.

The summary, workshops, and other related activities are a part of NDI's Western Balkans Legislative Strengthening Initiative (WBLSI), which assists parliaments in the region in strengthening their capacities for law-making, oversight, and representation. With funding from the National Endowment for Democracy (NED), the Initiative fosters relationships between the Western Balkan legislatures and their European Union (EU) counterparts by creating forums for regional cooperation and information sharing. For more information about the Initiative please contact Ms. Zuzana Papazoski at zpapazoski@ndi.org in Poland or Mr. Alexander Pommer at apommer@ndi.org in Washington D.C.

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"Laws made by parliaments are foundation of political life. Good law, adapted to the needs of its addresses, inspires and stimulates economic and social development. The question, how good law should be made, is one of fundamental questions in political sciences. It is said that law ought to be effective, stable, comprehensible and particular enough, yet not overly detailed, not casuistic and efficiently executed, enforced. Moreover, in a democratic state, it must also reflect basic, commonly accepted values, such as dignity of persons, their inherent rights, rule of law, pluralism and freedom of individual. From this point of view efficiency and effectiveness of making law is an especially important element in the implementation of democratic state. Hence also results the principal role of the services connected with tasks related to legislation and all substitutive services to the process of making law by the Parliament. It is at the Parliament that the difficult process of translating complex ideas and political concepts into language of law which must meet requirements of transparency and order takes place. The course of the process is regulated by parliamentary procedures. Its major task is to put together in democracy both-parliamentarians and professionalism, i.e. legislative services. Ideas and social values, the defense and representation of which is the task of the politicians, thanks to accurate knowledge of the services should allow everyone to exercise and implement these values. So the professionalism and competence of legislative services determines to a large extend the condition of the system of law of the states and that means, also their democracy."

MP Ryszard Kalisz, former Chair of the Legislative Committee of the Polish Sejm, 2004 ECPRD Seminar on the Role of Legislative Services in the Legislative Process

Introduction: Legislative services

Legislatures offer expert legislative support at different stages of the legislative process. Although governments are the leading proposer of legislation in parliamentary democracies, parliaments still need to develop these capacities and provide professional assistance, as bills are amended through the legislative process and MPs and other entities, such as groups of citizens, committees, and self-governments, have the right to propose legislation. Parliaments cannot and should not rely on legislative departments operating at ministries for these services.

Generally speaking, legislative support is provided through different services in different forms, but the leading support is provided by the following departments:

Legislative procedural services are primarily provided by legislative departments, which are specialized departments composed of lawyers that are experts in legislative technique. These lawyers follow bills during the legislative process in parliament from beginnig to end, review them through preparing a legislative standpoint, and provide legislative technical support and procedural advice to committees and MPs. The goal is to make sure that the resultant law does not contradict the Constitution, EU laws, and the existing legal system and is technically well written, using the right terms, to avoid possible issues with interpretation and implementation at later stages.

Parliaments also provide analytical legislative services, which are primarily offered by research departments. Research departments employ lawyers and experts from other fields of studies to support committees and MPs with bill analyses from the policy point of view.

The secretariats of committees offer both procedural and policy support during the committee meetings of immediate or ad hoc character. When more substantive support is needed, they are assisted by legislative and research departments.

Legislative and research departments, together with committee secretariats, constitute the backbone of expert administrative support provided by parliamentary administrations and are of key importance for effective functioning of lawmaking and oversight functions of parliaments.

Legislative services recommendations

The following summarizes recommendations gathered during the regional workshops "Roles and Responsibilities of Legislative Services in Parliaments" organized by the NCSR and NDI in Casta – Papiernicka, Slovakia in November 2014 and "Legal Assistance during the Legislative Process in Parliaments" in June 2016 in Durres, Albania .

The event brought together members of parliament (MPs) including legislative and constitutional committee chairs, deputy-chairs and members, committee staff, and parliamentary legal experts from Albania, Bosnia-Herzegovina, Kosovo, Macedonia, Montenegro and Serbia. The participants drew on each other's experiences--as well as those presented by colleagues from the Czech Republic, Slovakia, Poland and Latvia--regarding how parliamentary legislative services operate and provide assistance.

Recommendations

1) Legislative services (departments) within ministries or in the Office of the Government are inadequate to fulfill this role for the parliament, which should conduct its own independent review of legislation. Hence it is necessary to establish a legislative department with the parliamentary administration in order to assess draft laws and provide opinions to MPs and staff.

2) Legislative experts should be a part of an independent parliamentary service.

3) Employees of the Legislative department should be lawyers with university degrees/masters in law. They should be experts on legislative technique and operate independently of committees and other parliamentary departments.

4) Legislative services should be separated from legal services. The legal services sector should draft contracts between the parliament and legal or natural entities and represents the parliament in court. The legislative service sector should evaluate draft bills and provide opinions for MPs and staff.

5) Legislative services should serve all committees and MPs, not just committees with an express mandate to address legal and constitutional affairs.

6) Experts from the legislative services should preserve their neutrality and independence by avoiding close links with specific committees.

7) The legislative services should prepare at least a basic legislative review (**brief opinion**) on every bill submitted to the parliament and a more detailed review on bills (**standpoint to bills**) to be reviewed in committee, which includes legislative-technical comments that can be introduced by MPs as amendments.
    - The basic legislative review (brief opinion) should concisely check on formal legal requirements of a draft bill before it is introduced to the parliamentary procedure (i.e. before the first debate on it in the plenary or in the committees). Such preliminary

legal/legislative opinion usually serves as background information for the Speaker of the Parliament or for the Speaker's Conference when scheduling session agendas.

- The standpoint to the bill should be a written legal/legislative opinion reviewing compliance of the bill with the constitution, with the domestic legal order, with European law and with international law. It should also include legislative-technical comments (corrections) and review the bill's proposed date of entry into effectiveness.

8) Legislative opinions should be stored in the internal parliamentary database and made available to all MPs and parliamentary staff members through the intranet.

9) Legislative opinions should have a recommendatory nature and should not be binding for MPs or committees. Legislative-technical comments included in the opinion may serve as amendments submitted by MPs.

10) The experts of the legislative services should not draft legislative proposals (bills) for MPs. This should be done by the MP's assistants or a caucus staff member. Legislative services staff should provide technical advice and expert legislative technique consultations.
    - In instances where MPs have very limited access to assistance, experts of the legislative department can provide assistance with actual legal drafting. In these cases the preparation of a legislative opinion should be vested with a different legal advisor not involved in the drafting process to secure an objective view.

11) At least one parliamentary legislative expert should follow the progress of each bill from its initial introduction to parliament until its submission for publication in the country's collection of laws.

12) A parliamentary legislative expert should be present during each committee's review of a bill to provide expert advice, explain legislative–technical comments included in the legislative opinion, and answer additional questions.

13) A parliamentary legislative expert should assist MPs in drafting amendments, keep track of all proposed amendments, and prepare the final report of all amendments approved in committee for the second reading in the plenary session.

14) A parliamentary legislative expert should check the consolidated version, or final text, of each draft law to ensure it is accurate before it is signed by the Speaker and forwarded to the President for promulgation.

15) A parliamentary legislative expert should amend the wording of an adopted law before its publication in the Official Gazette.

16) When there is insufficient time to prepare a legislative opinion on a draft bill, an expert from the legislative services should at least verbally note compatibility challenges or other legislative-technical irregularities with the proposer of the bill.

17) Every bill submitted to the parliament should be reviewed for EU law compatibility; in particular, an opinion on the bill's compatibility with the *Acquis Communautaire* should be prepared.

18) Parliamentary legislative experts are usually in the highest salary class in the parliamentary service.

19) It is important not only to store documents resulting from the legislative process (legislative reports included) on the parliamentary website, but to make sure different databases are linked and interconnected so that materials such as reports, amendments, and voting records resulting from the committee bill review process are easily accessed and linked.

1. Examples of Organizational Rules and Duties of Legislative Services in Parliaments

1.1. Role of the Legislative Service in the Albanian parliament

Legislative Service

Legislative Service a separate organizational unit that is directly subordinated to the Secretary General.

The unit comprises of:

- the Plenary Session Service
- Legal Service
- Committees Service
- Legal Approximation Unit

The experts of Plenary Session Service, Legal Service and Legal Approximation Unit are all lawyers. The experts of Committees Service are experts in different areas according to the field of responsibility of the committee.

In total 49 employees work for the Legislativel Service. The structure of staffs is as follows:

- 1 General Director of Legislative Service
- Plenary Session Service: 1 director, 1 legal advisor, 2 administrative assistants, 1 typist
- Legal Service: 1 director, 12 legal advisors, 1 legal acts editor
- Committees Service: 1 director, 12 advisors, 8 administrative assistants (one for each committee), 1 coordinator for cooperation with the civil society and group of interests, 1 responsible and one 1 employee for multiplication of documents
- Legal Approximation Unit: 1 director, 4 legal advisors

Employment requirements:

- university education in law, **at least Master's degree in law for legal advisors and** university degree and at least a master degree for advisors.
- **at least 5 years practice in law drafting**;
- knowledge of the Constitution of the Republic of Albania, Rules of Procedure Act and other laws.
- knowledge of European Union law and the legislative process in the European Union;
- knowledge of the state language and another language of europian union;
- professionalism, flexibility and a positive attitude to teamwork;,
- communication skills, creativity
- PC control at the user level.

Duties and responsibilities of the legal advisor:

- *Prepare the legal opinion for the Chairman and members of the Committee to which is attached, on every draft law or draft act that is submitted and is to be considered in the Committee and in Parliament. The report is on issues of procedural nature, compliance with the Constitution, international treaties ratified by the Republic of Albania, the legislation in force and an analysis in view of legislative technique.*
- *Permanently inform and cooperate with the director of the Legal Service and to rigorously implement the tasks assigned by him.*
- *Cooperate with the rappourter of the committee to prepare the report on the draft laws that are reviewed in the responsible committee.*
- *Prepare, in cooperation with the committee rappourter, written reports on the draft laws, draft decisions, draft declarations and draft resolutions submitted in Parliament for examination and adoption and present it for signature to the Committee Chairman.*
- *Continuously follow the committee meetings and all its activity.*
- *Provide juridical assistance to the Chairman and all members of the parliamentary committee for procedural issues and for the implementation of Parliament's Rules of Procedure.*
- *Track, in plenary session the process of examination and adoption of draft laws, according to their areas of responsibility.*
- *Provide his/her specialised juridical opinion on the amendments proposed by the MPs.*
- *Provide a written opinion on the content of the requests of the respective committee members, whether they are in compliance with the Constitution and the Parliament's Rules of Procedure and present it to the committee chairman and to his/her superior or to the Secretary General.*
- *Give a written opinion on issues related to the competence of examination or not of the draft law, according to the committee areas of responsibility.*
- *Track the process of transcription and editing the law after its adoption in Parliament's plenary session, make it ready for signature and sign it in the last copy.*
- *Fully track the process of law decree by the President, its publication in the Official Journal and entry into force and also, in case of any problem in this process, immediately inform the director of the service.*
- *Reflect any changes or amendments to the law in its integral text.*
- *Keep a full and operative database for all the laws he/she has tracked and draft periodical information for his/her superiors.*
- *Prepare specialised responses for the official correspondence addressed to the committee and to the committee chairman, when requested by the latter.*
- *Continuously cooperate with the Unit of Law Approximation, periodically inform this unit on all the necessary cases, which require the study of the legislation compliance with EU legislation.*
- *Continuously cooperate with the Unit of Law Approximation and the Independent Institutions Oversight Service, on issues related to constitutional institutions or independent institutions established by law, in order to provide wider information, aiming to improve the legislation in his area of responsibility or the draft laws that are submitted for consideration.*
- *Cooperate and coordinate with the Service that monitors those institutions that report to and inform the Parliament:*
    - *For the annual report of the constitutional institutions and those established by law and their respective mandates, according to the committee's area of responsibility*
    - *For any kind of correspondence or assessment material that will prepare.*

- *Cooperate with the plenary sessions service for the procedures and materials that are prepared on the draft laws and annual reports of the Constitutional Institutions and those established by law, which report to Parliament.*

The Law Approximation Unit as a part of the Legislative Service is responsible for the verification of the information on the compatibility of the draft bill with the European Law given in Explanatory report attached to the draft bill. The Legislative opinion contains a statement on conformity of the draft bill with the European Law.

1.2. Role of the Legislative and Legal Sector of the Parliamentary Assembly of Bosnia and Herzegovina (BiH)

Legislative and Legal Sector

The Legislative and Legal Sector is a section within the Common Service of the Secretariat of the Parliamentary Assembly composed of lawyers. It does not have subdivisions.

The total number of employees is three. Although the Rulebook on Internal Organisation and Job Classification stipulates five posts, two posts have been vacant since the establishment of the Legislative and Legal Section.

The Legislative and Legal Sector (LLS) is a specialized service of the Secretariat that performs professional tasks related to the parliamentary legislative and control function, as well as other expert tasks for Members of both the Houses of Parliamentary Assembly of BiH and its working bodies.
The role of the Legislative and Legal Sector is stipulated by the provisions of the Rules of Procedure:

"*A bill shall be submitted to the Speaker of the House, who shall without delay send it to the Collegium of the House and Legislative and Legal Sector for the purpose of providing opinion on the compatibility of a bill with the Article 105 of these Rules of Procedure and Unified Rules for Legislative Drafting in the Institutions of Bosnia and Herzegovina*."

The opinion shall be issued within 3 days and is addressed to the Constitutional Committee(s) and Collegium of the House:

- In case that the opinion is "positive" the legislative procedure will continue as regulated
- In case that the opinion is negative, the proposed law shall be returned to the proponent for corrections within 7 days

Other tasks of the LLS are as follows:

- Drafting legislation for Members of both the Houses of Parliamentary Assembly of BiH, and committees;
- Revising the texts of laws and other legislation and analyzing and preparing expert opinions on complience of the draft laws with the Rules of Procedure of both Houses and Unified Rules for Legislative Drafting in the Institutions of BiH;
- Participating in the sessions of the committees of the Parliamentary Assembly and providing legal clarification with regard to the subject of discussion;
- Preparing information and other materials which are important for legislative procedures;
- Providing consulting and expert support to the working bodies during the drafting of amendments on proposed laws and other acts; and
- Making consolidated versions of laws.

In the Parliamentary Assembly of Bosnia and Herzegovina there is no separate organizational unit responsible for the approximation of laws. The Directorate for European Integration (body of the Council of Ministers) is responsible for providing opinions on the compatibility of draft bills with the *acquis*.

1.3. Organization of the Legislative Department of the Chancellery of the Chamber of Deputies of the Czech Republic

The **Legislative Department** of the Chancellery of the Chamber of Deputies (CD) is a separate organizational unit directly subordinate to the Secretary General of the Chancellery of CD.

Internal structure of the unit:

- Legislative division
- Legal division

Employees of the Legislative Department specialize according to assigned areas of law. They focus on particular draft bills and pursue their formal and legislative technical accuracy. Additionally, they elaborate standpoints towards draft bills, statements of the Chamber of Deputies for the Constitutional Court's proceedings, and information for public.

The Legislative Department has 24 employees, consisting of one director, two lawyers within the Legal Division, 17 lawyers within Legislative Division, and four administrative assistants.

The Parliamentary Institute (Research department) deals with the compatibility of legislation with EU law.

