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ANALYSIS OF COMPLIANCE OF BILLS WITH THE EUROPEAN UNION LAW IN PARLIAMENTARY WORK IN 2015–2016

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1. INTRODUCTION

The Republic of Poland's membership of the European Union has not only changed the economic and political situation in the country but also exerted considerable influence on the legislation processes. Still in the pre-accession period, based on the Association Agreement,[1] the Republic of Poland was obliged to adjust its national law to *acquis communautaire*. The provisions of Articles 68 and 60 of the Agreement recognised that the major precondition for Poland's economic integration into the Community was the approximation of the country's existing and future legislation to that of the Community. Moreover, Poland was obliged to make its best endeavours to ensure that future legislation is compatible with the Community legislation. The Association Agreement stipulated that the approximation of laws should take place still in the pre-accession period and indicated the most important areas it should cover. Those included, inter alia, customs law, company law, banking law, company accounts, entrepreneurship, taxation (in particular indirect taxes), intellectual property, protection of workers at the workplace, financial services, rules on competition, customer protection, protection of health and life of humans, animals and plants, technical rules and standards, transport and the environment.[2]

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1 Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part signed in Brussels on 16 December 1991, OJ L 348, 31.12.1993, p. 184 (Dz.U. 1994, No. 11, item 38); hereinafter Association Agreement.

2 Compare Article 69 Association Agreement.

Poland's accession to the EU on 1 May 2004 resulted in natural expiration of the Association Agreement and its substitution with the Accession Treaty,[3] and in consequence of that, being fully bound by the Treaties on the European Union[4]. Obligations resulting from the membership are laid down in Article 4 para. 3 TEU, which stipulates the principle of sincere cooperation and obliges the Member States to take any appropriate measure to ensure the achievement of tasks of the Treaties and refrain from any measure which could jeopardise the attainment of the Union's objectives. The principle obliges the Member States to adjust national law to the entire EU legislation and recognise the primacy of the EU law over national law,[5] and the necessity of taking measures to harmonise and unify the Member States' law.

Due to the legal complexity of integration processes within the EU, it is necessary to establish clear rules concerning the division of competences to enact law and to indicate the fields where law is enacted at the supranational level and where the legislative process remains the Member States' competence. The Union constitutional principle regulating the above issues is the principle of conferral (Article 5 paras 1 and 2 TEU), under which the Union enacts law only within the limits of competences conferred upon it by the Member States in the Treaties. This means that the EU as a supranational organisation has only as much legislative power as results from the transfer of legislative power by the Member States. It was confirmed in the judgment in *Van Gend en Loos*,[6] containing the characteristic features of the Union law as a new international legal order, in which sovereign powers in certain fields of law are transferred from the national level to the Union level. The article analyses the general rules of the division of competences between the Member States and the Union, which in practice can translate into legislative discretion at the national level. Then, the article more thoroughly discusses notification obligations connected with informing the EU about domestic bills. Finally, selected legal acts passed in the period 2015–2016 in connection with election-related promises are evaluated. 70 legal acts are analysed in order to determine whether and, if so, to what extent the Union law was an obstacle to national legislation, and what was the influence of the obligations resulting from the membership on the shape of selected provisions.

2. EU COMPETENCES TO LEGISLATE AS A LIMITATION TO THE FREEDOM TO SQUANDER NATIONAL ELECTION PROMISES

After the Treaty of Lisbon entered into force, a formal Treaty-based division of competences between the Member States and the Union took place. There are three types of competences: exclusive, shared and supporting ones. The analysis of their

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[3] OJ L 236, 23.9.2003, p. 46 (Dz.U. 2004, No. 90, item 864).

[4] Treaty on European Union and Treaty on the Functioning of the European Union, OJ C 326, 26.10.2012, pp. 1–390; hereinafter TEU and TFEU, respectively.

[5] For more on the principle of the EU law primacy, compare E. Całka, *Zasada pierwszeństwa w prawie Unii Europejskiej. Wybrane problemy*, Studia Iuridica Lublinensia Vol. XXV, 1, 2016, pp. 47–58.

[6] ECJ judgment of 5 February 1963 in Case 26-62, *NV Algemene Transport-en Expeditie Onderneming van Gend & Loos v. Netherlands Inland Revenue Administration*, ECLI:EU:C:1963:1.

specificity and the scope of the fields they cover lead to a conclusion that the obligations resulting from the Republic of Poland's membership of the European Union may totally exclude the state's freedom to enact national law (fields of exclusive competences) or considerably limit it (shared and supporting competences). Moreover, it is also necessary to take into account the principle of the EU law primacy over national law, which, based on the collision rule, admits non-application of the national law that is in conflict with the EU law. The EU law primacy does not automatically eliminate national norms that are in conflict with the EU law and it does not in advance prevent the adoption of national solutions infringing the Union regulations. It is due to the fact that it is the primacy of application and not of being in force.[7] This means that in the process of law application by courts or administration bodies, in case of collision between the national law and the Union law, the latter is applicable.[8] Despite the basic function of primacy determined this way, it should be noticed that the principle also precludes the adoption of national provisions that are in conflict with the Union law and hampers the entry into force of a norm of national law that is in conflict with the Union law.[9] That is why, in the national legislative process, bills also include justification from the point of view of their conformity with the Union law. In the Polish legislative practice, it constitutes the expression of respecting the principle of the Union law supremacy and also the principle of precedence resulting from Article 91 para. 3 Constitution of the Republic of Poland. The provision stipulates that: 'If an agreement, ratified by the Republic of Poland, establishing an international organisation so provides, the laws established by it shall be applied directly and have precedence in the event of a conflict of laws.' In addition, at the stage of taking a decision to develop a bill, there is an obligation to take into account the analysis of the present legal state, including the European Union law,[10] and every bill's justification should contain, inter alia, a declaration of its conformity with the EU law or a declaration that the subject matter of the bill is not covered by the EU law.[11]

The exclusive competence conferred on the Union by the Treaties in the legislative area means that only the Union may legislate and adopt legally binding acts, and the Member States are able to do so themselves only if they are empowered by the Union or for the implementation of the Union acts (Article 2 para. 1 TFEU). The Union has exclusive competence in the following areas: customs union; the

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[7] E. Całka, *supra* n. 5, pp. 48–49.

[8] ECJ judgment of 9 March 1978 in Case 106/77, *Amministrazione delle Finanze dello Stato v. Simmenthal SpA*, ECLI:EU:C:1978:49.

[9] *Ibid.*, para. 17.

[10] Compare § 1 sub-section 1(2) Annex 'Legislative technique rules' to the Regulation of the President of the Council of Ministers of 20 June 2002 concerning legislative technique rules (consolidated text, Dz.U. of 2016, item 283).