The Legislative Division, in particular:

- Monitors the legislative process in the Chamber of Deputies; participate in debates on draft bills in parliamentary committees; prepares lists of submitted amendments to draft bills and processes final wording of laws adopted by the Chamber of Deputies;
- during sessions of the Chamber of Deputies, ensures the continuous consultation service in relation to questions of legal, legislative and procedural nature;
- ensures signing of the adopted bills by the constitutional authorities and provides for sending of draft bills to Senate, to the President of the Republic, and to the Prime Minister;
- cooperates with editors from the Collection of Laws (Official Gazette) and carries out tasks related to promulgation of laws and resolutions of the Chamber of Deputies in the Collection of Laws;
- drafts statements of the Chamber of Deputies to the Constitutional Court; and
- elaborates standpoints and information on draft bills and on legal and procedural issues.

Generally, one employee is responsible for a draft bill through its entire legislative process. Employees of the Legislative Department take part in debates on draft bills and international treaties at the meetings of parliamentary committees.

1.4. Organization of the General Directorate for Legal and Procedural Affairs in the Parliament of Kosovo

The **General Directorate for Legal and Procedural Affairs** is a s**eparate organization unit directly subordinate to the Secretary General. It comprises of:**

- Directorate for Committee Support
- Directorate for Research, Library and Archive
- Directorate for Approximation and Standardization
- Directorate for Presidency and Plenary Issues

The vast majority of staff in this organizational unit are lawyers specialized to cover different areas of law and divided by sectors covered in committees, which reflect government ministries.

In total 60 employees work for the General Directorate for Legal and Procedural Affairs:

Directorate for Committee Support	36
Directorate for Research, Library and Archive	8
Directorate for Approximation and Standardization	9
Directorate for Presidency and Plenary issues	7

The employment requirements are the following:

- *university education, at least Master's degree in law;*
- *at least 2-5 years practice in law;*
- knowledge of the Constitution of Kosovo, Rules of Procedure Act and other laws relating to the status and powers of the parliament*;*
- knowledge of the legislative process in Kosovo and basics of legal drafting techniques*;*
- knowledge of European Union law and the legislative process in the European Union*;*
- knowledge of *official* languages, and English language*;*
- PC control at the user level; and
- *professionalism, flexibility and a positive attitude to teamwork.*

The leading tasks are:

- Preparing the preliminary report on a bill, and introducing it to the standing committee prior to the first reading in the Assembly;
- Supporting the working group composed of MPs at the standing committee level (after the first reading) in reviewing and amending the bill;
- Providing legal analysis and policy research (upon request);
- Preparing the final report with amendments; and
- Preparing the fair copy of the bill after adoption in the second reading, including harmonization in two official languages: Albanian and Serbian.

There is **one legal officer to track a bill** throughout the legislative process and coordinate all the work around it.

Legal service staff and the committee clerk have the right to be present at the committee meetings and provide legal opinions. They are allowed to present their findings but only on demand and with the consent of the committee's members (MPs).

The Directorate for Approximation and Standardization is responsible for the initial verification of the information on the compatibility of the draft bill with the European Law (in an explanatory report). However, staff of the directorate is detached during the committee phase, whereas the staff of the Committee on EU Integration ensures approximation of amendments and issues the final statement of conformity of the bill with Acquis.

1.5. Organization and Role of the Legal Bureau of the Saeima of Latvia

The Legal Bureau of the Saeima is a unit of the Saeima subordinate to the Presidium. The Legal Bureau of the Saeima has no subdivisions; however, the Legal Advisors of the Legal Bureau, including the Head and Deputy Head of the Bureau, specialize in different fields of law.

The Legal Bureau of the Saeima is currently staffed by 16 employees, including the Head, Deputy Head, five Senior Legal Advisors, seven Legal Advisors, and a Technical Secretary. The staff of the Legal Bureau are highly skilled. Although neither internal, nor external regulations contain any specific requirements regarding skills or experience, employees of the Legal Bureau have law degrees, a good reputation, substantial work experience, and good communication and language skills.

The Legal Bureau is the unit of the Saeima responsible for the legal review of legislative proposals submitted to the Saeima, meaning the Bureau gives its expert opinion to the Presidium and the committees on the compliance of draft laws with legislative techniques and codification rules. According to Rules of Procedure of the Saeima, legislative acts regulating the work of the Legal Bureau, as well as the traditions established in the Saeima, the Bureau must do its best to ensure that MPs and committees, especially the committee responsible for the specific draft law, receive professional advice on the compliance of draft laws, proposals, and suggestions with the Constitution, other laws, and international treaties binding to Latvia, as well as the Latvian legal system in general.

The responsible committee must provide to the Legal Bureau in a timely manner all documents to be examined at the committee meeting, review the Bureau's opinion on the draft law and proposals, and consider the opinion before moving forward. The Legal Advisor of Legal Bureau specializing in the particular area of an individual draft law is responsible for the legal review of the proposal from the day of submission to the day of adoption**.**

Employees of the Legal Bureau of the Saeima take part in the meetings of the parliamentary committees. During these meetings the representatives of the Legal Bureau are required to explain and defend their expert opinions, comment and advise on proposals relating to the draft law, and consult on applicable parliamentary procedures.

The Head of the Legal Bureau must take part in plenary sittings, provide operational support to the chairperson of the sitting and MPs, and offer on-the-spot expertise regarding the Rules of Procedure and other parliamentary procedures.

1.6. Organization and Role of the Legal Department of the Seimas of the Republic of Lithuania

The **Legal department** is a separate organizational unit of the Office of the Seimas; the head of the Legal Department is directly subordinate to the Secretary General.

The Legal Department is comprised of the following internal units:

- Criminal and Administrative Law Unit
- Civil Law Unit
- Labour and Social Law Unit
- European Union and International Law Unit
- Public Law Unit

The specialization of experts corresponds to a combination of legal sectors of the national legal order (i.e. areas of law).

The main task of the Legal Department is to fulfil functions described in the article 136 par. 2 of the Seimas Statute (see citation below):

"*With respect to a registered draft law, the Legal Department of the Office of the Seimas shall, within seven working days of the receipt thereof, submit conclusions on conformity of the draft with the Constitution, laws, legislation principles and technical rules of law-making and on conformity of the submitted documents to the requirements of this Statute. If this is a large draft, the Director of the Legal Department shall have the right to apply to the Conference of Chairs for the extension of this period*."

Additionally, the Legal Department is obliged to perform the following functions:

- Provide Legal advice to the Seimas committees, commissions, Board of the Seimas and Secretary General on the content of legal acts adopted by the Seimas.
- Assist in drafting legal acts to be adopted by the Seimas upon request of the Seimas committees, commissions, Board of the Seimas and Secretary General;
- Assist in drafting legal acts by working groups established by the Seimas and the Board of the Seimas;
- Submit proposals to the Committee on Legal Affairs on the implementation of the rulings of the Constitutional Court - upon request of the Board of the Seimas; and
- Represent the Seimas in litigation before the Constitutional Court upon delegation by the Speaker of the Seimas.

Approximation of the laws falls within competence of the Legal Department which draws up conclusions on conformity of the drafts with the Constitution, laws, principles of legislation, and technical rules of law-making and on the conformity of the submitted documents to the requirements of the Statute of the Seimas (art. 136 par. 2 of the Seimas Statute).

The Legal Department is also involved when the "subsidiarity check" procedure regarding a draft legislative act of the EU is conducted in the Seimas; in this case the Legal Department prepares conclusions on this issue (article 180^6 of the Seimas Statute). Committees of the Seimas deliberating on a position of the Republic of Lithuania concerning proposals to adopt legal acts of the EU may request conclusions of the Legal Department regarding potential impact of such proposals on the legal regulation of the Republic of Lithuania (article 180^{10} of the Seimas Statute).

General employment requirements for staff of the Legal Department are established by the law on civil service, and certain special requirements are listed in job descriptions for a particular position. The basic requirement is possession of a university degree of the magister (or equivalent) of law and experience in legal profession, whereas the number of required years is dependent upon the position in question (head of unit - 4 years; chief advisor - 4 years; advisor - 3 years; senior specialist - 1 year). Specific requirements on knowledge of at least one foreign language and experience in a particular area of law may also be listed in a job description. There are also some general requirements applicable in the entire civil service, such as citizenship of Lithuania, proficiency in the official language, age limits from 18 to 65 years old, full legal capacity, no criminal record, and a good reputation.

1.7. Role of the Legislative Department of the Assembly of the Republic of Macedonia

There is no specialized organizational unit within the parliamentary administration for reviewing the bills from a legislative point of view. As part of the parliamentary service there is the **Legislative Department**, which is a unit responsible for the preparation and drafting of texts of laws, other acts, and amendments proposed by MPs. The committee staff may also contribute to the preparation and drafting of laws, other acts, and amendments, as well give an opinion about laws and other acts submitted to the Parliament.

The main duties, responsibilities, and competences of the Legislative Department are:

- the preparation and drafting of texts of laws, other acts, and amendments proposed by the MPs;
- the proof-reading of texts of laws, other acts, and amendments proposed by the MPs; and
- the preparation of the laws and other acts for publishing in the Official Gazzette.

The Legislative Department does not provide legal opinions on the acts. There is no requirement for the state advisors to present their findings during the meetings of the parliamentary committees.
There is no unit within the parliamentary administration responsible for the verification of the information on the compatibility of the draft bill with the European Law.

The Legislative Department currently employs eight civil servants. There is no legal requirement for them to have a law degree; the employees in the Legislative Department are required to have a university degree in the field of social sciences and previous working experience ranging from one to five years depending on the position.

1.8. Legislative Services in the Parliament of Poland

The **Biuro Legislacyjne/BL (Legislative department)** is a unit of the Chancellery of the Sejm and it comprises of:

- the Legislative Affairs Department (providing legislative support to the law-making process);
- the Department for Consolidated Texts and the Legislative Technique Analysis (responsible mainly for preparing consolidated texts of acts); and
- the Text Editing Department (where texts of draft and adopted legislative instruments are entered into databases); and the Secretariat.

As the structure of employment reflects the duties performed by the Bureau, the main group of employees are lawyers (experts in various law specialities; the specialization of experts is determined by a combination of areas of law).

The second legislative expert department is the **Biuro Analiz Sejmowych (BAS)/Research Department.** *Biuro Analiz Sejmowych* is a unit of the Chancellery of the Sejm and is composed of the following units: the Managing Team of the Bureau of Research, the Department of Parliamentary Law Research, the Department of Legislative Research (consists of: the General Group and Enquiry and Consultancy Group), the Department of European and International Law Research, the Department of International and Comparative Research, the Department for Matters before the Constitutional Tribunal, the Department of Social and Economic Research and EU Policies (consists of: the Economic Affairs Group, the Group for Financial and State Budget Research and the Natural Resources Group), the Documentation and Databases Section, the Secretariat of the Bureau of Research, and the Secretariat of the Legislative Committee[1].

As the structure of employment reflects the duties performed by the Bureau, the main group of employees are lawyers (49 experts in various law specialities). The remainder includes some 14 economists and specialists in such fields as political science, social science, agriculture, or environment.

Biuro Legislacyjne/BL (Legislative department) is an institution responsible for providing legislative support to the Sejm committees and subcommittees by submitting comments and conclusions of legal and legislative character on draft acts and resolutions being considered by those bodies. Such comments apply both to provisions contained in draft acts and to amendments proposed in the course of processing. The support covers formal and legal aspects and does not include the preparation for deputies of alternative proposals relating to substantive issues, for example. In the course of work of committees and subcommittees, members of the staff of the Bureau also make comments of a procedural character.

[1] For structure, please see: http://www.bas.sejm.gov.pl/our_team.php

Moreover, the employees of the Bureau draw up preliminary legislative opinions on draft acts referred to the Sejm before they are put to first reading. Those opinions mainly involve the assessment of whether the explanatory statement on the act concerned complies with the requirements of the Rules and Procedures of the Sejm and essential analysis of constitutional compliance.

The Bureau's lawyers are also responsible for preparing texts of draft acts and resolutions at different stages of the legislative process, and for preparing texts of instruments after they have been adopted by the Sejm. The Legislative Bureau does not participate in the preparation of draft acts by groups of deputies. In such a case, deputies usually draw on the assistance of lawyers employed by parliamentary clubs and faction experts. When a draft act is prepared by a Sejm committee, lawyers of the Legislative Bureau participate in such a committee's work on its chairperson's request. The engagement then includes comments and conclusions of a legal/legislative nature on the draft instrument processed.

The **Biuro Analiz Sejmowych/BAS (Research department)** is an institution responsible for providing both the Deputies and the Sejm bodies with reliable information which allows a safe and effective exercise of a Deputy's mandate and secures the proper role of the Sejm in the tripartite system of government.

The tasks of the Bureau include: supporting the legislative process with academic advice; providing opinions of draft legal acts during the legislative process; assisting parliamentary committees; providing expert assistance in the exercise of a Deputy's mandate; conducting research (law, economy, society) related to the legislative process; advising and providing opinions in matters related to Poland's EU membership; and cooperating with legal services of the European Union. In addition, BAS provides analyses of EU institutions and legislation; for example, the Bureau verifies whether draft legislation proposed by the Sejm Deputies is in compliance with EU law.

The legislative services' staff members, both of BAS and BL, responsible for providing legal opinions are present at the meetings of the parliamentary committees and are allowed to present their findings.

The *Biuro Legislacyjne/BL* employs approximately 74 employees, of whom 54 are lawyers. The *Biuro Analiz Sejmowych/BAS* employs 90 employees (77 full-time posts), ten of which are professors and 30 doctors.

According to the job description, legislators and experts for legislation have to possess higher legal education and proper professional experience which depends on the specific position in the Bureau:

- senior expert for legislation: higher legal education or academic degree of Doctor of law; legal apprenticeship of barrister, solicitor, public prosecutor, legal counsel, or judge; or postgraduate studies in legislation at the University of Warsaw and 7 years of experience;
- expert for legislation: higher legal education and 6 years of experience; higher legal education and legal training in legislation; or postgraduate studies in legislation at the University of Warsaw and 3 years of experience; and

- junior expert for legislation: higher legal education and 1 year of experience.

When there is an available position as a legislator/expert for legislation at BAS/BL, a public competition is announced by the Personnel Department (available on the website: http://orka.sejm.gov.pl/rekrutacja.nsf). After the deadline for sending applications has passed, a selection of potential candidates is made by an ad-hoc committee consisting of people from different structures, including the Head of BAS/BL. The committee invites candidates to the Sejm for interviews. After that, the committee selects the best candidate and invites him/her for another interview to clarify the conditions for the employment. Experts for legislation are not civil servants, but their status is regulated in the Act of 16 September 1982 on Employees of State Authorities.[2] Moreover, persons who have finished a special administrative training in the Chancellery of the Sejm, the so-called "aplikacja sejmowa", can work as an expert for legislation or a junior expert for legislation.

[2] Journal of Laws of 1982, No. 31, it. 214 with amendments. This Act is available only in Polish on the website: http://isap.sejm.gov.pl/DetailsServlet?id=WDU19820310214

1.9. Role of the Department of Legislation and Law Approximation of the National Council of the Slovak Republic

Department of Legislation and Law Approximation

The Department of Legislation and Law Approximation carries out specific tasks related to constitutional and legislative activities of National Council.