[11] Compare Article 34 para. 2(7) of the Rules and Regulations of the Sejm of the Republic of Poland, M.P. of 2012, item 32, as amended. For more on the obligations of the authors of bills, see P. Kuczma, *Obowiązki projektodawców w związku z koniecznością respektowania zasady pierwszeństwa prawa UE*, [in:] M. Jabłoński, S. Jarosz-Żukowska (eds), *Zasada pierwszeństwa prawa Unii Europejskiej w praktyce działania organów władzy publicznej RP*, Wrocław 2015, pp. 108–117, http://www.bibliotekacyfrowa.pl/Content/64518/Zasada_pierwszenstwa_prawa_Unii_Europejskiej.pdf (accessed 20.5.2019).

establishing of the competition rules necessary for the functioning of the internal market; monetary policy for the Member States whose currency is the euro; and common commercial policy (Article 3 TFEU). This relatively narrow catalogue of exclusive competence limits the discretion to legislate for provisions by the Member States to the greatest extent. Evaluating the scope of most important acts adopted in Poland in 2015 and 2016 in connection with the electoral campaign and next fulfilling the election promises, one can assume that none of the acts analysed belonged to the areas of exclusive competence.[12]

Shared competences constitute an absolutely more complex area both in terms of the rules regulating the division of legislative powers between the EU and the Member States and the scope of matters covered. The provision of Article 2 para. 2 TFEU stipulates that both the Union and the Member States may legislate for acts in this area. The Member States exercise their competence to the extent to which the Union has not exercised its competence or the Union has decided to cease exercising its competence. Shared competence between the Union and the Member States applies to the following areas: internal market; social policy (for the aspects defined in the Treaty); economic, social and territorial cohesion; agriculture and fisheries (excluding the conservation of marine biological resources); environment; consumer protection; transport; trans-European networks; energy; area of freedom, security and justice; and common safety concerns in public health matters, for the aspects defined in the Treaty.[13]

The weakest EU competences to legislate for acts are the ones that support, coordinate or complement the action of the EU Member States. Their characteristic feature is that the acts relating to these areas do not entail harmonisation and the rule that the Union measures do not supersede the competence of the Member States (Article 2 para. 5 TFEU). The supporting competences include the following areas: protection and improvement of human health; industry; culture; tourism; education, vocational training, youth and sport; civil protection; and administrative cooperation.[14]

Exercising all the competences, the European Union follows the principle of proportionality. This way, the protection of the Member States powers to legislate for acts within the Union legislative system is implemented. In accordance with the principle, the content and form of the Union action do not exceed what is necessary to achieve the objectives of the Treaties (Article 5 para. 4 TEU).[15] Proportionality as a general principle of law may be also treated in a broad way. Then, it covers the Member States' actions connected with the application of the Treaties or judgments on derogation of fundamental freedoms of the internal market (for goods, persons,

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[12] For more on the scope of exclusive competence, compare P. Saganek, Article 3, [in:] D. Miąsik, N. Półtorak, A. Wróbel (eds), *Traktat o funkcjonowaniu Unii Europejskiej. Komentarz. Tom I (art. 1–89)*, Wolters Kluwer Polska, 2012.

[13] For more on shared competences, *ibid.*, Article 4.

[14] For more on the scope of supporting competences, *ibid.*, Article 6.

[15] The principle of proportionality within the Treaties concerns the Union measures. Proportionality as a general legal principle may be also approached in a broad way, then it covers actions.

services, capital and payments). Each of these freedoms prescribes a catalogue of special public interests that can justify departure from the Treaty-based rules.[16] The Member States can adopt national legal solutions serving the protection of one of the important interests recognised by the EU law (e.g. protection of health, protection of the environment, protection of order and public security), provided that the undertaken legal measures proportionally protect a given interest without excessive interference into the content of the given Treaty-related freedom. This means that, in this approach, the principle of proportionality limits legislative action of the Member States.[17]

Shared and supporting competences are additionally governed by the principle of subsidiarity (Article 5 para. 3 TEU). The principle means that the EU legislation is possible when the objectives of the proposed action cannot be sufficiently achieved by the Member States (either at the central or at the regional and local levels) but can rather, by reason of the scale or effects of the proposed action, be better achieved at the Union level. Thus, in accordance with the principle of subsidiarity, legal regulations should be legislated on at the level that is closest to citizens and the interference at the Union level should be well grounded. Only if the requirements laid down in Article 5 para. 3 TEU are met, the adoption of a Union act and, this way, the limitation of the legislative discretion of the Member States are possible.[18]

3. NOTIFICATION OBLIGATIONS AS A LIMITATION OF THE FREEDOM TO LEGISLATE FOR NATIONAL LEGAL ACTS

The freedom of the Member States, including obviously the Republic of Poland, to legislate for national acts, apart from a general obligation not to pass national acts that are in conflict with the EU law, which, as it has been said above, results from the principle of loyal co-operation and the principle of the EU law primacy, is limited

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[16] Compare Articles 36, 45, 52 TFEU. Moreover, derogations can be judicial in nature. Then, they are referred to as necessary requirements, imperative requirements or important reasons of public interest.

[17] For more on the issue of the principle of proportionality, compare J. Maliszewska-Nienartowicz, *Zasada proporcjonalności w prawie Wspólnot Europejskich*, Toruń, 2007.

[18] The principle of subsidiarity is reviewed at the stage of a legislative process as well as after legal acts have been passed. The *ex-ante* review is carried out in cooperation with National Parliaments, which should receive a draft of a Union legal act properly justified with respect to subsidiarity. Pursuant to Article 5 para. 3, second sub-section, and Article 12(b) TEU, National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in Protocol 2 attached to the Treaty. In fact, National Parliaments cannot use the procedure to block the adoption of a bill that is in conflict with the principle of subsidiarity. However, they can induce the institution that is the author of the bill to change or withdraw it. If, within the standard legislative procedure, National Parliaments challenge the conformity of a bill with the principle of subsidiarity and the European Commission does not withdraw it, the case is first read in the European Parliament and the Council. If they recognise the bill is in conflict with the principle of subsidiarity, they may vote against it by the majority of 55% of the Council members or the majority of votes cast in the European Parliament. The *ex-post* review of the principle of subsidiarity is judicial in nature and is carried out based on a complaint about the invalidity of the EU act brought to the CJEU (Article 263 TFEU).

by a series of notification obligations resulting from the Union law. In some areas, within the national legislative process, there is an obligation to notify the Union institutions of proposed bills. There are four main notification procedures at present, which make legislative work at the national level discontinue in order to obtain approval of the bills. These include the notification of: (1) public aid (pursuant to Article 108 TFEU and the Council Regulation (EU) 2015/1589); (2) technical regulations; (3) harmonisation of the Member States' national regulations; and (4) national regulations that are within the competence of the European Central Bank.

The notification of public aid under Article 108 TFEU and the Council Regulation (EU) 2015/1589 of 13 July 2015[19] concerns any plans to grant new aid or to amend the existing aid granted in accordance with Article 107 TFEU. A Member State must notify the European Commission thereof. A Member State cannot legislate on bills granting public aid before the conclusion of the examination procedure by the Commission in accordance with the Council Regulation (EU) 2015/1589. This means the necessity of discontinuation of all national legislative work until the Commission has taken a decision.[20] Public aid that is subject to notification in accordance with Article 108 and the Council Regulation 2015/1589 cannot be put into effect until the Commission has taken or is deemed to have taken a decision authorising it. This means that the Member States' freedom in this respect is limited and subject to the Commission's decision.

Another notification procedure is connected with the functioning of the freedom of movement of goods and services, and results from Directive (EU) 2015/1535 of the European Parliament and of the Council laying down a procedure for the provision of information in the field of technical regulations and rules on Information Society services.[21] It concerns notification of bills proposing technical regulations. They cover technical specifications of products (e.g. regulations concerning the characteristics required of a product such as, inter alia, levels of quality performance, safety, packaging and marking) and other requirements or rules on services provided at a distance, by electronic means and at the individual request of a recipient. The procedure determined in Directive 2015/1535 obliges the Member States to notify the Commission of any national draft regulations concerning technical regulations. It is connected with the necessity of ensuring full freedom of the movement of goods and the freedom of the provision of services by making it possible for the Commission and other Member States, which are indirect addressees of the notification, to make amendments to their planned national measures to be introduced in connection with technical regulations. The amendments aim to eliminate or reduce any barriers that might occur in the free

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[19] Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, OJ L 248, 24.9.2015, pp. 9–29.