The Department of Legislation and Law Approximation mainly performs the following tasks:

1. Review of submitted drafts of constitutional laws and bills, preparation of opinions and proposals to remove identified shortcomings in terms of their compliance with the Constitution of Slovak Republic, constitutional laws, laws, international treaties which are binding for Slovak republic, EU legislation and legislative rules for laws preparation and degree of compliance with EU law.
2. Preparation of information concerning the fulfillment of formal and legal conditions of draft law pursuant to Rules of Procedure and Legislative rules for preparation of laws as a basis to prepare draft decisions for the Speaker of National Council on submitted draft law.
3. Participation in discussions concerning draft laws and laws returned by the President of the Slovak Republic at committee meetings and provision of opinions on legislative issues and, upon request, cooperation with the committee secretary in the preparation of the committee resolution on draft law and law returned by the President of the Slovak Republic.
4. Upon request cooperation with the secretary of the committee responsible in preparation of a common report to draft law and law returned by the President of the Slovak Republic, mainly with regard to amendments by committees to draft law and preparation of respective opinion of committee responsible.
5. Upon request, provision of specific assistance to the common rapporteur of committees and secretary of committee responsible during meetings of committee responsible and National Council session on draft law and law returned by the President of the Slovak Republic.
6. During the session of the National Council, ensuring a continuous consultation service on issues of legislative and procedural character, also by direct participation in the meeting room.
7. Processing of final wording of laws adopted by National Council and their preparation for signature to constitutional bodies.
8. After signing of adopted law by constitutional bodies the Department ensures its disclosure in the Collection of Laws of Slovak Republic and performs an emendation of the wording of the law.
9. Upon request provision of legislative consultations to all units of Chancellery of National Council.
10. Commenting on interpretation of legal regulations addressed to National Council and Chancellery.
11. Preparation of draft opinions to the sessions of Constitutional Court of Slovak Republic in cases when National Council is a party to the proceedings and keeping records of these cases.

12. Commenting of proposals of internal regulations of the Chancellery of National Council, with respect to their compliance with legal order of Slovak republic and their legislative and technical aspects.
13. On the basis of authorization of the Head of the Chancellery the Department represents National Council in the proceedings before public administration bodies.
14. Preparation of conceptual documents at the level of Chancellery of National Council and within specified area of legislative process fulfillment of other conceptual and specific tasks assigned by Speaker of National Council, Deputy Speakers of National Council and Head of Chancellery serving as a basis for decision making of National Council, or its authorized body.
15. Review of legal issues, preparation of documents and expert opinions and provision of consultations for the needs of National Council and other units of the Chancellery of National Council in relation to change of EU establishing treaties and other EU legal documents, as well as materials concerning compatibility of Slovak law with EU law and with the membership of Slovak Republic in the EU.
16. Cooperation with Department of European Affairs including mainly the following:
17. After mutual agreement and in determined cases monitoring of legislative procedure, or another procedure in terms of preparation and discussion of legislative proposal, or other proposal in EU institutions and commenting on their result in relation to the National Council and legal order of the Slovak republic.
18. Upon its request it shall submit opinions concerning EU legal acts and draft opinions of the Slovak Republic concerning them, mainly from the view of impact of the EU legal acts on domestic legal order,
19. Upon its request it shall provide expert consultations on chosen legislative issues related to legal acts of the EU.
20. Upon its request it shall provide documents on opinions related to the membership of the Slovak Republic in the EU.
21. Cooperation with units of Chancellery of National Council in terms of ensuring expert program for foreign visits on provision of information and training tasks related to the activities of National Council and its MPs and Chancellery of National Council.
22. Entry of data related to performed activities of Department of Legislation and Law Approximation into the computer system to monitor legislative process in National Council
23. Performing other tasks upon instruction by the Head of Chancellery.

1.10. Role of the Legislative Clerk in the National Council of the Slovak Republic

Role of a legal adviser (legislative clerk) during the legislative process

1. Legislative clerk shall receive a draft bill for the first reading along with information pursuant to § 68 and 69 Act No. 350/1996 Coll. on Rules of Procedure of National Council of the Slovak Republic (so called „24h brief infomation“) to be filled out by him or her and delivered to LLAD secretariat (Legislation and Legal Approximation Department) within shortest time possible. In order to determine committees to which the draft bill is to be assigned and to determine Committee Responsible, the clerk shall consider the content of draft bill and he or she may also use SSLP (legislative tracking system) to find out to which committee the draft bill was assigned in the past. In case that some parliamentary committee considers as important to discuss draft bill in spite of the fact that it was not assigned to this committee by the clerk, it may request to do so.
2. In case that draft bill is adopted by MPs at National Council session and it goes to the second reading, legislative clerk shall draft a legislative opinion-standpoint- (deadline by which the opinion is to be delivered shall be set at LLAD meeting). In the preparation of the opinion the clerk shall use various sources including for instance ASPI (electronic database of all laws), legislation portal and other internet portals, or consultation with colleagues. The main issues to be taken into account by the clerk include draft bill effective date, transitional arrangements, internal references, duties – sanctions, conflict with constitution and other legislation, name of draft bill, unified terminology in the bill, use of legislative abbreviations, scope and wording of authorizing provisions so that it is the bill which stipulates obligations and not an implementing act or recitals. The opinion is divided into parts A, B and C. With regard to part A of the opinion the clerk shall state rather general comments concerning legislative, or factual issues. Part C includes unquestionable and clear legislative and technical comments. In the opinion drafting process the clerk shall prepare the wording including incorporation of amendment to the bill which helps not only to draft the opinion itself, but also to streamline and facilitate work during parliamentary committees and National Council sessions. The clerk proceeds in accordance with Legislative rules for bill drafting process. In case that the same bill is amended in a number of prints and respective drafts are in collision, legislative clerk shall point out to this fact in the opinion in part A, he or she shall contact bill´ s sponsors and seek cooperation in preparation of amendment to resolve the situation.
3. After drafting of opinion (part A+C – legislation; part B – approximation) it will be sent by the legislative clerk to the secretariat of the department (prior to that clerks shall send to each other their respective parts of opinions for consistent verification with regard to its delivery deadline) where it shall be prepared for the director to be reviewed. Legislative and approximation clerks shall sign it and it is subsequently submitted to the director. Final version is to be prepared by LLAD secretariat.
4. The next stage includes participation in parliamentary committees to which draft bill was assigned by decision of the Speaker of the Parliament. If a number of committee sessions takes place at the same time, legislative and approximation clerks divide them based on priority

(legislative clerk usually participates at the meeting of Lead Committee). The clerks are available for possible consultations and take down the notes concerning the course of the meeting (they have seats reserved for LLAD). They mainly note whether procedural amendments were submitted (clerk tries to review, if there is room to do that – if they are in accordance with Legislative rules for bill drafting process; as regards amendments by which a new article is inserted into draft bill – amendment to next law, it is necessary to reflect this change in the name of the bill), important statements of MPs concerning draft bill, voting. Legislative clerk is active and prior to committee meeting he or she shall contact bill´s sponsor or secretary of the committee concerning preparation of possible amendments (in case he or she has such document or information, which is relevant for approximation clerk as well, he shall brief him).

5. After committee meeting is over the secretary of Lead Committee shall draft a common report on draft bill where which legislative clerk participates – mainly checks points to which voting took place according to resolutions of committees, whether respective points did not collide (if yes, it must be considered in so called rapporteur´ s guidance), order of points.
6. Legislative clerk participates directly in plenary sessions (on seats reserved for LLAD) when draft bill is discussed in the plenary in the second and third reading, where he or she mainly provides consultations for MPs if necessary, notes down the course of the session (mainly the order of MPs who spoke in the debate or submitted a procedural proposal, or amendment, whether submitted amendments are not in conflict with the common report or other amendments, important statements of MPs concerning draft bill, voting).
7. Legislative clerk shall cooperate with committee secretary on preparation of voting procedure after end of debate in second reading, rapporteur´ s guidance.
8. Voting on draft bill in plenary after second reading within time set out in Rules of Procedure. The clerk is present, verifies the voting process in relation to rapporteur´ s guidance and common report. In case of incorrect procedure of rapporteur, legislative clerk shall remind the Director of Organizational Department who shall carry out necessary measures (mainly reminding the session chair).
9. After adoption of draft bill the clerk shall prepare a clean copy of adopted bill to ensure meeting of set deadline of three days in which National Council is obliged to publish adopted bills. He or she shall agree on a date with bill´s sponsor (if it is a government draft bill an authorized employee of Ministry shall sign it) and employee of government legislation who was responsible for the given bill (it is only necessary to call the secretariat) and they shall come and sign the law. If it concerns a draft bill sponsored by MPs, it shall be only signed by the sponsor. In both cases legislative clerk shall also sign a clean copy of the bill. Procedure to prepare clean copies of bills is set out in Annex No. 1.
10. The bill shall be sent for signing to constitutional bodies and subsequently to Collection of laws, in case it was not vetoed by President. If the law is vetoed by the President, it shall return to the next session of the Parliament for discussion in Committee Responsible and Constitutional Committee. Respective LLAD clerks participate in discussion concerning returned law in committees and plenary (the same work procedure as the clerk as during debate in second

reading). According to the Rules of Procedure subject of debate includes only Presidents´ s comments, or proposal not to adopt the whole text.

11. Editorial staff of Collection of laws prepares a graphic form of the law, they highlight proposed modifications (i.e. graphic corrections, grammar adjustments of text...) and they shall call respective legislative clerk to carry out emendation. Legislative clerk shall check the wording of adopted bill along with the wording prepared by Editorial staff of Collection of laws, highlight accepted proposed changes and sign final form of the bill. In principle, the clerk shall perform textual emendation at work (when it comes to shorter laws he or she can do so directly in the editorial office of Collection of laws). In case of any unclear issues it is necessary that adjustments proposed by editorial staff of the Collection of laws are consulted with the Head of the sub department for legislation, possibly with Director of LLAD. It is necessary to consider well every proposed adjustment. Legislative clerk shall request a copy of adjusted law which he or she shell hand over at LLAD secretariat.

Annex No. 1

Procedure to prepare draft clean copies of adopted bills
(agreed at LLAD meeting on 11th February 2013)

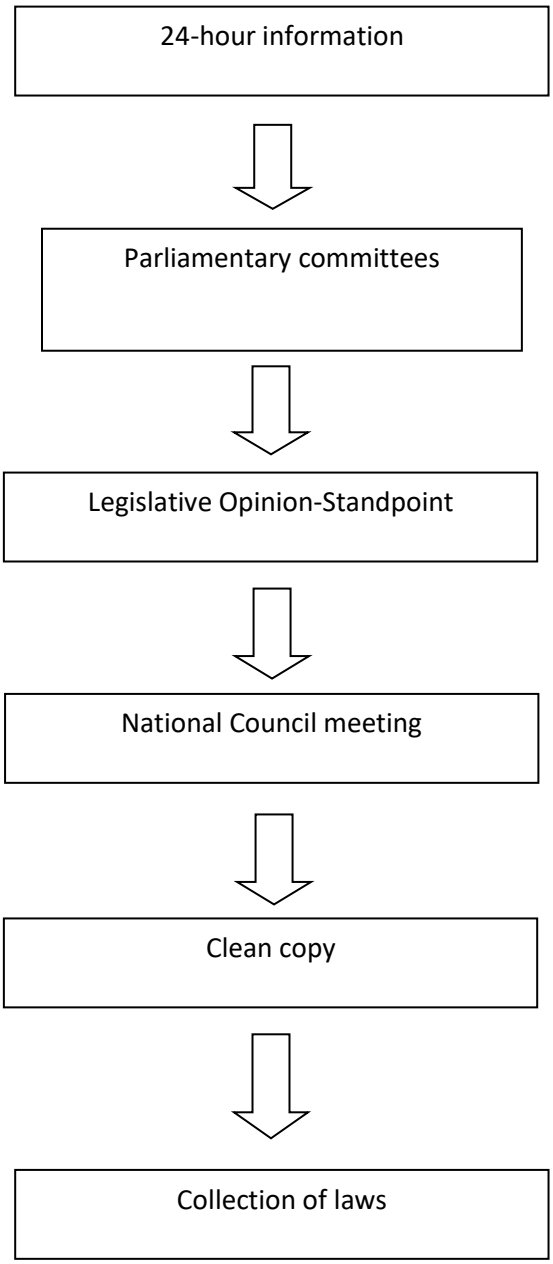
1) If the clerk prepares a draft clean copy of bill in form of revision in electronic form, he or she shall send a revised form of draft clean copy to the secretariat which will print it and give it to the clerk for verification and highlighting the reason for the change (clerk will manually write the designation of the amendment from common report to individual changes, possibly name of MP who submitted adopted amendment; if it concerns an amendment to the law to which new points were inserted by amendments, the clerk shall designate original numbering of points according to submitted draft bill).

2) If the clerk prepares clean copy proposal in paper form, he or she shall highlight the reason for the changes and hand it over to the secretariat to incorporate the changes. When clean copy of bill is executed in paper form, it is necessary to reflect in the law (either to write manually or in case of a more extensive proposal to cut out and paste) all adopted amendments from common report, as well as adopted amendments submitted in the plenary. At the same time it is necessary to make a note to each proposal whether it is a common report, or to state the name of MP. The secretariat will incorporate the changes and hand over a clean copy proposal to the clerk for verification.

3) After delivery of clean copy of bill (whether revised in electronic form, or in paper) to the secretariat, all other necessary adjustments are done only in the secretariat.

4) In both cases, after approval by clerk, secretariat shall print a clean copy of the bill to be signed by constitutional bodies and shall submit it for check along with clean copy proposal, draft bill, common report, amendments from debate and voting in the second and third reading (the wording of the clean copy must be in line with the wording of draft bill!).

Annex No. 2


24-hour information
Parliamentary committees
Legislative Opinion-Standpoint
National Council meeting
Clean copy
Collection of laws

1.11. Organization of the Legal and Legislative Services in Parliament of Slovenia (National Assembly)

The Legal Legislative service of Drzavni Zbor
(Slovene Parliament)

The Legislative and Legal Service of the National Assembly

Article 27^b

(1) The National Assembly has a Legislative and Legal Service which delivers opinions on the conformity of draft laws, other acts, and amendments with the Constitution and the legal system, and on legislative and technical aspects of drafts (hereinafter referred to as the Legislative and Legal Service).
(2) The Head of the Legislative and Legal Service is appointed by the Commission for Public Office and Elections on the proposal of the Secretary General.

THE ORGANIZATION OF THE LEGAL LEGISLATIVE SERVICE IN THE PARLIAMENT OF THE REPUBLIC OF SLOVENIA

ORGANIZATION OF LEGAL –LEGISLATIVE SERVICE (LLS)

Parliamentary professional staff

- The level of independence of the Legal Legislative service, compared to other professional services in the Parliament is a bit higher. The reasons are the tradition, but primarily the role of the LL service in regard to the Rules of Procedure of the Parliament – the organization and the nature of work.
- Currently, the LL Service has 13 employees: Lawyers with bar exam, out of which there are 3 with Master's degree and one PhD, and two administrative assistants.

The LLS is not specialized in specific areas; their primary role is to watch if the legal order as a whole and scrutiny.