[20] For more on the notification procedure in accordance with Article 108 TFEU, compare B. Pawłowski, *Notyfikacja – obowiązek informowania UE o projektowanych krajowych aktach prawnych*, INFOS. Zagadnienia społeczno-gospodarcze, Biuro Analiz Sejmowych 9(213), 19.5.2016, pp. 1–2.

[21] Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and rules on Information Society services, OJ L 241, 17.9.2015, p. 1.

movement of goods due to the application of different technical regulations in the Member States. The notification procedure under Directive 2015/1535 can block the legislative process of the bill notified for a period from three to 18 months.

The process of harmonisation of national law is connected with the notification obligations that can be imposed on the Member States in the course of the national legislative process (Article 114 paras 4–6 TFEU) and after an act on a directive transposition is passed. The first of the above-mentioned cases concerns a harmonisation measure adopted at the Union level in accordance with Article 114 TFEU, which authorises the Union institutions to adopt provisions that have as their objective the establishment and functioning of the internal market. The notification under Article 114 TFEU applies to national provisions concerning harmonisation, which, however, contain legal solutions that depart from the standard laid down in the transposed directive. The differences may result, firstly, from the Member States' desire to maintain legal solutions protecting important social interests determined in Article 36 TFEU[22] or connected with the protection of the natural environment or the working environment. Secondly, after the adoption of a harmonisation measure by the Union institutions, a Member State may deem it necessary to introduce provisions based on new scientific evidence relating to the protection of the natural environment or the working environment on grounds of a problem specific to that Member State arising after the adoption of the harmonisation measure. Within the procedure laid down in Article 114 paras 4–6 TFEU, a Member State notifies the Commission of the provisions it is going to introduce in accordance with Article 114 paras 4 or 5 TFEU. The Commission must, within six months of the notifications, approve or reject the national provisions involved, having verified whether or not they are a means of arbitrary discrimination or a disguised restriction on trade, and whether or not they constitute an obstacle to the functioning of the internal market.

Within the harmonisation of law of the Member States, apart from notification blocking the legislative process, there is also notification of an act that has been adopted as a result of transposition of a Union directive to the national system. Timely and proper transposition of Union directives is every Member State's obligation. The type of harmonisation involved determines the regulatory discretion at the national level. When a directive envisages full harmonisation, a Member State in fact does not have any freedom to formulate national provisions and must strictly transpose complete, uniform and exhaustive Union solutions to the national law. Minimal harmonisation indicates the adoption of a minimum level of protection at the Union level, which must be maintained in national regulations; however, it is possible to introduce national solutions that raise the level of protection.

Every Member State is obliged to notify the Commission of the introduction of statutory, implementing and administrative provisions that are necessary to transpose a given directive after the adoption of those provisions without delay.

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[22] Article 36 TFEU lays down the catalogue of derogations from quantitative restrictions and measures having the equivalent effect. The Member States can limit trade on grounds of: public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures of artistic, historic or archaeological value; or the protection of industrial and commercial property.

The Member States submit the text of a transposition act, which should contain clear reference to the implemented directive, to the Commission. The obligation to notify of acts that transpose directives is important from the point of view of ensuring a coherent level of legal protection in the EU, which is guaranteed by harmonisation norms. The failure to fulfil the obligation to notify of implementation measures is an unambiguous signal for the Commission that the deadline for transposition has been missed, which can result in the initiation of a procedure against a Member State for an alleged infringement of an obligation under the Treaties (Article 258 FEU).

A legislative process can also be halted in connection with the obligation to notify of national draft legislative provisions that are within the competence of the European Central Bank. Article 127 para. 4 TFEU and the Council Decision 98/415/EC of 29 June 1998[23] are legal grounds for consultation with the ECB. Thus, the legislative discretion of the Member States is limited in relation to currency matters, means of payment, national central banks, the collection, compilation and distribution of monetary, financial, banking, payment systems and balance of payment statistics, payment and settlement systems, and rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets. The Member States that have not adopted the single currency are obliged to consult the ECB on any draft legislative provisions on the instruments of monetary policy (Article 2 Decision 98/415/EC).

Summing up the general rules concerning notification of national regulations to the Commission or the ECB, it should be emphasised that failure to comply with the obligations laid down in the Union law means the infringement of the Union law and authorises the Commission to initiate a procedure against a Member State for the infringement of an obligation under the Treaties (Article 258 TFEU). Evaluating the consequences of the notification obligations from the point of view of a Member State, it can be assumed that national regulations adopted in conflict with the notification obligations can be invalid and public aid unlawfully granted will be subject to recovery.

4. LEGISLATION ON ELECTION PROMISES IN THE PERIOD 2015–2016 VERSUS THE EU LAW

Moving the above discussion to a practical level and evaluating the legislative process connected with election promises in the period 2015–2016 from the point of view of obligations resulting from the membership of the European Union, it is necessary to establish some organisational issues. The research into the above-mentioned period analysed a total number of 70 bills, including 35 in 2015 and 35 in 2016. The matters regulated concerned mainly social policy, agricultural policy and issues connected with cohesion policy. Legal acts adopted in 2015 and 2016 included

[23] Council Decision of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions (98/415/EC), OJ L 189, 3.7.1998, pp. 42–43.

a series of solutions, inter alia, extending the scope of social and health benefits, determining the rules on access to subsidies within the direct support systems of agricultural policy, or regulating the retirement system rules. Evaluating the course of the legislation in the above-mentioned years, in relation to selected legal acts, one can notice that every bill was evaluated with regard to its conformity to the EU law. In case of every bill, reference to its conformity to the EU law can be found in the content of the justification for draft regulations as well as opinions expressed in the legislative process by the Ministry of Foreign Affairs or the Bureau of Research of the Chancellery of the Sejm (BAS). This means that the principle of primacy of the Union law over national law is important in the legislative process in Poland and is complied with by the authors of draft regulations and entities whose role is to evaluate bills in the course of legislative process. It also constitutes the expression of respect for the national rules on legislative technique mentioned in section 2 of the paper.

The analysed legal acts can be divided into two main groups. The first one contains acts that regulate issues not covered by the Union law. The other group consists of acts which scope is within the Union legislative competence.