Legal legislative service

- Parliamentary staff
- Employs public servants
- Areas or responsibility: constitutional issues, the issues of legal order and legal-technical issues.
- The opinions of the LL service are not binding
- It cannot submit the motion of dismissing the Law and cannot submit amendments

GENERAL OVERVIEW

- LLS prepares opinions on compatibility and conformity of the draft laws, other acts and amendments with the Constitution, legal order and matters of legal-technical aspects of the laws;

- Prepares the professional base on forming an opinion, or response to the constitutional for of Republic of Slovenia in cases of constitutional review and legality of the act.
- Prepares opinion on other matters on in accordance with the rules of procedure (parliamentary investigation, referendum procedures);
- Prepares opinions for the needs of the President/Speaker of the Parliament and interpretation of legal issues to the Members of Parliament;
- Prepares official and unofficial revised laws and proofreads the text of laws and other acts for publishing in the Official Gazette of Republic of Slovenia.

LEGAL LEGISLATIVE SERVICE IN LEGISLATIVE PROCEDURE

1. Preparation of opinion on draft laws, other acts and amendments;
2. Taking part in committee sessions, where draft laws or other acts and amendments are being debated;
3. Informing and forewarning on mutual inconformity of certain law provisions before the final vote on a law;
4. Prepares of opinion if 'Drzavni savet' (in a way another House in the Parliament) for repeat of voting on a law (a veto);
5. Prepares the final text of a law and publishes it in the Official Gazette; and
6. Prepares official and unofficial reviewed law texts.

LEGISLATIVE PROCEDURE

First reading

- In this phase of procedure, the draft law has yet not been sent for review to a relevant committee; the opinion of Legal Legislative service is not yet requested.

Second reading

The Committee session

- Debate and voting on specific regulations from the draft law
- Submitting amendments on all regulations of the draft law (changes and adaptions: only the regulations that are the subject of the draft law). In most cases, amendments on specific regulations of the draft law are prepared on the base of remarks from the written opinion of the legal legislative service.

Plenary session

- Debate and voting on submitted amendments
- Submitting amendments on provisions of law that had been changed or adapted on the Committee session (this does not apply on transitional provisions)

Third reading

This is done only on plenary session of the Parliament.

- Debate and voting on entire draft law
- Amendments are submitted only on provisions that had been subjected to change or adaptation in the second reading on the plenary session.
- After the voting on amendments and before voting on the law itself, it is possible that Legal Legislative Service or the Government (who proposed the legislation) will warn that the adopted amendments have caused mutual inconformity or disharmony to the regulation/provision of the law.
- Preparation of the law for harmonization/conformity (The Government and the relevant committee) – in case the amendment is not adopted, legislative procedure is over.

CONSOLIDATED TEXTS OF THE LAW

Official consolidated text

- Requested by the Parliament's decision, LLS prepares it
- It is accepted by the Parliament on the plenary session (without debate)
- Publishing in the Official Gazette

Unofficial consolidated text

- After every change and adoption of the law (also after passing of other laws, Constitutional Courts' decision to intervene in the text of law), it is prepared by the LLS
- Publishing on the Parliament's Official web page

OPINION ON THE DRAFT LAW

- Giving opinion at least 14 days before the Committee session, which is devoted to discussion on the bill (second reading).
- The opinion is submitted to Committee members, the caucuses and the body which proposed the bill (or act).
- Before the session – the proposer of the bill reviews the opinion and the recommendations of the LLS on the respective bill, prepares the proposed amendments and possibly explanations on non-accepted remarks or objections.
- The amendments are prepared by the Government, which is a relevant Ministry – cooperation with the LLS and the staff of the relevant Committee.
- The Rules of Procedure forbids the proposer of the bill to submit amendments; amendments are formally submitted by the caucuses of the governing majority coalition five days before the session.

- The possibility of Committees to submit the amendments a day before the session rarely happens lately, but also in these cases, it must be suggested by the proposer of the bill (the Government) with cooperation of LLS and the Committee staff.
- The representative of the LLS presents the opinion on the Committee session and takes part in the discussion on amendments.

THE REQUEST OF DRŽAVNI SVET FOR THE REPEATED VOTE ON A LAW (A VETO)

- The request is submitted within the seven days after passing the law in the plenary session.
- Debate on the Committee session.
- LLS prepares an opinion on legal aspects of the request.
- Repeated voting on the law at the plenary session of the Parliament (Drzavni zbor) and absolute majority of all MPs is needed.

PREPARATION OF THE FINAL TEXT OF THE LAW

- Immediately after passing the law at the Plenary session.
- In the final text, all amendments that had been passed in the third reading are included.

Final revision of the text – the LLS prepares corrections that do not change the substance and exact meaning of the law (such as interlunation, grammar and written typos, quotes and obvious mistakes in the text).

2. Examples of Legal/Legislative Opinions on Bills in Parliaments

2.1. Legal/Legislative Opinion on a Bill from the Parliament of Albania

OPINION

REGARDING THE BILL "ON SOME ADDITTIONS AND AMENDMENTS TO LAW NR. 9669, DATED 18.12.2006, "ON MEASURES AGAINST VIOLENCE IN FAMILY RELATIONS," AMENDED

In the last twenty years, the notion of responsibility to protect individuals from domestic violence, considered in the past to be a private or a family matter, has now become a prevalent notion on a national and international level.

The UN Convention "On the Elimination of All Forms of Discrimination against Women" (CEDAW), Article 2, states:
States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:
(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
(g) To repeal all national penal provisions which constitute discrimination against women.

Article 16 of CEDAW specifically addresses domestic violence as a form of discrimination against women:
1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
(a) The same right to enter into marriage;
(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
(c) The same rights and responsibilities during marriage and at its dissolution;
(d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;

(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
(f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
(g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

In addition, in General Recommendation nr. 19, the CEDAW Committee interprets gender based violence as "*a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men"*. In the same recommendation the Committee emphasizes that:
"*States parties should ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity. Appropriate protective and support services should be provided for victims."*

In the recommendations made by the Committee to the Albanian Government after its Third Report on the elimination of discrimination against women, among others, it is stated:
"The Committee calls upon the State (…) to appropriately sanction and criminalize acts of domestic violence and to ensure that all cases of violence against women are swiftly prosecuted and punished. The Committee further recommends that the State party strengthen its efforts to ensure that female victims of violence have immediate protection, including the possibility of expelling the perpetrator from the home, effective recourse to a shelter and access to free legal aid and psychosocial counseling. (…) The Committee calls on the State party to systematize data collection on violence against women, including domestic violence. It recommends that structures be established to help female victims of violence to rebuild their lives, including through the creation of job opportunities. The Committee invites the State party to further pursue, in collaboration with a broad range of stakeholders, including women's and other civil society organizations, awareness-raising campaigns through the media and public education programmes to make such violence socially unacceptable, and to continue seeking international assistance towards this end."

The UN Convention "On the Rights of the Child" requests the same for the children:
"States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination (...) irrespectively of whether he/she is under the care of the parents, legal guardian, or any other person responsible for the wellbeing of the child".

In order to codify the common European standards, the Council of Europe's Ad-Hoc Committee on the Prevention and Fight against Domestic Violence (CAHIVO) is drafting a European Convention to prevent and fight domestic violence.

The European Court of Human Rights has many times emphasized the importance of an effective domestic legislation for the protection of victims of domestic violence. In *Opuz v. Turkey of 9 June 2009*, the Court judged that the Turkish authorities had failed to implement the necessary measures to protect the victim of domestic violence, therefore rendering the domestic legislation ineffective. In a

recent decision against Bulgaria (*Becacqua and S v. Bulgaria, 12 June 2008*) the Court judged the legal measures to be infective and that the State was unable to avoid the domestic violence in the case cited above, therefore it asked "*a more active involvement of the State in the protection of the victims*".

Law nr. 9669, dated 18.12.2006, "*On Measures against Violence in Family Relations*" was first proposed to the Assembly of Albania by 20,000 signatory citizens. In 2008, Ms. Valentina Leskaj, an MP, proposed a few amendments to increase the number of legal authorities and their responsibilities in implementing the law.
Regarding the additions and amendments presented today by the Ministry of Social Affairs for further reviewing, I can say that they widely reflect international standards against domestic violence, which I have intentionally cited above.

In addition, these amendments are also a consequence of the improved legislation in other fields, such as the legislation "*On social assistance and services*", or the one "*On free legal assistance*".
Of importance is the presented amendment regarding the request to put the child under immediate protection within 24 hrs from the issuance of the request.
However, after prior consultations with groups of interest, I think that there is space for some amendments with the aim to increase the effectiveness of the legislation.

The proposals are:

1. **Letter "a" of section 3, Article 3, is changed as follows:**

a. **The wife/husband, or the partner in a cohabiting relationship, or the girlfriend/boyfriend in an engagement, or the ex-wife/husband, or the ex-partner in a cohabiting relationship, or the ex-girlfriend/boyfriend in an engagement.**

During the last three years of implementing the law, there have been many cases of violence between partners who have been either engaged, or simply in a relationship. Also, there have been requests addressed to the court from such subjects, whether engaged or in relationships, asking for protection orders. We have noticed that the Court of Tirana has issued an order of protection from an ex-boyfriend, but the Court of Fier has turned down a request to have legal protection from an ex-partner in an engagement, reasoning that the legislation "*On Measures against Violence in Family Relations*" does not consider the ex-partners in an engagement to be under its jurisdiction. We think that it is very important that such subjects must be granted protection by this legislation, not only as persons with family relations and affinity, but also for the fact that these subjects are of a young age. It means that more often than not they are faced with the prejudices and discriminatory mentalities that are part of the social reality and are in need of specific protection. Therefore, the inclusion of these subjects in the legislation will be a good step to fulfill the obligations born under the Constitution, which states that *"...young people have the right of special protection by the state*".

2. **After letter "d", section 2, Article 13, letters "dh" and "e" are added, stating that:**

“dh) police/general attorney.

e) persons legally responsible for the children”.

Persons legally responsible for the children are usually persons who have been trusted with the care and education of the children by their parents and legal guardians. These include, in particular, school and kindergarten teachers, school and kindergarten psychologists and social workers, school and kindergarten administrative authorities, nannies, etc. As we can see, these subjects can be employees of public or private institutions, or employed by the family itself.

All these persons constitute a category that spends a lot of time with children and could observe visible phenomena of domestic violence. They may proceed by denouncing it to the administrative bodies, but we think that it is in the interest of child protection that they have the right to directly address the court itself. Naturally, this is a right of theirs and not a legal obligation, therefore it is in their hands to judge whether they should follow the administrative way or the court way as foreseen by the law. We think that this addition is a guarantee to increase the protection of children from violence.

3. **After Article 15, Article 15/a “Protection of confidentiality” is added with this content:**

1. The victim who contacts the social care services of public institutions or licensed non-profit organizations, and lawyers of legal representatives has the right of confidentiality regarding her personal data and the information given on her situation, except for the cases when the victim states otherwise in writing.

2. Workers of social care services for victims of domestic violence, who are employed by public institutions and licensed non-profit organizations, and lawyers of legal representatives of victims of domestic violence protect the secrecy of personal data and the confidentiality of the information given by the victim about her situation, except for the cases when the victim states otherwise in writing.

3. Workers of social care services for victims of domestic violence, who are employed by public institutions and licensed non-profit organizations, and lawyers of legal representatives of the victims of domestic violence cannot be forced to testify what they know because of their profession, except in those cases when the law foresees the obligation to refer the testimony in front of the proceeding authorities.

In the framework of the responsibility held by the lawyers who will provide legal assistance, and by the workers of various social service centers that have been or will be created by the state, or those that will be licensed by the state, it is important that a direct relationship of communication is created between them and the victims of domestic violence, whom they serve. In this framework, the protection of professional confidentiality is one of the criteria to ensure a just and trustworthy relationship between

them and the victims. Therefore we think it is best that the related Article, which deals with evidence in a process (Article 15), must state their non-obligation to testify, with some exceptions that can be decided in cases foreseen by other laws, and in particular, by the Albanian Code of Criminal Proceedings. This rule of an aesthetic character will strengthen the victims' trust on the advocacy and psycho-social services.

The Albanian Code of Criminal Proceedings, Article 159, states that:

Article 159 - Professional secrecy

1. There may not be forced to give evidence for facts learnt due to their duty or profession, except when they have to present them to the proceeding authorities:
a) The representatives of the religious belief, whose statutes are not in opposition to the Albanian rule of law;
b) Practicing lawyers, legal representatives and notaries;
c) Doctors, surgeons, pharmacists, obstetricians and any body else exercising a medical profession,
d) The ones who exercise other duties or professions, whom the law recognizes the right to not give evidence for what concerns the professional secret.
2. When there are reasons to suspect that these persons try to not give evidence under unmotivated grounds, the court orders for necessary verification. When it results ungrounded, the court decides that the witness must give evidence.
3. The provisions set forth in paragraph 1 and 2 shall also apply to the professional journalists as far as the names of the persons from whom they have collected information during the performance of their profession are concerned. But, in case the data are indispensable to prove the criminal offence and the truthfulness of these data may become clear only through the identification of the source, the court orders the journalist to give the source of his information.

Worked by Jonida Tafani

2.2. Legal Opinion on a Bill from the Parliament of Albania

THE REPUBLIC OF ALBANIA

THE ASSEMBLY

Legal Service

No. ___Prot. Tiranë, _____2012

Subject: A memo regarding request no. 2562 Prot., dated 18.10.2012, presented by a group of MP's, as a bill proposal "On the protection and special representation of the rights of persons with disabilities."

To: **Ms. Jozefina TOPALLI (ÇOBA)**

Speaker of the Assembly

Here

Honorable Ms. Speaker,

With memo nr.2562 Prot., dated 18.10.2012, a group of MP's from the Socialist Party Parliamentary Group presented the Albanian Assembly with a bill proposal "On the protection and special representation of the rights of persons with disabilities".

The issued documentation contains:

-The proposed bill "On the protection and special representation of the rights of persons with disabilities", drafted as a normative act;

-The attached report on this bill, signed by the initiatory MP's.

Constitutional standpoint:

The Constitution of the Republic of Albania, Article 81/1, states:

"The Council of Ministers, every MP, and 20,000 electors each have the right to propose laws."

In the issued document, the initiators are MP's of the Assembly of Albania, whose rights are recognized by the Constitution, as stated in the Article cited above.

The Constitution of the Republic of Albania, Article 82, sections 2 and 3, state:

2. "No non-governmental draft law that makes necessary an increase in the expenses of the state budget or diminishes income may be approved without taking the opinion of the Council of Ministers, which must be given within 30 days from the date of receiving the draft law."

3. "If the Council of Ministers does not give an answer within the above term, the draft law passes for review according to the normal procedure".

Assembly's Rules of Proceedings formal standpoint:

Rules of Proceedings, Article 68, sections 1, 2, and 3, state:

Article 68

Proposal of Bills

*1. The right to propose laws belongs to the Council of Ministers, **every MP**, and 20.000 electors.*

*2. The bills must be drafted as a normative act and accompanied by a report that contains the objectives that its approval aims to fulfill, the arguments that these objectives cannot be fulfilled with the existing legal instruments, its conformity with the Constitution and the harmonization with the legislation in power and the EU legislation, its social and economic effects.. For the bills of financial character, **the report must contain the financial, consequent effects of its implementation**.*

3. No non-governmental bill that increases the expenses of the state budget or diminishes its incomes can be approved without taking the opinion of the Council of Ministers that must express it within 30 days from the date of receiving the bill. If the Council of Ministers does not give an answer within this deadline, the bill passes for consideration according to the normal procedure.