In 2015, among the legal acts analysed, the following bills contained statements that the matters regulated in them were not covered by the Union law: the Act of 5 August 2015 amending the Act on social insurance of farmers and the Act on the social security system;[24] the Act of 5 August 2015 on free legal assistance;[25] the Act of 9 October 2015 on the support for mortgage debtors in a difficult financial situation;[26] the Act of 11 September 2015 amending the Act on the provision of healthcare services financed from public funds;[27] the Act of 16 December 2015 amending the amended Act on the provision of healthcare services financed from public funds, and some other acts;[28] the Act of 25 September 2015 on financing some healthcare services in the period 2015–2018;[29] the Act of 5 March 2015 amending the Act on old-age and disability pensions from the Social Insurance Fund;[30] the Act of 15 May 2015 amending the Act on financial benefits from social insurance in case of illness and maternity, and some other acts;[31] the Act of 12 June 2015 amending the Act on some forms of support for residential construction and the amended Act on collateral and guarantees granted by the State Treasury and some legal persons, the Act on the Bank Gospodarstwa Krajowego, and some other acts[32]; the Act of 25 June 2015 amending the Act on cash equivalent of the right to free coal for employees

[24] Dz.U. 2015, item 1506.
[25] Dz.U. 2015, item 1310.
[26] Dz.U. 2015, item 1925. In this case, in addition, the BAS issued an opinion (BAS-WAPEiM-1928/15) stating that the Bill does not exercise the EU law; compare the Sejm paper No. 3859.
[27] Dz.U. 2015, item 1692.
[28] Dz.U. 2015, item 2198.
[29] Dz.U. 2015, item 1770.
[30] Dz.U. 2015, item 552.
[31] Dz.U. 2015, item 1066.
[32] Dz.U. 2015, item 1169.

of mining enterprises[33]. Thus, in the case of the above-mentioned acts, regulatory autonomy was broad and was not connected with the necessity of harmonising the scope of national regulations with the Treaties' provisions or those resulting from the Union regulations, directives or decisions. It should be also highlighted that in six bills of 2015, one could find some logical inconsistence in relation to the justification from the point of view of the Union law: the same bills were assessed as being in conformity with the Union law (or not in conflict therewith)[34] and, at the same time, not within the scope of the Union regulation (e.g. the justification of a bill indicated that it was not under the regulation and the BAS evaluated the bill as being in conformity with the EU provisions).[35] Such inconsistent justification is logically inappropriate. If the subject matter is not regulated in the Union law, there is no issue of its conformity evaluation at all. Of course, the final result of the evaluation does not lead to important discrepancy in the assessment whether provisions are admissible (such a discrepancy, hypothetically, might occur if a bill was at the same time deemed to concern a subject matter not regulated in the Union law and in conflict with it). Nevertheless, the authors of the justification and opinions should indicate relations between bills and the Union law in a consistent way.

In 2016, similarly, five bills were specified as ones that regulated subject matters not regulated in the Union law. These were as follows: the Act of 2 December 2016 amending the Act on the provision of healthcare services financed from public funds;[36] the Act of 5 September 2016 amending the Act on supporting a family and the system of substitute guardianship, the Act on social assistance and the amended Act on commune self-government, and some other acts;[37] the Act of 15 January 2016 on one-off extra payment for some old-age and disability pensioners and persons entitled to pre-pension benefits, bridging pensions or compensation allowance for teachers in 2016;[38] the Act of 25 February 2016 amending the Act on one-off extra payment for some old-age and disability pensioners and persons entitled to pre-pension benefits, bridging pensions or compensation allowance for teachers in 2016;[39] the Act of 20 May 2016 amending the Act on family benefits and the Act

[33] Dz.U. 2015, item 1179.

[34] For more on the relation between cohesion and non-conflict as one of the requirements of the legislative technique as well as on the systemic rules that influence the legal situation of entities, see T. Braun, *Unormowania compliance w korporacjach*, Warszawa 2017, p. 38 et seq.; *idem*, *Korporacyjne normy compliance a zasada spójności prawa*, Ius Novum 1, 2014, p. 164 et seq.

[35] Compare the Act of 25 September 2015 amending the Act on financial support for the development of social dwellings, protected apartments, doss houses, and homeless hostels (Dz.U. 2015, item 1815); the Act of 25 September 2015 amending the Act on the provision of healthcare services financed from public funds, and some other acts (Dz.U. 2015, item 1735); the Act of 6 February 2015 amending the Act on vocational and social rehabilitation and employment of disabled persons (Dz.U. 2015, item 493); the Act of 9 April 2015 amending the Act on the social security system (Dz.U. 2015, item 689); and the Act of 24 July 2015 amending the Act on the provision of healthcare services financed from public funds and the Act on prevention and combating of infections and infectious diseases in people (Dz.U. 2015, item 1365).

[36] Dz.U. 2016, item 2169.

[37] Dz.U. 2016, item 1583.

[38] Dz.U. 2016, item 188.

[39] Dz.U. 2016, item 366.

on the establishment and payment of benefits for guardians[40]. On the other hand, the bills the justification for which indicated that the subject matter was not within the scope of the Union regulation but were in conformity with them, included: the Act of 6 October 2016 amending the Act on the social security system;[41] the Act of 2 December 2016 amending the Act on social assistance;[42] the Act of 4 November 2016 amending the Act on the provision of healthcare services financed from public funds, and some other acts;[43] the Act of 21 October 2016 amending the Act on social insurance of farmers;[44] the Act of 29 November 2016 amending the Act on personal income tax, the Act on corporate income tax and the amended Act: Taxation Law, and some other acts;[45] the Act of 4 November 2016 amending the Act on old-age and disability pensions form the Social Insurance Fund;[46] the Act of 15 November 2016 amending the Act on the Poles' Card and the Act on foreigners;[47] the Act of 21 July 2016 amending the Act on the provision of healthcare services financed from public funds, and some other acts;[48] the Act of 18 March 2016 amending the Act on the provision of healthcare services financed from public funds, and some other acts;[49] the Act of 18 March 2016 amending the Act: Teachers' Card, and some other acts;[50] the Act of 13 May 2016 amending the Act on the Poles' Card, and some other acts;[51] the Act of 6 July 2016 amending the Act: Atomic Law[52].

The other group of the analysed regulations indicated connections with the areas within the competence of the EU. The bills, and then acts adopted based on them, included those that implemented the Union law and those that did not have such a nature. A regulation that implements the Union law is one that is adopted in connection with the obligation imposed on the Republic of Poland to adjust the national law to the Union law. It may result from the necessity of adopting measures of transposition of the Union directives to the national legal system or from the necessity of implementing the provisions of the Union regulations[53] and creating

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40 Dz.U. 2016, item 972.
41 Dz.U. 2016, item 1921.
42 Dz.U. 2016, item 214.
43 Dz.U. 2016, item 2173.
44 Dz.U. 2016, item 2043.
45 Dz.U. 2016, item 1926.
46 Dz.U. 2016, item 1935.
47 Dz.U. 2016, item 2066.
48 Dz.U. 2016, item 1355.
49 Dz.U. 2016, item 652.
50 Dz.U. 2016, item 668.
51 Dz.U. 2016, item 753.
52 Dz.U. 2016, item 1343.
53 Compare the Act of 19 July 2016 on access to genetic resources and sharing of benefits from their utilisation (Dz.U. 2016, item 1340). The Act implemented the rules of application of Regulation (EU) No 511/2014 of the European Parliament and of the Council of 16 April 2014 on compliance measures for users from the Nagoya Protocol on Access to Genetic Resources and Fair and Equitable Sharing of Benefits Arising from their Utilization in the Union (OJ L 150, 20.5.2014, p. 59) and the Commission implementing Regulation (EU) 2015/1866 of 13 October 2015 laying down detailed rules for the implementation of Regulation (EU) No 511/2014 of the European Parliament and of the Council as regards the regulations of collections, monitoring user compliance and best practices (OJ L 275, 20.10.2015, p. 4).

coherent conditions for their application. In the period analysed, the following acts transposing and adjusting national law to the Union directives were adopted: the Act of 5 August 2015 amending the Act on state compensation to victims of some crimes, the Act: Code of Civil Procedure and the Act on court costs in civil cases[54] (transposition of Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims[55]); the Act of 25 June 2015 on the treatment of infertility[56] (transposition of four directives: Directive 2004/23/EC of the European Parliament and of the Council of 31 March 2004 on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells;[57] Commission Directive 2006/17/EC of 8 February 2006 implementing Directive 2004/23/EC;[58] Commission Directive 2006/86/EC of 24 October 2006 implementing Directive 2004/23/EC;[59] Commission Directive 2012/39/UE of 26 November 2012 amending Directive 2006/17/EC[60]); the Act of 29 April 2016 amending the Act on the promotion of employment and labour market institutions, the Act on the Chief Labour Inspectorate and the Act on the implementation of some EU provisions concerning equal treatment[61] (transposition of Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers[62]); the Act of 22 June 2016 amending the Act on renewable sources of energy and some other acts[63] (reference to Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC[64]).

Among the discussed statutory regulations, one can distinguish a group of legal acts that adjusted national provisions to the Union regulations adopted within the Cohesion Policy[65] and Common Agricultural Policy. The areas, important elements of which are the systems of direct support based on subsidies or other mechanisms of financing connected with the Union distribution within subsidies from structural

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54 Dz.U. 2015, item 1587.
55 OJ L 261, 6.8.2004, pp. 15–18.
56 Dz.U. 2015, item 1087.
57 OJ L 102, 7.4.2004, pp. 48–58.
58 OJ L 38, 9.2.2006, pp. 40–52.
59 OJ L 294, 25.10.2006, pp. 32–50.
60 OJ L 327, 27.11.2012, pp. 24–25.
61 Dz.U. 2016, item 691.
62 OJ L 128, 30.4.2014, pp. 8–14.
63 Dz.U. 2016, item 925.
64 OJ L 140, 5.6.2009, pp. 16–26.
65 Compare the Act 5 August 2015 amending the Act on some forms of support for innovative activities and the Act on the National Capital Fund, Dz.U. 2015, item 1308 (it adjusted the national law to Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006, OJ L 347, 20.12.2013, pp. 320–469).

funds or other financial instruments, require the adoption of detailed legal solutions at the national level that implement the rules on spending the Union funds. In the case of the Common Agricultural Policy, the acts adopted concerned the establishment of uniform rules on direct support (subsidies), in particular by granting bodies and organisational units competences concerning direct payments,[66] general rules on financing the Common Agricultural Policy,[67] as well as structural aid for agriculture within the Rural Development Programme for 2014–2020[68].

What also often occurred in the discussed areas is the issue of adjusting national solutions to the Union rules for admissibility of public aid, including *de minimis* aid. In the group of legal acts adopted, where it was necessary to take into account standards of public aid resulting from Commission Regulation No 651/2014,[69] one needs to point out: the Act of 5 August 2015 amending the Act on some forms of support for innovative activities and the Act on the National Capital Fund,[70] and the Act of 25 September 2015 amending the Act on vocational and social rehabilitation and employment of disabled people[71]. On the other hand, the issue of *de minimis* aid regulated in Commission Regulation (EU) No 1407/2013[72] occurred at the stage of legislating on the Act of 5 August 2015 amending the Act on social employment and some other acts[73] and the Act of 16 November 2016 amending some acts in order to facilitate the sale of food by farmers[74].

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[66] Act of 5 February 2015 on payments within the systems of direct support (Dz.U. 2015, item 308); Act of 24 April 2015 amending the Act on payments within the systems of direct support (Dz.U. 2015, item 653), taking into account the necessity of implementing the Union provisions resulting from a series of the Union regulations connected with the system of direct support within the Common Agricultural Policy.

[67] Act of 27 May 2015 on financing the Common Agricultural Policy (Dz.U. 2015, item 1130).

[68] Act of 20 February 2015 on support for rural development with the resources of the European Agricultural Fund for Rural Development within the Rural Development Programme for 2014–2020 (Dz.U. 2015, item 439), which implements the provisions of Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005, OJ L 347, 20.12.2013, p. 487.

[69] Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, Text with EEA relevance, OJ L 187, 26.6.2014, pp. 1–78.

[70] Dz.U. 2015, item 1308.

[71] Dz.U. 2015, item 1886.

[72] Commission Regulation (EU) 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid, Text with EEA relevance, OJ L 352, 24.12.2013, pp. 1–8.

[73] Dz.U. 2015, item 1567. It should be noted that in the legislative process for the above-mentioned act, which concerned the method of calculating subsidies for Social Integration Centres and Social Integration Clubs, there were discrepancies in the opinions concerning conformity of the bill with the Union rules for *de minimis* aid. The BAS issued a negative opinion on the matter recognising that the bill was in conflict with the EU law. On the other hand, the representatives of the Ministry of Labour and Social Policy presented an opposite opinion supported by the Minister of Foreign Affairs of 29 July 2015, which stated that there was no conflict with the EU law. This meant the assumption in the bill and then in the adopted act that subsidies paid from the Labour Fund were not included in the payments increasing *de minimis* aid.

[74] Dz.U. 2016, item 1947.

In the case of two acts adopted in the period analysed, the necessity of notification of public aid in accordance with Council Regulation (EU) No 2015/1589[75] was considered in the course of the legislative process. In the first case, the Act of 25 September 2015 amending the Act on financing support for the development of social dwellings, protected apartments, doss houses, and homeless hostels,[76] there were interpretational discrepancies concerning the nature of support. According to the opinion of the BAS of 15 September 2015,[77] the envisaged support constituted the state aid, thus it required notification to the Commission. However, in the opinion presented later, the President of the Office of Competition and Consumer Protection[78] decided that the support provided did not meet all the requirements under Article 107 para. 1 TFEU, in particular distorting competition and affecting trade. This meant that the adopted provisions did not constitute public aid and did not require notification to the Commission. Such notification was required, however, in the case of the Act of 22 January 2015 amending the Act on the functioning of coal mining for 2008–2015 and some other acts[79].

The Act of 6 July 2016 on the tax on the retail sector[80] is an interesting example of the influence of the Union law on the national legislative process. After the act was passed, the European Commission initiated the formal investigation procedure[81] concerning charges that progressive taxation of revenue linked to the size of the undertaking introduces a difference in treatment for undertakings with small income and selective advantage over competitors, which is an infringement of the rules for the state aid.[82] Due to these proceedings and until the issue of the decision by the Commission, the government presented the Bill of 6 July 2016 amending the Act on the tax on the retail sector introducing in the transitional provisions a decision on the application of statutory provisions to revenue obtained after 1 January 2018.[83] The time limit was determined this way so that it was sufficient for the Commission to issue a final decision in which it would evaluate the compatibility of Polish regulations with the internal market. The Commission took the decision on 30 June 2017,[84] where it recognised the provisions of the Act of 6 July 2016 on the tax on the retail sector as the state aid that was incompatible with the internal market and stated that they had been unlawfully put into effect. At the same time, due to the Act amending the Act

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75 The procedure is in general described under section 3 herein.

76 Dz.U. 2015, item 1815.

77 Opinion BAS-WAPEiM-1957/15, the Sejm paper No. 3929.

78 Opinion of the President of the Office of Competition and Consumer Protection of 24 September 2015 on the Sejm paper No. 3929.