4. The Speaker of Assembly can return the deposited bill to the initiator, in a motivated way, if the requests provided in item 2 of this Article are not fulfilled.

Analysis from a constitutional and procedural standpoint:

The proposed draft law is in conformity with the Constitution of the Republic of Albania (Article 81, section 1) and with the Albanian Assembly's Rules of Proceedings (Article 68), therefore generally fulfilling the necessary legal criteria for a bill to be proposed. The only remaining unfulfilled criterion is the one regarding the expected financial impact that will result from the implementation of the bill, if it is to be approved.

Because the proposed draft law does not fulfill all the criteria stated by Article 68/2 in the Rules of Proceedings, we recommend that it is to be returned to the initiators.

Because the proposed bill is not a proposal of the Council of Ministers, based on Article 82, section 2 of the Constitution, we recommend that the bill is to be sent to the Council of Ministers for reviewing.

2.3. Legislative Opinion on a Bill from the Parliamentary Assembly of Bosnia and Herzegovina

Number: 01,02-02-1-33/15
Sarajevo, 30 December 2015

The Parliamentary Assembly of BiH
Collegium of the House of Peoples
Constitutional-Legal Committee of the House of Peoples

Pursuant to Article 9, paragraphs (1) and (2) of the Rules of procedure of the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina ("Official Gazette of BiH", No. 58/14, 88/15 and 96/15), Constitutional-Legal Committee submits the

O P I N I O N
on compliance of the Draft Law on Amendments to the Law on Traffic Safety Basics on the roads in Bosnia and Herzegovina with Article 95 of the Rules of procedure of the House of Peoples of the Parliamentary Assembly of BiH and the Uniform Rules for Legislative Drafting in the Institutions of Bosnia and Herzegovina

Speaker of the House of Peoples of the Parliamentary Assembly of BiH, in accordance with the provisions of Article 97, paragraph (1) of the Rules of procedure of the House of Peoples, by document No. 01,02-02-1-33/15 of 25 December 2015, submitted the Draft Law on Amendments to the Law on Traffic Safety Basics on the roads in Bosnia and Herzegovina (hereinafter: the Draft Law) to the Constitutional-Legal Committee for an opinion on the compliance of the Draft law with Article 95 of the Rules of procedure of the House of Peoples and the Uniform rules for Legislative drafting in the Institutions of BiH.

Draft Law No. 01,02-02-1-33/15 of 24 December 2015, was submitted by the Council of Ministers of BiH, as authorized proponent, pursuant to Article 94, paragraph (1) of the Rules of procedure of the House of Peoples.

I. Compliance with the provisions of the Rules of procedure of the House of Peoples of the Parliamentary Assembly of BiH

Article 95, paragraph (1) of the Rules of procedure of the House of Peoples stipulates that the Draft Law is submitted in the form of text, in accordance with the Uniform rules for Legislative drafting in the Institutions of BiH, in written and electronic form, in the languages and alphabets which are in official use in BiH.

In this regard, the text of the Draft Law was submitted in written and electronic form, in the languages and alphabets which are in official use in BiH. However, in terms of compliance with the Uniform Rules

for Legislative Drafting in the Institutions of BiH there are certain terminological inconsistencies in the Draft Law in language versions, so we believe that the Draft Law **is formally compliant with** Article 95, paragraph (1) of the Rules of procedure of the House of Representatives.

Article 95, paragraph (3) of the Rules of procedure of the House of Peoples stipulates that the Draft Law is submitted along with the explanation that includes:

a) constitutional basis for the adoption of the Law
b) reasons for the adoption of the Law
c) principles on which the Draft Law is based
d) assessment of the financial resources necessary for the enforcement of the Law
e) opinion of the Directorate for European Integration on compliance of the Draft Law with legally binding EU standards, as well as opinions of institutions and organizations consulted during the drafting of the Draft Law, and
f) any other circumstances that could explain to the House of Peoples reasons for the adoption of the Law.

In this regard, the Draft Law was submitted along with the explanation which includes:

1. constitutional basis
2. reasons for the adoption of the Law
3. goal of the adoption of the Law
4. explanation of the proposed solutions, and
5. assessment of the financial resources necessary for the enforcement of the Law.

The Draft Law was submitted along with the opinions of the Ministry of Justice, Office for Legislation, the Ministry of Finance and Treasury and the Ministry of Human Rights and Refugees.

Therefore, the explanation does not contain the principles of the Draft Law, compliance with the European legislation, nor the Opinion of the Directorate for European Integration about it was submitted, so the Draft Law **is not compliant with** Article 95, paragraph (3) of the Rules of procedure of the House of Peoples.

The Proponent submitted, along with the Draft Law, provisions that are to be changed, i.e. amended, but did not submit the revised version of the text, so in this sense the Draft Law **is not compliant with** Article 95, paragraph (5) of the Rules of procedure of the House of Peoples.

The above shows that the Draft Law on Amendments to the Law on Traffic Safety Basics on the roads in Bosnia and Herzegovina **does not fully comply with** Article 95 of the Rules of procedure of the House of Peoples.

II. Compliance with the Uniform Rules for Legislative Drafting in the Institutions of Bosnia and Herzegovina ("Official Gazette of BiH", No. 11/05, 58/14 and 60/14)

In its structure and form the Draft Law complies with the rules of legislative drafting.

However, we point to Article 34, paragraph (2) of the Uniform Rules:
"(2) The terminology used in the legislation must be:
a) clear
b) consistent,
c) precise,
d) necessary."

Accordingly, the terminology used in the Draft Law made in three language versions does not comply with the rules referred to in Article 34, paragraph (2). One can get the impression that only one language version of the Law was taken into account when making amendments, and the following happened:

1. in the Draft Law, in Article 5, the amendment was proposed in such a way that the words "Saobraćajna pravila" (Traffic rules) are replaced by the words "Pravila saobraćaja" (Rules of traffic), which can be changed only in the Law written in the Serbian language, while in the Law written in Bosnian and Croatian the used terminology was already included in the proposed amendment ["Pravila saobraćaja" (Rules of traffic), i.e. "Pravila prometa" (Rules of traffic)];
2. in the Draft Law, in Articles 18, 19 and 20 the similar error is repeated, and the word "rastojanje" (distance) is replaced by the word "odstojanje" (distance). The term proposed by amendments already exists in the Law written in the Bosnian language, and the word "razmak" (distance) which is used in the Law written in the Croatian language is not present at all. Therefore, this amendment can be made only in the Law written in the Serbian language;
3. in the Draft Law, in Article 43, already described problem also occurs, and in Article 176, item 1, indent 3) the words "saobraćajna pravila" (Traffic rules) in the Law written in the Serbian language are replaced in "pravila saobraćaja" (Rules of traffic), whereas such an expression is already used in the Law written in the Bosnian language, i.e. in the Law written in the Croatian language: "pravila prometa" (Rules of traffic).

The above shows that the Draft Law **is not fully compliant with** the Uniform Rules for Legislative Drafting in the Institutions of Bosnia and Herzegovina.

Chairwoman
of the Constitutional-Legal Committee
Mirjana Kutanjac

Deliver to:
1. Title
2. Secretary of the Common Services of the Secretariat

2.4. Legal/Legislative Opinion on a Bill from the Parliament of the Czech Republic (Chamber of Deputies)

Legislative standpoint

on constitutional conformity of complex amendment to submitted bill on Service Act

(Print n° 71)

Merit of the case:

The parliamentary bill that changes Act No. 218/2002 Coll. on service of public servants in administrative offices (Service Act) has been submitted to the Chamber of Deputies (print no. 71). This bill is a direct amendment to the Service Act and includes 104 points. During the meeting of the parliamentary committee, the complex amendment was submitted to this bill, which has the form of a draft to adoption of a brand new Act on public services, repealing and displacing the valid Service Act. There are a few dozen of repealing provisions of other legal regulations in this new Act (§ 200). But mainly it changes the form and the extent of the Act. Amendment on bill becomes a draft of a new bill that is significantly more extensive compared to initially-submitted one. The question rises, whether such procedure is constitutionally allowable.

Legal regulation (case-law):

The Constitutional Court dealt with the problem of allowable extent of amendments submitted within the legislative process on a bill under debate, in particular in its ruling no. 37/2007 Coll. of February 15, 2007. The Constitutional Court differs between an intensive and an expansive departure from limited area reserved for amendments. In case of intensive departure, regulation remains within the subject, but it is significantly enlarged by its content. In case of expansive departure a completely different amendment is added to the bill, without any relation, so there is a departure from the subject and from the purpose of initially-submitted bill. While intensive departure is, according to the Constitutional Court, in conformity with the Constitution, expansive is not. In opinion of the Constitutional Court, amendment should not fundamentally change or extent the initiative bill, as well.

The Constitutional Court stated that "the claim of predictability of law as part of principle of legal state ceases to be fulfilled in a moment when the amendment of one Act is a part of another Act in the formal sense, and their content is not related. "

Related case-law of the Constitutional Court has already been less restrictive towards the legislator. In ruling no. 88/2008 Coll. of January 31, 2008, the Constitutional Court declared a statement on constitutionality of so-called collecting amendments. It stated that "the practice, when there is a number of various Acts amended by one bill is … in principle in conformity with the Constitution, unless amended Acts are not substantially related."

In ruling no. 249/2010 Coll. of October 6, 2010, the Constitutional Court confirmed that legislative practice in form of complex amendments are not in contrary with rules of legislative process established by the Constitution.

In ruling no. 39/2013 Coll. of January 9, 2013, the Constitutional Court even declared substantive relation between the bill changing the Act on sport aid and the senatorial amendment supplementing into respective bill the amendment of Act on local charges, which was ingenuously presented during discussion by senator Kubera as "phoney" attachment due to the lack of more preferable legislative carrier in conditions of ending parliamentary term of Chamber of Deputies.

For the Constitutional Court to consider a relation of substance, the fact that one of communities' duties is a duty of care of sport development and that raised income from local charges may be used for sport aid, was sufficient. The Constitutional Court considered the whole issue as so non-contentious that, according to the judgment, "possible stating of unconstitutionality of contested provisions would in its consequences mean a fundamental and surprising change of case-law".

We deduce from mentioned above that the case-law of the Constitutional Court is quite open and review of every case depends on particular circumstances, especially when account is taken of the impact that the finding of unconstitutionality of the law in this case would have.

Conclusion of the legislative department:

With respect to mentioned above, the legislative department inclines to the conclusion that the adoption of proposed complex amendment would represent a procedure not completely adequate from legislative point of view, but not likely to be unconstitutional. By its subject and its purpose, the complex amendment does not departure from limits outlined for parliamentary bills.

The complex amendment changes the form of the bill and extents its content. It is rather an intensive deviation – the bill is extended in its content, but thematically remains unchanged, the subject of complex amendment is related to the subject of submitted bill, the purpose of complex amendment is closely related to the purpose of submitted bill. Proposals are not attached without any relation.

Such important bill should be drafted, discussed and submitted by the government itself following the standard procedure so that no phase of legislative process would be avoided. Due to the chosen procedure, the government will not adopt an official standpoint (if it is a parliamentary bill), or not every commenting bodies will be able to give an opinion (like in case of governmental bills). In our opinion, possible doubt of proposed procedure does not consist in change of form, but in change of intensity, e.g. extension of proposed changes. The necessity of enlargement of legal regulation in complex amendment as opposite to the initiative bill (print no. 71) should be therefore thoroughly reasoned as to avoid possible objections on significant expansion or change of subject of legal regulation.

For sake of completeness we state that if an objection on unconstitutionality of single change of form of Act (e.g. from amendment to the new bill) has been adopted, it would lead only to change of technique of amend. Instead of current comprehensive bill in form of complex amendment there would be many motions proposed with maybe hundreds of points with substantially similar or the same regulation as proposed in the complex amendment. The legislative department takes into consideration

that cited case-law of the Constitutional Court is based on the principles of predictability, clarity and comprehensibility of law. For recipients of legal regulation is an adoption of the new bill much more clear and comprehensible as fragmented amendment of present Act provided by single points.

However, the conclusion stated above is not entirely undoubted. If proceeded by proposed procedure and if there will be a question of constitutionality of adoption of the new bill brought before the Constitutional Court, it will be only on the Court to take measure and to decide. The legislative department cannot anticipate its decision.

In Prague, June 4, 2014 Signature

The legislative department

2.5. Legal/Legislative Opinion on a Bill from the Parliament Assembly of Kosovo

Republika e Kosovës
Republika Kosovo-Republic of Kosovo
Kuvendi - Skupština – Assembly

To: Committee on Health, Labour and Social Welfare

Through: Zoja Osmani, Director, Directorate for Legal Standardization, Approximation and Harmonization

From: Valon Dobruna, Senior Legal Officer
Directorate for Legal Standardization, Approximation and Harmonization

Subject: Preliminary report on Draft-Law No. 04/L-252 on amendment and supplementation of Law No. 03/L-019 on Vocational Ability, Rehabilitation and Employment of People with Disabilities

Date: 29 January 2014

Based on the Regulation for Organization and Responsibilities of the Assembly Administration, the Directorate for Legal Standardization, Approximation and Harmonization has prepared this preliminary report on the Draft Law No. 04/L-252 on amendment and supplementation of Law No. 03/L-019 on Vocational Ability, Rehabilitation and Employment of People with Disabilities (henceforth 'the draft-law'):

1. Formal-legal aspects of the draft-law

The Draft-Law was submitted to the Assembly on 21.01.2014, and was disseminated to members of the assembly on 24.01.2014, with the following accompanying memoranda:

- Explanatory memorandum;
- Financial statement;
- Statement on compliance with EU Legislation.

2. Structure of the draft-law

2.1 – Structure according to formal division

The Draft-Law is structured in eighteen (18) articles. The structure, as per the formal division, has in general a good ordering of articles, whereby one article of the draft-law supplements and amends another article of the basic law. In general, most articles require interventions, as far as standardization of references to the paragraphs in this draft-law is concerned.

2.1.1 Specific remarks:

- **Article 1.** In order for the entire text of the draft-law to be harmonized, i.e. to use the same drafting technique and legal terminology, and to simplify referring paragraphs, and also taking into consideration that Article 2 of the basic law consists of one paragraph only, hence the entire relevant article is reformulated, we recommend for the referring paragraph of the draft-law to be reformulated to the following:

  Article 2 of the basic law is reformulated with the following text:

  Article 2
  Purpose

  The purpose of this law is legal and institutional support for training, rehabilitation, and vocational training to increase suitable employment of people with disabilities in the labour market, as well as treatment and equal opportunities, including gender options.

- **Article 2.** Referring paragraph to this article has grammar mistakes and mistakes related to legal drafting techniques. This Article is envisaged to include three existing definitions from Article 3 of the basic law, but does not foresee explicitly where such definitions shall be placed, although the definitions are not numbered in the basic law. We recommend for the said paragraph to be reformulated as follows:

  In the definitions in Article 3 of the basic law, the definition of "ZKP" shall be followed with three additional definitions, with the following formulations: ...

2.2. Structure according to provisions

The Draft-Law is considered ordered according to provision structure, and includes provisions amending and supplementing the basic law throughout its structure.

3. Draft-Law EU Legislation approximation considerations

All MEI conclusions, provided in their legal opinion on Draft-Law's approximation with EU legislation, were reviewed and verified, and we hereby conclude that the provisions of this Draft-Law are not in infringement of the EU Acquis.