79 Dz.U. 2015, item 143.

80 Dz.U. 2016, item 1155.

81 European Commission Decision C(2016) 5596 final of 19.9.2016 concerning the state aid SA.44351(2016/C) (ex 2016/NN).

82 Compare justification for the governmental Bill amending the Act on the tax on the retail sector of 19.10.2016, the Sejm paper No. 952.

83 Act of 15 November 2016 amending the Act on the tax on the retail sector (Dz.U. 2016, item 2099).

84 European Commission Decision (UE) 2018/160 of 30.6.2017 concerning the State aid SA.44351(2016/C) (ex 2016/NN) implemented by Poland for the tax on the retail sector (notified under document C(2017) 4449), OJ L 29, 1.2.2018, p. 38.

on the tax on the retail sector adopted on 15 November 2016, which cancelled the implementation of the measure, the Commission decided that there was no need to recover the aid from beneficiaries. The Polish government applied to the General Court to annul the decision. The General Court in its judgment of 16 May 2019 annulled two decisions issued by the Commission (of 19 September 2016 and of 30 June 2017).[85] This means that the original Act of 6 July 2016 did not introduce an unlawful measure of public aid and the tax laid down in it can be collected.

The legislative process of the Act of 6 July 2016 on the tax on the retail sector illustrates the influence of potential obligations resulting from particular provisions of the Treaties or the secondary EU law (including the rules for the state aid) as well as the influence of the CJEU case law on the legal regulations that are in force in Poland. In the case of the Act on the tax on the retail sector, its validity was confirmed by the judgment of the Court, which was issued in accordance with Article 263 TFEU stipulating the possibility of applying for the recognition of invalidity of the Union law (in this case, the evaluation concerned the validity of the European Commission decision recognising the Polish Act as the infringement of the Treaties' provisions concerning the state aid).

The Act of 5 August 2015 amending the Act on social welfare[86] is the statute that still at the stage of legislative work required adjusting to the Union law, namely the Treaties' provisions on the freedom of movement for workers according to the principle of abolition of any discrimination based on nationality (Article 45 TFEU). One of the provisions of the Bill concerned the rules for access to a job of a supervisor of social work. In the initial version, the provision of Article 1 para. 22 of the Act in question stipulated that this job requirement should be at least five-year work experience in organisational units of social welfare institutions or documented at least 500 hours of training for social workers. The opinion on this Bill issued by the BAS[87] indicated that the solution is in conflict with the principle of freedom of movement for workers with regard to the introduction of a discriminatory requirement for access to the job based on work experience acquired in organisational units of social welfare institutions. The BAS drew attention to the fact that organisational units of social welfare institutions are entities operating in Poland for the implementation of the state social policy.[88] This means that the proposed provision was disadvantageous for persons who acquired vocational experience in social work in institutions other than organisational social welfare units. Such persons, in accordance with the initial version of the provision, would not be able to have their work as social workers in the social welfare institutions in other EU Member States treated as meeting the requirement. Therefore, it

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[85] Judgment of the ECJ, General court of 16 May 2019 in joined cases T-836/16 and T-624/17, *Republic of Poland v. European Commission*, ECLI: EU:T:2019:338.

[86] Dz.U. 2015, item 1310.

[87] Opinion BAS-WAPEiM-874/15, the Sejm paper No. 3473.

[88] Article 6 para. 5 of the Act on social welfare provides that organisational units of social welfare institution include regional social policy centres, county support centres for family, social welfare centres, social welfare homes, specialist advice centres, including centres for family support, welfare centres and crisis intervention centres.

constituted a reflection of indirect discrimination abolished under Article 45 TFEU. The BAS comments were taken into account in the course of legislative work and the wording of the adopted provision is neutral as it uses the criterion of five-year work experience as a social worker. The requirement formulated this way is not limited to social welfare in national organisational units and makes it possible to recognise work periods in other Member States.

Another example of a national regulation the provisions of which result from the judgment of the European Court of Justice is the Act of 1 December 2016 amending the Act on the tax on the retail sector, and some other acts.[89] The adopted changes concerning exemption of, inter alia, insurance services from VAT resulted from the judgment of the Court of Justice in case C-40/15, *Aspiro*[90].

A considerable number of the 2015–2016 legal acts analysed, in the justification for them, contain an opinion on the lack of conflict or on conformity with the EU law. The authors of the bills also indicated the lack of notification obligations. The group includes: the Act of 25 July 2015 amending the Act on the support for persons entitled to alimony, the Act on old-age and disability pensions from the Social Insurance Fund and the Act on family benefits;[91] the Act of 10 September 2015 amending the Act on some forms of support for residential construction, and some other acts;[92] the Act of 16 December 2015 on special solutions for the implementation of the Act on 2016 budget;[93] the Act of 16 December 2015 amending the Act on amendment of some acts in connection with the implementation of the Act on the budget;[94] the Act of 24 July 2015 amending the Act on family benefits, and some other acts;[95] the Act of 15 May 2015 amending the Act on family benefits;[96] the Act of 25 June 2015 amending the Act: Public Procurement Law and the Act amending the Act on the social security system, and some other acts;[97] the Act of 10 July 2015 on family benefits and some other acts;[98] the Act of 16 December 2016 amending the Act on pension schemes for officers of the Police, the Internal Security Agency, the Intelligence Agency, the Military Counterintelligence Service, the Military Intelligence Service, the Central Anti-Corruption Bureau, the Border Guard, the Government Protection Bureau, the State Fire Brigade and the Prison Service, and their families;[99] the Act of 21 October 2016 amending the Act on the promotion of employment and the institutions of labour market and the Act on pre-retirement benefits;[100] the Act of 4 November 2016 on the 'For Life' support for pregnant women and families;[101] the Act of 30 November 2016 amending the Act on the functioning

[89] Dz.U. 2016, item 2024.

[90] ECJ judgment of 17 March 2016 in case C-40/15, *Minister Finansów v. Aspiro SA*, ECLI:EU:C:2016:172.

[91] Dz.U. 2015, item 1302.

[92] Dz.U. 2015, item 1582.

[93] Dz.U. 2015, item 2199.

[94] Dz.U. 2015, item 2194.

[95] Dz.U. 2015, item 1217.

[96] Dz.U. 2015, item 995.

[97] Dz.U. 2015, item 1153.

[98] Dz.U. 2015, item 1359.

[99] Dz.U. 2016, item 2270.

[100] Dz.U. 2016, item 1942.

[101] Dz.U. 2016, item 1860.

of coal mining, and some other acts;[102] the Act of 29 January 2016 amending the Act on audit of some investments;[103] the Act of 11 February 2016 on the state support for child-raising;[104] the Act of 18 March 2016 amending the Act: Family and Guardianship Code;[105] the Act of 13 April 2016 amending the Act on personal income tax, the Act on corporate income tax and the Act on the freedom of business activity;[106] the Act of 29 April 2016 on special solutions connected with the protection of work places and the Act on the protection of workers' claims in case of an employer's insolvency;[107] the Act of 13 May 2016 amending the Act: Labour Code;[108] and the Act of 13 May 2016 amending the Act: Taxation Law and some other acts[109].

5. CONCLUSIONS

Trying to assess the influence of the Union law on the scope of national regulations analysed, it is necessary to draw attention to, in general, the legislator's respect for the obligations of the Republic of Poland resulting from its membership of the EU. The legal acts adopted in 2015 (at the time of the government formed by the Civic Platform party and at the beginning of the government formed by the Law and Justice party) as well as those adopted in 2016 (at the time of the government of the Law and Justice) were passed with respect for legislative procedures in which it is necessary to take into account justification from the point of view of compatibility with the EU law or covering the statutory subject matter by the EU law or determining whether a regulation implements the EU law.[110] As it has been argued above, in the case the lack of compatibility of statutory provisions with the EU law is recognised (e.g. based on the BAS opinion), this kind of reservation is taken into account in the course of further legislative work so that the adopted legal act contains appropriate provisions in compliance with the Union regulation.

The EU law has the biggest influence on national regulations connected with the implementation of the Union policies at the national level: the Common Agricultural Policy and the Cohesion Policy. Financial advantages for the citizens and entrepreneurs (direct subsidies and grants from the Union funds) result directly from the principles established at the Union level. The national legislator's role is

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[102] Dz.U. 2016, item 1991.
[103] Dz.U. 2016, item 149.
[104] Dz.U. 2016, item 195.
[105] Dz.U. 2016, item 406.
[106] Dz.U. 2016, item 780.
[107] Dz.U. 2016, item 827.
[108] Dz.U. 2016, item 910.
[109] Dz.U. 2016, item 846.
[110] For more on the course of the legislative procedure with regard to the examination of compatibility of legal acts with the EU law, compare P. Kuczma, *Procedura badania zgodności projektu ustawy z prawem UE*, [in:] M. Jabłoński, S. Jarosz-Żukowska (eds), *Zasada pierwszeństwa*, *supra* n. 11, p. 133 et seq., http://www.bibliotekacyfrowa.pl/Content/64518/Zasada_pierwszenstwa_prawa_Unii_Europejskiej.pdf (accessed 15.6.2019).

to create efficiently functioning procedural and institutional instruments making it possible to implement the forms of support envisaged by the Union law.

The necessity of taking into account the Union rules concerning public aid and *de minimis* aid is a considerable potential limitation of the Member States' regulatory discretion. The legislative processes analysed show the full respect for those Union rules and procedures. The Act of 6 July 2016 on the tax on the retail sector[111] is an example. The national legislator, being aware of the legal consequences connected with the potential necessity of returning unlawfully granted state aid, undertook legislative initiatives that were aimed at eliminating possible disadvantageous decisions of the European Commission.

Due to the specificity of the division of competences between the Union and the Member States, a considerable number of the adopted legal acts fulfilling the most important election promises (e.g. *dezubekizacja*,[112] 500+[113]) were not within the competence of the Union law, which means that the national legislator had legislative discretion making it possible to take steps promised during the electoral campaign.

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[111] Dz.U. 2016, item 1155.

[112] Act of 16 December 2016 amending the Act on the pension schemes for officers of the Police, the Internal Security Agency, the Intelligence Agency, the Military Counterintelligence Service, the Military Intelligence Service, the Central Anti-Corruption Bureau, the Border Guard, the Government Protection Bureau, the State Fire Brigade and the Prison Service, and their families (Dz.U. 2016, item 2270).

[113] Act of 11 February 2016 on the state support for child-raising (Dz.U. 2016, item 195).

ANALYSIS OF COMPLIANCE OF BILLS WITH THE EUROPEAN UNION LAW IN PARLIAMENTARY WORK IN 2015–2016

Summary

A given state's membership of the European Union may limit its regulatory discretion and legislative activities. It results from the principle of primacy of the Union law as well as the Treaties-based division of competences between the Union and the Member States. Moreover, there is a series of areas such as public aid, regulations concerning technical norms, rules for the functioning of the internal market or currency policy, which require notification of any national legal acts to the European Commission or the European Central Bank. The Member States, adjusting national law to the Union directives, also act within the limits determined by the objective of a given directive. All those obligations then translate into national legislative processes. In Poland, every legal act adopted by the Sejm is evaluated from the point of view of obligations resulting from the membership of the European Union. The analysed legislative processes in the period connected with the 2015 electoral campaign and the fulfilment of election promises proved that in general the Union law either did not cover the regulatory subject matter or the national legislator, passing legal acts connected with the election promises, ensured respect for the Union law.

Keywords: legislative process, the Union law, the Union competences, election promises, social policy, harmonisation of law

BADANIE ZGODNOŚCI PROJEKTÓW USTAW Z PRAWEM UNII EUROPEJSKIEJ W PRACACH PARLAMENTARNYCH W LATACH 2015–2016

Streszczenie

Członkostwo danego państwa w Unii Europejskiej może ograniczać jego swobodę regulacyjną i działalność prawodawczą. Wynika to zarówno z zasady pierwszeństwa prawa unijnego, jak i traktatowo umocowanego podziału kompetencji między Unię i państwa członkowskie. Ponadto istnieje szereg obszarów, takich jak pomoc publiczna, regulacje dotyczące norm technicznych, zasad funkcjonowania rynku wewnętrznego czy polityki walutowej, które wymagają notyfikowania Komisji Europejskiej lub Europejskiemu Bankowi Centralnemu wszelkich krajowych aktów prawnych. Państwa członkowskie, dostosowując prawo krajowe do dyrektyw unijnych, również działają w granicach wyznaczonych celem danej dyrektywy. Te wszystkie obowiązki przekładają się następnie na krajowe procesy legislacyjne. W Polsce każdy akt prawny przyjmowany przez Sejm jest oceniany z punktu widzenia zobowiązań wynikających z członkostwa w UE. Analizowane procesy prawodawcze w okresie związanym z kampanią wyborczą w 2015 r. oraz realizacją obietnic wyborczych wykazały, że zasadniczo prawo unijne albo nie obejmowało swoim zakresem materii regulacyjnej, albo prawodawca krajowy, uchwalając ustawy związane z obietnicami wyborczymi, gwarantował poszanowanie prawa unijnego.

Słowa kluczowe: proces legislacyjny, prawo unijne, kompetencje unijne, obietnice wyborcze, polityka społeczna, harmonizacja prawa

ANÁLISIS DE CONFORMIDAD DE PROYECTOS DE LEY CON EL DERECHO COMUNITARIO DURANTE EL PROCESO LEGISLATIVO EN 2015–2016

Resumen

El hecho de pertenecer como Estado Miembro en la Unión Europea puede imitar la libertad del Estado en cuanto a su regulación y actividad legislativa. Esto resulta tanto del principio de primacía del Derecho Comunitario, como de la división de competencias reguladas en los tratados entre la UE y los EE.MM. Además, hay muchas áreas, como p.ej. ayuda pública, regulaciones técnicas, principios de funcionamiento del mercado interno o política monetaria, que requieren notificar a la Comisión Europea o al Banco Central Europeo todas las leyes nacionales. Los EE.MM, a la hora de adaptar la legislación nacional a las directivas comunitarias, también actúan en el marco de los objetivos de la directiva en cuestión. Todas estas obligaciones influyen los procesos legislativos nacionales. En Polonia, cada norma jurídica adoptada por el Congreso se valora desde el punto de vista de las obligaciones resultantes del hecho de ser el EM de la UE. Los procesos legislativos analizados en el periodo relativo a la campaña electoral en el 2015 y la ejecución de las promesas electorales demuestran que, en general, el Derecho Comunitario, o bien no incluye el ámbito de la regulación en cuestión, o bien el legislador nacional, aprobando las leyes relativas a las promesas electorales, promete respetar el Derecho Comunitario.