4. Recommendations related to the Draft-Law contents, structure and linguistic-legal formulation

4.1. General remarks regarding the content

Article 11. In paragraph 4b, we consider that the text: *"*according to elements defined in job skills*"*, is unclear or grammatically incorrect, which makes the formulation of this provision overloaded and incomprehensible. Therefore, we recommend for the said formulation to be reviewed and reformulated by a more adequate expression.

Article 12. In paragraph 4 of Article 13A we recommend for the text: "*should be a safe environment*" to be replaced with the word "*safe*" in order to simplify the provision and make it more comprehendible for the implementer.

Article 13. This Article of the Draft-Law amends and supplements the title of Article 14 of the basic law. In the title, the word 'offices" is added, however if we only add this word to the title, the title would be formulated as follows *"Qendra për aftësim, riaftësim profesional dhe zyrat punësim në Kosovë"*, which is clearly missing the connector "e" and leaves the sentence incomprehensible. Therefore, since the draft-law is provided in three versions (Albanian, English and Serbian), we recommend for the entire wording of the title to be reformulated, in order to maintain upon translation into other languages (Serbian and English) the structure of a full sentence and its meaning. We recommend the following reformulation:
"Center of Vocational Ability, Rehabilitation and Employment Offices in Kosovo".

Article 14. This Article envisages the inclusion of a new provision between the existing provisions, a practice also followed in Article 11 of the Draft-Law, however, the provision in this case has obtained another number and not the number following the provision below which it is placed. Therefore, we recommend for the referring paragraph and ordering to be corrected during committee review, and to reformulate the text as follows:

> In Article 15 of the basic law, following subparagraph 1.5 a new subparagraph (1.5a) shall be inserted with the following formulation:
>
> **1.5a. ....**

Article 16. This Article has the same problems as Article 13 of the Draft-Law, therefore, here too we recommend to provide clearer provisions for the implementers, namely to transfer the text from the basic law and reformulate the entire provision, namely Article 20 of the basic law.

4.2. Remarks and recommendations regarding linguistic standardization

In general, the Draft-Law is drafted relatively well in Albanian, with certain spelling and legal drafting technique omissions, which will be avoided during committee review and formatting processes, therefore, as such it may be proceeded for further review.

5. Remarks and recommendations regarding textual standardization and unification in English

The Draft Law No. 04/L-252 on amendment and supplementation of Law No. 03/L-019 on Vocational Ability, Rehabilitation and Employment of People with Disabilities is translated into English relatively well. However, certain omissions of substantial and technical nature are noted in the Draft-Law.

Below, we are providing a number of proposals for amending the text of this Draft-Law in English, in order to ensure its complete harmonization with the version in Albanian.

Article 1

Remark: Paragraph 1 of this Article should be reformulated substantially, as the English version differs from the Albanian version.

Recommendation: Text: "The purpose of this law is legal and institutional support for training, rehabilitation, and vocational training to increase suitable employment of people with disabilities in the labour market, as well as treatment and equal opportunities, including gender options."
should be replaced with the following text:
"The purpose of this law is legal and institutional support for training, rehabilitation, **incitement** and vocational training to increase suitable employment **of persons** with disabilities in the labour market, as well as treatment **of** equal opportunities, including gender options."

Article 3

Remark: Article 5A, paragraph 2 of this Article should be reformulated, in order to ensure full harmonization of the English version with the Albanian version.

Recommendation: Text: "Employment offices send all information and necessary documentation for the disabled person to determine the ability of the remaining work in the Medical Commission."
should be replaced with the following text:
"Employment offices send all information and necessary documentation for the disabled person to determine the **ability for work** in the Medical Commission."

Remark: Paragraph 4 of this Article should be reformulated, in order to ensure full harmonization of the English version with the Albanian version.

Recommendation: Text: "Medical Commission evaluates work invalids with full disabled when from the accident or reasons that are related to work have lost the ability to work in a partial or complete way, according to laws and regulations in force."

should be replaced with the following text:
"Medical Commission evaluates work invalids with **full disability** when from the accident or reasons that are related to work have lost the ability to work in a partial or complete way, according to **legal and sub-legal acts in force.**"

Article 4

Remark: Article 6A, paragraph 2 of this Article should be reformulated substantially, as the version in English differs from the version in Albanian.

Recommendation: Text: "The remaining working ability of persons with disabilities assessed by a special commission specialized in whose composition has specialist of different areas."
should be replaced with the following text:
"The remaining working ability of persons with disabilities **shall be assessed by a special specialized commission composed by specialists of different areas.**"

Article 17

Remark: The text of this Article should be partially reformulated, in order to ensure full harmonization of the English version with the Albanian version.

Recommendation: Text: "Overseeing the implementation of the provisions of this law, which regulates work relations, safety and health at work, makes Labour Inspectorate under the law in force for the Labour Inspectorate and the Law on Safety and Health at Work.''
should be replaced with the following text:
"**Monitoring of** the implementation of the provisions of this law, **which regulate the employment relationship,** safety and health at **work shall be performed by** Labour Inspectorate under the law in force on the Labour Inspectorate and the Law on Safety and Health at Work."

6. Remarks and recommendations regarding textual standardization and unification in Serbian

The Serbian version of the Draft Law No. 04/L-252 on amendment and supplementation of Law No. 03/L-019 on Vocational Ability, Rehabilitation and Employment of People with Disabilities contains some orthographic and technical omissions; however, they can be corrected through proofreading.

2.6. Legal/Legislative Opinion on a Bill from the Saeima of Latvia

Riga, 13 November 2015
No. 111.13/1-196-12/15
To: Foreign Affairs Committee

OPINION
On the draft law
"On International and National Sanctions Implemented by the Republic of Latvia"

The Legal Bureau of the Saeima has reviewed the draft law "On International and National Sanctions Implemented by the Republic of Latvia" (No.358/Lp12), adopted in the first reading (hereinafter referred to as Draft Law), and provides the following opinion.

1. The Draft Law introduces a new mechanism for imposing national sanctions, which is unprecedented in the legal system of Latvia. The aim of the mechanism is to rapidly and effectively respond to developments that Latvia deems to be detrimental to peace, national security or national interests. However, we would like to draw the Committee's attention to the fact that the mechanism for imposing and appealing national sanctions is defined vaguely in the Draft Law. According to Section 11 of the Draft Law, the Cabinet of Ministers may adopt regulations imposing national sanctions upon establishing that there is a need to achieve one of the objectives defined in Section 3 of the Draft Law. Section 13 of the Draft Law lists the institutions responsible for implementing such regulations of the Cabinet of Ministers, for instance, by providing relevant information or taking decisions necessary for the introduction of specific prohibitions. Finally, Section 15 of the Draft Law provides for the right of the sanctioned entity (a country, international organisation, legal or natural entity, or any other identifiable entity) to appeal a decision made by a competent institution regarding sanctions imposed on the relevant entity.

According to Section 92 of the Constitution of the Republic of Latvia, as well as the jurisprudence of international courts (e.g. Court of Justice of the European Union judgement of 18 July 2013 in cases No. C-548/10 P, C-593/10 P and C-595/10 P, as well as the European Court of Human Rights judgement of 12 September 2012 in Nada v. United Kingdom), whenever sanctions impose limitations upon a natural person's rights, these persons are entitled to an effective mechanism of appeal. We draw the attention of the Committee to the fact that the possibility to appeal decisions made by the competent institutions to the Administrative Court, as prescribed by the Draft Law, cannot be regarded as an effective mechanism of appeal. A decision by a competent institution is a binding administrative act. Therefore, we urge the Committee to consider including in the Draft Law an appeal mechanism that would allow the sanctioned entity for a substance-based appeal of the imposed sanctions.

2. Different references to international and national sanctions are used throughout the text of the Draft Law. For instance, Sections 5, 8, 9 and 13(3) of the Draft Law contain 2 references to sanctions pursuant to a European Union regulation or a Cabinet of Ministers regulation. Section 5(1) of the Draft Law contains a reference to sanctions imposed by the European Union or the Cabinet of Ministers, while Section 10 refers to international or national sanctions. We urge the Committee to consider introduction of a uniform reference to international and national sanctions throughout the text of the Draft Law.

3. According to the second sentence of Section 12(2) of the Draft Law, in order to facilitate implementation and monitoring of sanctions the competent institution has the right to provide all available information about a natural person to the Ministry of Foreign Affairs without the consent of the natural person in question. We draw the attention of the Committee to the fact that the Draft Law does not explicitly specify the extent of the information or the objective of its transfer, nor does it provide for data processing, storage procedures or the term of storage. Section 10 of the Personal Data Protection Law stipulates the requirements applicable to personal data processing. Failure to comply with these requirements may lead to privacy and data protection violations. We urge the Committee to specify in the Draft Law the objective of processing this data, as well as the procedures for the use and storage of this data, and the term of storing the data. We also recommend the Committee to consult the Data State Inspectorate regarding the specifics of personal data protection.

4. The Draft Law does not provide the suggested duration of national sanctions, nor a timeline for revising or revoking national sanctions. As of now, the proposed wording of the Draft Law provides for a variety of restrictions to be imposed upon various entities, including natural persons, while providing neither set deadlines nor any possibilities for the sanctioned entities to request termination of the sanctions in question. Taking into account that some of the sanctions may impose substantial restrictions on an individual's fundamental rights, and with reference to the case law of international courts and practices of international organisations, an effective mechanism for periodic revisiting and, where appropriate, revoking of sanctions against specific individuals must be in place. It must be noted that mechanisms for periodic revisiting of sanctions imposed by the UN and the EU are in place. Thus we urge the Committee to consider supplementing the Draft Law with mechanisms for periodic revisiting and revoking national sanctions, where appropriate. We also recommend the following amendments in the proposed Draft Law:

5. Section 1:

Supplement Paragraph 1 with text "and which are directly applicable or introduced in Latvia pursuant to this Law" after the word "Latvia";

Supplement Paragraph 2 with text "adopted by the Cabinet of Ministers pursuant to this Law" after the words "imposed restrictions";

Delete Paragraph 3;

Substitute Paragraph 3 with the following wording:
"3) a competent institution - a public entity which is responsible for implementing international or national sanctions within the scope of its legal competence";

Supplement Paragraph 4 with text "against which international or national sanctions are imposed" after the words "other identifiable entity";

6. Section 3:

In the introductory part, substitute the text “and if” with “and if it is necessary in order to obtain one of the following objectives:”;

Delete the word “necessary” from Subparagraphs 1, 2 and 3.

7. Section 4:

Amend the title and the introductory part as follows:
“Section 4. Types of International and National Sanctions
Latvia may implement the following types of international or national sanctions:”

8. Section 5:

Amend Paragraph 1 (1) as follows:
“1) to freeze all financial assets owned, managed or controlled by the sanctioned entity”;

Amend Paragraph 1 (2) as follows:
“2) to deny the sanctioned entity access to financial assets and financial instruments”;

Delete Paragraph 2

9. Section 12:

In Paragraph 1 (1), substitute the word “termination” with “revocation”;

Amend Paragraph 1 (3) as follows:
“3) the competent institutions regarding international and national sanctions, modifying or revoking such sanctions, and provide the information required for implementing these sanctions”;

Supplement Paragraph 1 (4) with text “and revoking thereof” after the text “imposed againstan entity”;

10. Amend Section 13 as follows:

“(1) The Office of Citizenship and Migration Affairs is the competent institution responsible for maintaining the list of persons who, pursuant to Section 11 of this Law, are prohibited from entering the territory of the Republic of Latvia.”

(2) The Ministry of Economics is the competent institution responsible for disseminating information about introduction, execution or revocation of restrictions on tourism services imposed pursuant to Section 11 of this Law.

(3) The Financial and Capital Market Commission is the competent institution responsible for monitoring implementation of international or national sanctions imposed on financial and capital market participants. The Financial and Capital Market Commission, where appropriate, may decide on

matters related to the implementation of sanctions, including binding decisions on freezing financial assets of the financial and capital market participants in question.

(4) The District (City) Land Register Office is the competent institution responsible for implementing restrictions imposed by international or national sanctions regarding prohibition to corroborate real estate ownership rights, as well as prohibition to corroborate any voluntary transfer of real estate (with the exception of real estate obtained through inheritance) owned by the sanctioned entity.

(5) Upon modifying or revoking of sanctions, the competent institutions perform all necessary actions to modify or revoke the sanctions in question within the scope of their respective competence pursuant to the relevant laws and regulations. “

...

Head of the Legal Bureau

2.7. Legislative Opinion on a Draft Law from the Parliament of Montenegro (Prepared by Legislative Committee Staff)

PARLIAMENT OF MONTENEGRO

TO THE PRESIDENT AND MEMBERS OF THE LEGISLATIVE COMMITTEE

SUBJECT: Opinion on the Draft Law on Energy, from the aspect of jurisdiction of the Legislative Committee

I

COMPLIANCE WITH THE CONSTITUTION AND LEGAL SYSTEM

Constitutional basis for the adoption of the Draft Law on Energy is contained in Article 16, paragraph 1, item 5 of the Constitution of Montenegro, which prescribes that the law, in accordance with the Constitution, stipulates other issues of interest for Montenegro.

When it comes to the jurisdiction of the Legislative Committee, the Draft Law contains provisions that could question its compliance with the Constitution and legal system of Montenegro. These are Article 78, paragraph 5 and Article 220, paragraph 3 of this Law.

Article 78 refers to obtaining an energy permit. In paragraph 5 of this Article it is prescribed that the energy permit can be obtained prior to acquiring the right of ownership, i.e. rights to use the land on which the construction of an energy facility is planned... The above provision is contrary to Article 58, paragraph 1 of the Constitution of Montenegro, which guarantees the right of ownership. If the energy permit could be issued prior to resolving property-legal relations, it would mean that a potential energy subject could perform certain work on the land which is privately owned. This possibility is further corroborated by the provisions of Article 80 of this Law.

Article 220 refers to the prohibition of works that endanger the operation of energy facilities. Paragraph 3 of this Article prescribes that the operator of the system on whose territory the energy facility is located is obliged to regularly remove trees and other plants threatening the operation of the energy facility without obtaining authorization for cutting from the owner of a real estate and without obligation to pay damage compensation on these grounds. The above provision is contrary to Article 58 paragraph 1 of the Constitution of Montenegro, which guarantees the right of ownership. A possible solution is to pay adequate compensation for the cut down forest. Article 218 stipulates the obligation

for the energy subject to pay a compensation for possible damage to the owner of the real estate, so a similar solution can be applied in this case.

II

UNIQUE LEGISLATIVE METHODOLOGY AND UNIQUE LEGAL-TECHNICAL PROCESSING OF ACTS

From the aspect of jurisdiction of the Legislative Committee the proposed Law has shortcomings to which I point out:

Article 6

In paragraph 1 of this Article, in the interest of precision the word "izrazi" ("terms") needs to be replaced by words "Pojedini izrazi" ("Certain terms")

Article 24

In paragraph 7 of this Article it might be necessary to replace words: "za podsticanje proizvodnje električne energije" ("to encourage production of electrical energy") with words "za podsticanje proizvodnje energije" ("to encourage energy production") or "za podsticanje proizvodnje energenata" ("to encourage production of energy-generating products").