Palabras claves: proceso legislativo, Derecho Comunitario, competencias comunitarias, promesas electorales, política social, armonización de derecho

ПРОВЕРКА СООТВЕТСТВИЯ ЗАКОНОПРОЕКТОВ ПРАВУ ЕВРОПЕЙСКОГО СОЮЗА В ХОДЕ ПАРЛАМЕНТСКОЙ ДЕЯТЕЛЬНОСТИ В 2015–2016 ГГ.

Аннотация

Членство той или иной страны в Европейском Союзе может накладывать на нее определенные ограничения в области регулятивной и законодательной деятельности. Это следует как из принципа верховенства права ЕС, так и из договорного разделения полномочий между Европейским Союзом и государствами-членами. Кроме того, существует целый ряд сфер, таких как государственные дотации, регулирование технических стандартов, правила функционирования внутреннего рынка и валютной политики, которые требуют уведомления Европейской комиссии или Европейского центрального банка обо всех законодательных актах, принимаемых на национальном уровне. При приведении национального законодательства в соответствие с директивами ЕС государства-члены Европейского Союза также должны действуют в рамках, соответствующих целям данной директивы. Все эти обязательства впоследствии влияют на процессы законотворчества на национальном уровне. В Польше любой правовой акт, принимаемый Сеймом, проходит оценку с точки зрения обязательств, вытекающих из членства в ЕС. Анализ процессов законотворчества за период, связанный с избирательной кампанией 2015 года, а также с выполнением предвыборных обещаний, показывает, что, как правило, национальный законодатель при принятии законов, связанных с предвыборными обещаниями, обеспечивал их соответствие праву Европейского Союза. В иных случаях объект принимаемых нормативно-правовых актов находился вне сферы применения законодательства ЕС.

Ключевые слова: процесс законотворчества; право Европейского Союза; компетенция Европейского Союза; предвыборные обещания; социальная политика; гармонизация законодательства

PRÜFUNG DER VEREINBARKEIT VON GESETZESENTWÜRFEN MIT DEM EU-RECHT BEI DER PARLAMENTARISCHEN ARBEIT IN DEN JAHREN 2015–2016

Zusammenfassung

Durch die Mitgliedschaft eines Staates in der Europäischen Union können dessen regulatorische Handlungsspielräume eingeschränkt und seiner gesetzgeberischen Tätigkeit Grenzen gesetzt sein. Dies ergibt sich sowohl aus dem Grundsatz des Vorrangs des EU-Rechts als auch aus der vertraglichen Zuständigkeitsverteilung zwischen der Union und den Mitgliedstaaten. Darüber hinaus gibt es eine ganze Reihe von Bereichen wie staatliche Beihilfen, Vorschriften zu technischen Standards oder die Grundprinzipien des Binnenmarktes oder der Währungspolitik, in denen die Mitgliedsstaaten verpflichtet sind, der Europäischen Kommission bzw. der Europäischen Zentralbank alle nationalen Rechtsakte mitzuteilen. Bei der Anpassung der einzelstaatlichen Rechtsvorschriften an die EU-Richtlinien agieren die Mitgliedstaaten innerhalb der durch die Zielsetzung der betreffenden Richtlinie gesteckten Grenzen. Alle diese Verpflichtungen werden anschließend in den nationalen Gesetzgebungsverfahren umgesetzt. In Polen wird jeder vom Sejm verabschiedete Rechtsakt unter dem Gesichtspunkt der sich aus der Mitgliedschaft in der EU ergebenden Verpflichtungen bewertet. Die untersuchten Gesetzgebungsprozesse im Zeitraum im Zusammenhang mit dem Wahlkampf zur Parlamentswahl 2015 und die Umsetzung der Wahlversprechen zeigen, dass das betreffende Unionsrecht grundsätzlich entweder keine regulatorischen Fragen betraf oder der nationale Gesetzgeber bei der Verabschiedung von Gesetzen im Zusammenhang mit Wahlversprechen die Einhaltung des EU-Rechts garantierte.

Schlüsselwörter: Gesetzgebungsprozess, EU-Recht, Zuständigkeiten der EU, Wahlversprechen, Sozialpolitik, Angleichung der Rechtsvorschriften

EXAMEN DE LA CONFORMITÉ DES PROJETS DE LOI AVEC LE DROIT DE L'UNION EUROPÉENNE DANS LES TRAVAUX PARLEMENTAIRES EN 2015–2016

Résumé

L'adhésion d'un État à l'Union européenne peut limiter sa liberté de réglementation et son activité législative. Cela résulte à la fois du principe de primauté du droit de l'UE et de la répartition des compétences fondée sur les traités entre l'Union et les États membres. En outre, de nombreux domaines, tels que les aides d'État, les réglementations sur les normes techniques, les règles du marché intérieur ou de la politique monétaire, nécessitent la notification de tous les actes juridiques nationaux à la Commission européenne ou à la Banque centrale européenne. Lorsqu'ils adaptent le droit national aux directives de l'UE, les États membres agissent également dans les limites fixées par l'objectif d'une directive donnée. Toutes ces obligations sont ensuite traduites en processus législatifs nationaux. En Pologne, chaque acte juridique adopté par le Sejm est évalué du point de vue des obligations découlant de l'adhésion à l'UE. Les processus législatifs analysés au cours de la période relative à la campagne électorale de 2015 et à la mise en œuvre des promesses électorales ont montré qu'en principe, le droit de l'UE ne couvrait pas les questions réglementaires, ou que le législateur national, en adoptant des lois relatives aux promesses électorales, garantissait le respect du droit de l'UE.

Mots clés: processus législatif, droit de l'UE, compétences de l'UE, promesses électorales, politique sociale, harmonisation des lois

ANALISI DELLA CONFORMITÀ DEI PROGETTI DI LEGGE CON IL DIRITTO DELL'UNIONE EUROPEA, NEL LAVORI PARLAMENTARI DEGLI ANNI 2015–2016

Sintesi

L'appartenenza di un determinato stato all'Unione europea può limitare il suo margine di discrezionalità normativa e la sua attività legislativa. Questo deriva sia dal principio di priorità del diritto comunitario, che dalla ripartizione delle competenze, stabilita nel trattato, tra l'Unione e gli Stati membri. Inoltre esistono molti ambiti come gli aiuti pubblici, le regolamentazioni relative alle norme tecniche, le norme sul funzionamento del mercato interno o la politica monetaria, che richiedono la notifica alla Commissione europea o alla Banca centrale europea di tutti gli atti giuridici nazionali. Gli Stati membri inoltre, recependo nel diritto nazionale le direttive comunitarie, operano entro i confini stabiliti dall'obiettivo della determinata direttiva. Tutti questi obblighi si traducono successivamente in processi legislativi nazionali. In Polonia ogni atto giuridico adottato dal Parlamento viene valutato dal punto di vista degli obblighi derivanti dall'appartenenza all'Unione europea. I processi legislativi analizzati, nel periodo legato alla campagna elettorale del 2015 e alla realizzazione delle promesse elettorali, hanno mostrato che il diritto comunitario non comprendeva nel suo ambito la materia normativa, oppure che il legislatore nazionale, adottando le leggi legate alle promesse elettorali, ha garantito il rispetto del diritto comunitario.

Parole chiave: processo legislativo, diritto comunitario, competenze comunitarie, promesse elettorali, politica sociale, armonizzazione legislativa

Cytuj jako:

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