Article 26

In paragraph 7 of this Article which refers to the issuance of certificates, a training program referred to in paragraph 4 of this Article is mentioned. However, paragraph 4 of this Article regulates matters relating to taking exams, ways of taking exams, fees for taking exams, etc., but not the matter of the training program. For this reason, it may be necessary to amend paragraph 4 of this Article.

Article 31

Paragraph 3 of this Article regulates who cannot be a member of the Committee. Item 2 of this paragraph stipulates that a member of the Committee cannot be a person who is employed by the energy subject or who has signed a temporary service contract with the energy subject. It is necessary to request clarification from the representative of the proponent regarding the meaning of the temporary service contract, i.e. whether this contract implies legal-labor status.

Article 32

In paragraph 2 of this Article, in the interest of legal precision, words "dana, od" ("date, from") should be replaced by the words: "dana od dana" ("date from the day").

Article 34

It is necessary to request clarification of the paragraph 2 of this Article from the representative of the proponent, taking into account paragraph 1 of this Article, as well as the procedure of the election of the Agency Board referred to in Article 31 of this Law.

Paragraph 3 of this Article should be rephrased to read as follows:

"(3) Mandat izvršnog direktora i zamjenika izvršnog direktora Agencije traje četiri godine ("The term of office of the Executive Director and Deputy Executive Director of the Agency shall be four years").

Also, in paragraph 4 of this Article, and bearing in mind that the President and members of the Agency Board are appointed, unlike the Executive Director and Deputy Executive Director who are elected, it is necessary after words "mogu biti" ("could be") to add words "imenovani, odnosno" ("appointed, i.e.").

Article 35

In paragraph 4 of this Article, and for the reasons stated in the last comment for the previous Article, this provision should be rephrased in the same way.

In paragraph 5, the word "Članovi" ("Members") should be replaced by the words "Predsjednik i članovi" ("President and members")

Article 36

It is necessary to request clarification of this Article from the representative of the proponent, i.e. its meaning, because this Law does not stipulate sanctions for behavior that is contrary to the proposed provisions of this Article. I think that the term "ne mogu" ("they cannot") is more appropriate than the term "ne smiju" ("they must not"). Also, it is necessary to establish an obligation of giving a statement concerning the existence of a conflict of interest in the new paragraph, because this is a basis for the removal from office in the next Article if it contains false information.

Article 37

This Article, in paragraph 1, defines the basis for the removal from office of the President, members of the Agency Board, Executive Director and Deputy Executive Director of the Agency. Item 3 of this paragraph should be more precisely formulated. This Article also regulates the issue of who proposes the removal from the office of the President and members of the Agency Board, but not the Executive Director and Deputy Executive Director. A possible solution is to regulate this issue through the Statute of the Agency, i.e. after the word "izbora" ("election") to add words "i razrješenja" ("and dismissal") in Article 39 item 4.

Article 38

It is necessary to request clarification of the paragraph 1 of this Article from the representative of the proponent regarding the termination of office of the President, members of the Agency Board, Executive Director and Deputy Executive Director of the Agency at the personal request, and in relation to the provision of Article 37 paragraph 1 item 6 of this Law.

Article 43

In paragraph 5 of this Article after the word "energijom" ("energy") the words "i gasom" ("and gas") should be added. The objective of the proposed amendment is harmonization with paragraph 4, item 12 of this Article as well as item 1 of this paragraph.

Article 45

In paragraphs 5, 6 and 7 of this Article, the referral to the article is evidently wrong. Namely, in Article 43, paragraph 2, there are no items, and for this reason a correction should be made.

Article 58

In paragraph 4, item 1 of this Article after the words "tačka 4" ("item 4") the words "ovog zakona" ("of this Law") should be added.

Article 85

Paragraph 3 of this Article stipulates the responsibility of subjects referred to in paragraph 1 items 1, 9 and 11 of this Article. However, these items do not mention subjects but energy activities of public interest. I think that in paragraph 3 after the word "subjekti" ("subjects") the words "koji obavljaju djelatnost" ("who perform activity") should be added.

Article 140

In the interest of legal precision in paragraphs 3 and 4 of this Article, after the words "prenosnog sistema" ("transmission system") a word "gasa" ("gas") should be added.

Article 166

In paragraph 3 of this Article the referral to the article is evidently wrong, it is possible that this is a paragraph 2 of this Article?

Article 177

In paragraph 1 of this Article before the word "prijema" ("receipt") a word "dana" ("date") should be added.

Article 230

In paragraphs 1, 2 and 3 of this Article after the word "kaznom" ("penalty") the words "u iznosu" ("in the amount") should be added.

Article 231

In paragraphs 1, 2 and 3 of this Article after the word "kaznom" ("penalty") the words "u iznosu" ("in the amount") should be added.

Article 232

In paragraphs 1, 2 and 3 of this Article after the word "kaznom" ("penalty") the words "u iznosu" ("in the amount") should be added.

in the Draft Law following spelling and legal-technical errors have been noticed, which should be corrected:

- In Article 5, paragraph 1, item 19 the word "obezbijeđuju" is replaced by the word "obezbjeđuju",
- In Article 14, paragraph 1, item 4 the word "ibilans" is replaced by the words "i balans", and in paragraph 4 the word "ibiogoriva" is replaced by the words " i biogoriva",
- In Article 19, paragraph 2, item 10 the word "koje" is replaced by the word "koji" or "koja", depending whether it refers to the effect or to the greenhouse,
- In Article 38, paragraph 3 the comma after the word "dana" is deleted.
- In Article 44, paragraph 2 numbering for paragraphs from 1 to 11 should be replaced by the numbering for items from 1 to 11.
- In Article 54, paragraph 6 the word "obavjesti" is replaced by the word "obavijesti".
- In Article 56, paragraph 1, item 4 the word "čl." is replaced by the word "član".
- In Article 64, paragraph 4, the word "odreditinačin" is replaced by the words "odrediti način".
- In Article 71, paragraph 4, item 2 the punctuation mark colon is replaced by the punctuation mark semicolon.
- In Article 74, paragraph 2, items 1 and 2 the comma is replaced by semicolon.
- In Article 76, paragraph 4, item 4 the word "is" is replaced by the word "iz"
- In Article 81, paragraph 7, the comma is deleted
- In Article 111, paragraph 2, the word "obezbjedi" is replaced by the word "obezbijedi".
- In Article 117, paragraph 1, the word "obezbjedi" is replaced by the word "obezbijedi", and in paragraph 7 the word "utvrđeneovim" is replaced by the words "utvrđene ovim".
- In Article 120 the word "klasifikovanepo" is replaced by the words "klasifikovane po".
- In Article 134, paragraph 2, the word "obezbjedi" is replaced by the word "obezbijedi".
- In Article 141, paragraph 1, item 4 the full stop is replaced by the comma, and in item 4 the word "obezbjedi" is replaced by the word "obezbijedi".
- In Article 144 the word "obezbjedi" is replaced by the word "obezbijedi".
- In Article 156, paragraph 1, the word "obezbjedi" is replaced by the word "obezbijedi", and one full stop at the end is deleted.
- In Article 184, paragraph 2, the word "nvestitora" is replaced by the word "investitora".
- In Article 218, paragraph 1, the word "kontrolu" is replaced by the word "kontrole".
-

III
MAJORITY NEEDED FOR DECISION MAKING

Members of the Committee will propose the majority of which the Parliament will decide on this Draft Law.

In Podgorica, 1 October 2015.

SECRETARY OF THE COMMITTEE

2.8. Legal/Legislative Opinion on a Bill from the Parliament of Poland (Sejm)

Warsaw May 24, 2012

Mr. Lech Czapla
Head of the Chancellery of the Sejm

Preliminary legislative opinion
on draft bill on transparency and lobbying activities in the law-making process
(Representative of sponsors of the bill: MP Elżbieta Witek)

The aim of the submitted bill is to introduce new, complex regulations, which are to supersede the currently binding act of July 7, 2005 on lobbying in the law-making process. The subject of the bill is the specification of:

1. obligations of public authorities ensuring openness and transparency in the law-making process,
2. principles of lobbying conduct in the law-making process,
3. permissible forms of affecting the decision process of public authorities,
4. forms of lobbying control.

The aim and the need to adopt this bill as well as the difference between current and suggested legal situation, have been introduced in the enclosed explanatory memorandum. It also contains a declaration that the bill is compatible with European Union law. In this case it should be mentioned that the preconditions set in Art. 34 para. 2) 1-3, 6 and 7 of the Rules and Procedures of the Sejm have been fulfilled.

However, there are doubts as to whether the preconditions to financial means and the sources of finance have been sufficiently fulfilled (Art. 34 para. 2 of the Rules and Procedures of the Sejm). This is essential since the obligation to introduce the financial effects results from Art. 118 para. 3 of the Constitution. In this respect the sponsors of the bill declared the bill bring about financial effects on the State budget as well as territorial self-government budgets, which are minor but difficult to estimate.

In the explanatory memorandum, neither outcomes of the consultations nor information on the variants and opinions, mentioned in Art. 34 of the Rules and Procedures of the Sejm, have been introduced. Considering the scope of the suggested regulation, the Chairman of the Sejm prior to the first reading is to send it to consult with the following subjects:

- Supreme Court – pursuant to Art. 1 para. 3 Act of November 23, 2002 on Supreme Court,
- Public Prosecutor General – pursuant to Art. 3 para. 1 Act of June 20, 1985 on Public Prosecutor's Office,
- Polish Bar Council – pursuant to Art. 58 para. 9 Act of May 26, 1982 on the Bar,
- National Council of Legal Advisers – pursuant to Art. 60 para. 2 Act of July 6, 1982 on Legal Advisers,
- Inspector General for Personal Data Protection – pursuant to Art. 2 para. 4 Act of August 29, 1997 on Personal Data Protection.

Furthermore, since the project may cause changes in the functioning of the territorial self-government, pursuant to Art. 36 para. 6 of the Rules of Procedures of the Sejm, it should be introduced to give opinions by territorial self-government organizations, which comprise a self-government party of the Common Commission of the Government and Territorial Self-Government. The request for an opinion may be made prior to the first reading of the bill.

In the light of Art. 37 para. 2 of the Rules of Procedures of the Sejm, the first reading of the bill by the Sejm is not required.

Regardless to the previously mentioned facts, attention should be paid to constitutionality of some regulations contained in this bill.

Firstly, the key definition of the "subject responsible for law-making process", suggested by the sponsors of the bill, causes serious doubts due to its inaccuracy. The definition uses formulation "other organs of public authority which are, based on different regulations, given the right to initiate the law-making process". This formulation causes a question whether the suggested regulation includes law-making process on the local level. Based on the Act of July 7, 2005 on the lobbying in the law-making process, a similar doubt has been raised. Despite this fact, the act relates explicitly to bills (and to their

assumptions) as well as to ordinance projects in Art. 2 (Principles of lobbying openness in the law-making process). Currently, in some regulations the bill mentions other bills and ordinances (e. g. Art. 8 para. 2), but other formulations are so general that their interpretation could lead to divergent conclusions. Should this bill be passed unamended, it is assumed that this could bring in regulations contradictory to principles of legislative as prescribed in Art. 2 of the Act.

Secondly, the submitted bill includes suggestions that are obviously in breach of Art. 112 of the Constitution. In conformity with the Constitution, the Rules and Procedures of the Sejm laid down "the internal organization and the order of the work of the Sejm as well as the process of the creation and functioning of its organs and also the mode of conduct of constitutional duties of state organs towards the Sejm"[3]. It is to mention that Art. 7 para. 2, Art. 12 para. 1 and 2, Art. 13 para. 7 and Art. 15 of the bill are in breach of the Constitution. Moreover, the incorporation of the Sejm, Senat as well as their commissions and sub-commissions within the definition of "subject responsible for law-making process" could cause that other regulations from the second part of the project would be burdened with this imperfection. In this context, the Act of 7 July, 2005 on lobbying openness and conduct in the law-making process should be revisited. In this Act, the regulations were appropriately divided between statutory and procedural rules. This is expressed in Art. 8 of the previously mentioned Act which says that the principles of public hearings conduct as well as taking part in those public hearings are stated in the Rules and Procedures of the Sejm. Similar stipulations could appear in relation to the third part of the bill ("Principles of lobbying conduct") in which the equivalent to Art. 14 para. 3 (Act of July July 7, 2005 on lobbying in the law-making process) is absent.

Moreover, it should be noticed that the sponsors of the bill did not foresee any temporary regulations. This is an essential issue as to whether the new index of subjects carrying out lobbying should include data used by the current index. The current legal situation of subjects carrying out professional lobbying also needs to be analyzed.

Considering the previously mentioned doubts about the constitutionality of the submitted bill, it is assumed that the bill should be fundamentally reworked. Otherwise there are serious grounds for

[3] Pursuant to Art. 124 of the Constitution, this Act is applied appropriately towards the Senate so the stipulations mentioned in the advisory legislative comment relate to the breach of regulations of this Chamber of the Parliament.

sending the bill to the Constitutional Council by the Chairman of the Sejm (pursuant to Art. 38 para. 4 of the Rules and Procedures of the Sejm).

Issued by:
Tomasz Jaroszyński – Chief Legislative Officer

Accepted by:

2.9. Legal/Legislative Opinion on a Bill from the Parliament of Poland (Senate)

Warsaw, 3rd July 2012

Michał Gil
Senior Legislator
Legislation Office, Chancellery of Senate

OPINION ON THE ACT CHANGING THE ACT ON THE PREVENTION AND CONTROL OF INFECTIONS AND INFECTIOUS DISEASES IN HUMANS AND ON THE STATE SANITARY INSPECTION (publication no. 141)

I. Objective and Scope

The Act concerned amends the Act of 5th December 2008 on the prevention and control of infections and infectious diseases in humans and the Act of 14th March 1985 on State Sanitary Inspection.

Its objective is to harmonise provisions of the said Acts with changed funding system for State Sanitary Inspection set out in the Act of 23rd January 2009 changing certain acts in connection with reorganisation of, and redistribution of responsibilities in regional administration. Pursuant to Article 5 of this Act, as of 1st January 2010 in consequence of reorganisation of the reporting structure for the State Sanitary Inspection, funding for the Inspection provided from the state budget chapter administered by the Minister of Health was replaced by funding from budgets administered by regional authorities.

Moreover, the amendment was adopted to harmonise terminology with rules laid down in the Act of 15th April 2011 on medical activity and the Act of 30th August 2002 on the compliance assessment system.

The Act abolishes refunds for notifications by doctors and paramedics of vaccine injury and disease cases, as well as refunds for notifications by laboratory managers of positive laboratory test results. In consequence, obligation for doctors, paramedics and laboratory managers to keep notification registers was abolished.

Other changes:

1) reorganisation of the list of obligations under epidemiological surveillance system (Article 5 point 1);
2) more detailed isolation rules (Article 33 point 7);
3) abolition of the requirement for operators contracted to ensure public health protection against infections and infectious diseases to maintain readiness to increase health services by at least 200% as compared to the amount of health services provided under contracts with the National Health Fund (Article 42 point 2.2);
4) corrected nomenclature of disease entities and editorial errors in the list of infections and infectious diseases in the Annex to the Act.

- as well as those provisions that were impractical or ambiguous and difficult to interpret.

The amendment of the Act on State Sanitary Inspection reduces the scope of matters delegated to the regulation laying down standard operating procedures for State Sanitary Inspection's sanitary checks and surveillance, and setting out document templates for individual actions; the amendment also changes the name of the State Sanitary Inspection of the Ministry of Interior and Administration.

The Act concerned will enter into force after 30 days from publication.

II. Legislative Procedure

The Sejm adopted the Act concerned on its 16th session on 15th June 2012 based on governmental bill (parliamentary publication no. 293). The bill was considered by the Sejm's Health Committee that introduced a number of editorial corrections. In the second reading (during Sejm's session) no additional remarks were introduced. The Sejm adopted the Act as proposed by the Health Committee.

III. Detailed Remarks

1) Article 1, point 1(b) defines research institute as the research institute in the meaning of the Act of 30th April 2010 on research institutes.

It seems that this definition is unnecessary as it does not bring anything into the Act. Were it not included, the phrase "research institute" would be understood precisely as defined by the Act of 30th April 2010 on research institutes. One should note, that according to §146 point 1 of Legislative Technique Principles an Act or another piece of legislation should include a definition of a notion, if:

1) the notion is ambiguous;
2) the notion is vague and it is necessary to reduce its vagueness;
3) meaning of the notion is not generally understood;
4) , due to the nature of the regulated field, it is necessary to establish a new meaning of a notion.

None of the above is applicable in this case. Therefore, the definition of research institute should be deleted.

PROPOSED CORRECTION:

– in Article 1, point 1 delete letter "b";

2) Grammatical corrections:

– - Article 1:

a) in point 16:

– - letter "a", first bullet point, the words "entities that suspect or recognise" will be replaced by "entity that suspects or recognises";

– - point 8, letter "c", in the enumerative section the words "are under obligation" will be replaced by "is under obligation";

b) point 21, in Article 32b, points 1 and 2, the words "are under obligation" will be replaced by "is under obligation";

c) point 1a.23, letter "b" the words "are under obligation" will be replaced by "is under obligation";

d) in point 2.24 the words "entities that designate" will be replaced by "entity that designates, and the word "entities supervise" will be replaced by "entity supervises";

e) point 1a.26, letter "b" the words "are under obligation" will be replaced by "is under obligation";

3) Article 1, point 19 adds to the Act on prevention and control of infections and infectious diseases in humans the Article 29a concerning sentinel supervision.

Doubts are raised by the phrase "designated by the competent minister of health" used at the beginning of Article 29a, point 2.1 and concerning research institutes and reference centres that are to participate in sentinel surveillance. Justification of government's bill proposal fails to explain the meaning of this provision.

As it stands, the provision could be a basis for the Minister of Health to issue an administrative decision. In this decision the Minister could only designate entities to enter negotiations preceding conclusion of agreements. The provisions fail to provide a basis for the decision regulate any elements of the agreements. Moreover, the decision will not give rise to the obligation referred to in Article 64 of the Civil Code (Binding court decision setting out an obligation for a person to provide a declaration of will replaces the declaration).

In a similar situation, Article 29a points 2.3 and 2.4 do not require entities that are to participate in sentinel surveillance to be designated before conclusion of agreements, which raises another question, this time about legislator's consistency.

Perhaps, designation of entities before conclusion of agreements is a remnant of Article 45 of the Act on prevention and control of infections and infectious diseases that regulated this form of epidemiological surveillance thus far. However, in accordance with a rational interpretation of Article 45, point 2.1 the Minister could designate entities subordinate to him. This was justified by the fact of subordination of the entities to the Minister, and thus the Minister was not required to issue an administrative decision, nor did it concern entities independent of the Minister.

Unless there are significant reasons to keep the current wording of Article 29a, point 2.1, I suggest the following correction.

- - in Article 1, point 19, in Article 29a, point 2.1 delete words: "designated by the competent minister of health";

4) According to Article 29a, point 2.1 research institutes and reference centres participate in sentinel surveillance on the basis of an agreement with the competent minister of health.

Competent minister of health does not have legal capacity. In other words, he may not be a party to an agreement. The real party to such an agreement is the State Treasury. Minister is a mere representative of State Treasury.

The same reservation concerns the capacity to enter an agreement by the State Sanitary Inspector (Article 29a, points 2.3 and 2.4).

Introduction of a respective correction would entail the need to harmonise Article 9, points 2 and 3 and Article 42, point 1 of the Act on prevention and control of infections and infectious diseases in humans that were not amended and that are similarly flawed. Since Senate's mandate is limited to the amending Act, I do not propose a correction.

2.10. Example of a Standpoint to a Bill in the National Council of the Slovak Republic

Chancellery of the National Council of the Slovak Republic
Department of legislation and law approximation

No: 734/2012

S t a n d p o i n t

to the proposal of the member of the National Council of the Slovak Republic Ľubomír Vážny to issue an act, which amends the Act no. 609/2007 Coll. about excise duty on electricity, coal and natural gas, and about the changes and amendments to the Act no. 98/2004 Coll. about the excise duty on mineral oil, as amended (print 30)

A.

The submitted proposal is a partial amendment of the Act no. 609/2007 Coll. about excise duty on electricity, coal and natural gas, and about the changes and amendments to the Act no. 98/2004 Coll. about the excise duty on mineral oil, as amended.

Its purpose is to remove the administrative barriers at the institute of tax exemption on electricity for electricity produced from renewable sources by production facilities with a total installed power of 10 kW.

The already valid Act no. 609/2007 Coll. about excise duty on electricity, coal and natural gas, and about the changes and amendments to the Act no. 98/2004 Coll. about the excise duty on mineral oil, as amended in § 7(1) point e) regulates the institute of tax exemption on electricity, if it concerns the production of electricity in solar installations, at wind power plants, at the facilities for the usage of geothermal energy, in hydroelectric power plants, in facilities that use biomass or biomass products.

Even under the conditions, that the production of electricity, subject to the conditions regulated by this act, meets the conditions of the tax exemption, producers - quasi taxpayers - are, however, according to the current legal state required to perform administrative duties (e.g., registration, handing in the income

tax statement, record administration) against the tax administrator. This state is caused because the valid revision does not distinguish between small and large producers, which produce electricity from renewable sources. The proposal eliminates this absence.

B.

The issue of the proposal is partially regulated by the law of the European Union.

The legislation on taxes and taxation is a part of the competence of the member states of the European Union. However, in accordance with the case law of the Court of Justice of the European Union (C-150/04, Commission against Denmark), it must be applied by the member states in accordance with the law of the European Union. According to the primary law of the European Union, this issue is subject to these regulations of the Treaty on the Functioning of the European Union (TFEU):

Art. 18 TFEU, which prohibits any discrimination concerning the nationality;
Art. 26 TFEU, which regulates the four fundamental freedoms of the internal market;
Art. 110 to 113 TFEU, which prohibits the discriminatory taxation;
Art. 355 TFEU, which regulates the territorial scope of the TFEU.

Concerning the secondary legislation, the issue of taxation is subject to several legally binding acts of the European Union and the decision of the Court of Justice of the European Union, as set out in the compatibility clause, in particular the directive of the Council 2003/96/EC from October 27, 2003 restructuring the framework of the Community for the taxation of energy products and electricity, as amended, the directive of the Council 2008/118/EC from December 16, 2008 concerning the general arrangements for excise duty and revoking the directive 92/12/EEC, as amended.

The regulation of the Council (EC) no. 2073/2004 from November 16, 2004 about the correct cooperation in the field of excise duties is revoked with effect from July 1, 2012 and it is replaced by the regulation of the Council (EU) no. 389/2012 from May 2, 2012 about the administrative cooperation in the field of excise duty and revoking the regulation (EC) no. 2073/2004.

The amendments contained in the proposal do not affect the transposition of the listed regulations in the

law no. 609/2007 Coll., which has been already carried out, and they do not alter its scope. For these reasons, the degree of compatibility of this proposal and the law of the European Union is considered as complete.

C.

During the process of considering the proposal of the member of the National Council of the Slovak Republic Ľubomír Vážny to issue the act, which amends the Act no. 609/2007 Coll. about excise duty on electricity, coal and natural gas, and about the changes and amendments to the Act no. 98/2004 Coll. about the excise duty on mineral oil, as amended, we suggest to apply these observations, which have a legislative-technical character:

1. to Art. I of the first point:

   In § 15a (2) are the words "shall be exempt from taxation" replaced by "shall be exempt from paying taxes."
   This is a legislative-technical and semantic elaboration of the proposed wording of § 15a (2) with respect to the valid institute of tax exemption under § 7(1) point e).

2. to Art. I of the third point:

   In the title of § 48e, are the words "from July 1, 2012" replaced by "from August 1, 2012".
   The proposal conforms to the schedule of meetings of the National Council of the Slovak Republic with respect to the constitutional law of the president of the Slovak Republic according to Art. 102 point o) of the Slovak Constitution, according to which he has the right to return the proposal approved by the National Council of the Slovak Republic to the National Council of the Slovak Republic with comments within 15 days of receipt of the approved act.

3. to Art. I of the third point:
   In § 48e in the third and fourth line, are the words "from July 1, 2012 "replaced by "August 1, 2012".
   As in the first point of this standpoint.

4. to Art. II

In Art. II, are the words "July 1, 2012 "replaced by "August 1, 2012".

As in the first point of this standpoint.

Bratislava June 7, 2012

Elaborated by: JUDr. Katarína Bučinová

Mgr.at Mgr. Monika Michalová

JUDr. Katarína Šimuničová

Director

3. Examples of Opinions on Compliance of a Bill with EU Law in Parliaments

3.1. Legal Opinion on Compliance with the Law of the European Union of the Private Members' Bill from the Parliament of Poland (Sejm)

Warsaw, 8th February 2012

BAS-WAPEiM-321/12
URGENT

Ms.
Ewa Kopacz
Marshal of the Sejm
of the Republic of Poland

Legal opinion
on the Compliance with the Law of the European Union of the Private Members' Bill changing the Act on the Organisation of the Market in Milk and Milk Products and the Act changing the Act on the Market in Milk and Milk Products (Representative of Authors of the Proposal: Edmund Borawski, MP)

In accordance with Article 34, para. 9 of the resolution of the Sejm of 30th July 1992 Rules of Procedure of the Sejm of the Republic of Poland (Monitor Polski of 2009 no. 5, item 47, with changes), the following opinion is drawn up:

1. Object of the Bill

The Bill submitted by Deputies is intended to amend two acts:

1) of 20th April 2004 on the organisation of the market in milk and milk products (Dz. U. 2009 no. 11, item 65 with changes), and
2) of 24th June 2010 changing the Act on the organisation of the market in milk and milk products (Dz. U. no. 148, item 990).

Changes in both acts are strictly related with authors' overall concept to repeal all provisions that oblige milk purchasers during quota year to collect advances on the levy due for the production in excess of wholesalers' individual quotas. Currently, in accordance with Article 33, para. 1 of the act on the organisation of market in milk and milk products, when the national wholesale quota or national direct sales quota is exceeded, the producer who marketed a quantity of milk or milk products in excess of his individual quota applicable for a given day of the year, as of the last day of the quota year, is liable for the levy laid down in Council Regulation (EC) 1234/2007 that will be discussed in point 2 of this opinion. Under the Polish law, wholesalers are to pay advances on the levy for each kilogram of milk converted to milk with reference fat content marketed in excess of their milk quotas applicable for

a given day of the year. Article 36, para. 3, p. 1 of the act mentioned in point 1 stipulates that advances are reimbursed to wholesalers, *inter alia,* when the national quota is not exceeded.

Because over the last few years milk production in Poland has not been exceeding 100% of the national wholesale quota and there are no signs for this trend to change, and moreover because the current milk quota system, pursuant to Article 204, para. 2 of Council Regulation (EC) 1234/2007, will continue until 31st March 2015, authors of the Bill propose to repeal all provisions of the act concerning the obligation to collect and reimburse abovementioned advances.

In the second act mentioned above, pursuant to which collection of advances was suspended for the period of two quota years (2010/2011 and 2011/2012), authors motion Article 9 to be repealed and Article 12 to be changed. In accordance with Article 9 of the act, in the period from 1st April 2012 to 31st May 2012 purchasers must inform the President of the Agricultural Market Agency of the separate bank account used to collect advances. Since the Bill repeals provisions on advances, in the opinion of the authors this provision will become purposeless. The second change is the consequence of the proposed changes in the act on the organisation of market in milk and milk products.

2. Status of the European Union Law in the Field Covered by the Bill

The main piece of EU legislation regulating the object of the Bill is the Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation; OJ L 299 of 16.11.2007, pp. 1-149, with changes).

Organisation of the milk market is discussed in articles 65 – 84 of the Regulation. In particular, in accordance with Article 78, para. 1 of the Regulation, if milk and other milk products are marketed in excess of the national quota as established in accordance with Subsection II (articles 66-77), a surplus levy of 27.83 EUR per 100 kilograms of milk shall be payable. Member States are liable for the surplus levy which is to be paid to the European Agricultural Guarantee Fund (EAGF). In accordance with Article 79, the surplus levy shall be entirely allocated among the producers who have contributed to each of the overruns of the national quotas. Producers shall be liable vis-à-vis the Member State for payment of their contribution to the surplus levy due. According to Article 80, para. 3 of the Regulation, each producer's contribution to payment of the surplus levy shall be established by decision of the Member State.

An important provision concerning purchasers' role in the payment of the surplus levy is Article 81 of the Regulation. According to this provision, purchasers shall be responsible for collecting from producers contributions due from the latter by virtue of the surplus levy. Purchasers shall pay to the competent body of the Member State the amount of these contributions deducted from the price of the milk paid to the producers responsible for the overrun or, failing this, collected by any other appropriate means. Further on, Article 81, para. 3 of the Regulation stipulates that where, during the reference period, quantities delivered by a producer exceed that producer's available quota, the relevant Member State may decide that the purchaser shall deduct part of the price of the milk in any delivery by the producer concerned in excess of the quota. This amount may be treated as an advance on the producer's contribution, in accordance with detailed rules laid down by the Member State.

Article 83 of the Regulation, in turn, regulates surplus levy on direct sales and stipulates that each producer's contribution to payment of the surplus levy shall be established by decision of the Member State, after any unused part of the national quota allocated to direct sales has or has not been re-allocated.

Article 84, para. 2 of the Regulation requires that where it is established that no surplus levy is payable, any advances collected by purchasers or the Member State shall be reimbursed no later than the end of the following twelve-month period.

3. Analysis of the Bill in the Context of the Established Status of the European Union Law

In the light of the abovementioned provisions of the Council Regulation (EC) 1234/2007 one should conclude that the Regulation does not require Member States to collect from producers advances on the levy for individual quota overruns. It only requires producers to pay their part of the surplus levy due (Article 79 of the Regulation) and wholesalers to pay the levy for individual quota overruns, where the national milk quota is exceeded (Article 80, para. 3 of the Regulation). Article 81 of the Regulation that defines the role of purchasers expressly leaves advances on producers' contribution to be regulated by Member States. The Regulation expressly requires, however, the advances to be reimbursed, where no surplus levy is payable, within the time limit referred to in Article 84, para. 2.

The decision to use the system of advances is to be made by Member States. Changes proposed in the Bill are therefore not contrary to Article 81, paragraphs 1 and 3 of the Council Regulation (EC) 1234/2007, nor other provisions of the Regulation.

4. Conclusion

Private Members' Bill changing the act on the organisation of the market in milk and milk products, and the act changing the act on the market in milk and milk products is not contrary to the law of the European Union.

Secretary General of the Sejm

Lech Czapla