

## OPAL Country Reports

# The Polish Parliament and EU Affairs

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# OPAL Country Report on the Polish Parliament<sup>1</sup>

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<b>I. General Position of Parliament in the Constitutional Balance of the Member State: Constitutional and institutional factors</b>	
This section looks at the role of Parliament in the political system, to help us understand the relative power position of the legislature.	
1.1	What is the type of government in the political system of your member state? (i.e. parliamentary or semi-presidential)
	Parliamentary republic with the parliamentary-cabinet system based on the tripartite separation of powers.
1.2	Is it a uni- or bicameral Parliament? If bicameral, is one house dominant or are both equally strong? Please briefly explain.
	<p>Poland has a parliament consisting of the Sejm (lower house) and the Senate (upper house). Members of both chambers are elected by universal ballot.</p> <p>Article 95 (1) of the Constitution of the Republic of Poland defines the Sejm and Senate as bodies of legislative power, i.e. bodies enacting statutes. Additionally, under Article 95 (2) of the Constitution of the Republic of Poland the Sejm exercises control over the Council of Ministers – a body of executive power.</p> <p>Therefore the positions of the Sejm and Senat are not equal. The Sejm is in a stronger position.</p>
1.3	Is the state federal, decentralized or unitary? If applicable, is it a form of asymmetrical federalism?
	Poland is a unitary state.
1.4	Briefly describe the electoral system, if applicable, for each chamber.
	<p>The Sejm is made up of 460 deputies (Polish: <i>Posel</i>), elected every four years by universal, equal, direct, proportional and secret ballot. Deputies are elected in 41 multi-seat constituencies. Sizes of constituencies range from 7 to 20 seats. The seats are divided with the use of the d'Hondt's method. Each elector casts one vote for a candidate from the list they support. The electoral threshold is 5% for single electoral committees and 8% for electoral coalitions.</p> <p>The Senate is composed 100 senators elected every four years by universal, equal, direct, proportional and secret ballot. Senators are elected by majority in 100 single-member constituencies: the candidate with the highest number of votes wins in each constituency.</p>

<sup>1</sup> This country report provides some basic data that has been collected in the context of the research for a chapter to be published in C.Heffler, C. Neuhold, O. Rozenberg, J. Smith & W. Wessels (Eds.). (forthcoming in 2014). *The Palgrave Handbook of National Parliaments and the European Union*. London: Palgrave, Macmillan.

1.5	<p>What (f)actors can prevent the parliament agreeing on EU legislation and/or treaty reform? (e.g. a constitutional court, or public referenda on questions of EU integration)</p>
	<p>1) <b>The role of the Constitutional Tribunal:</b> It has a strong position – it is competent to adjudicate on the constitutionality of international agreements, including the Treaty of Accession and amendments to EU treaties. The Tribunal has found the Treaty of Accession of Poland compliant with the Constitution (judgement of 11 May 2005) and more recently it has recognized the constitutionality of the Lisbon Treaty (judgement of 24 November 2010). The Tribunal’s judgment of 12 January 2005 was concerned with the cooperation between the Sejm and the Senate in matters relating to the EU and interpreted the Act of 11 March 2004 on the cooperation between the Council of Ministers and the Sejm and Senate in matters relating to the membership of the Republic of Poland of the European Union (which, after the entry into force of the Lisbon Treaty, was replaced with a new act, passed on 8 October 2010<sup>2</sup> - hereafter: cooperation act). This judgment reinforced the position of the Senate by enabling it to express its opinion on the government position to be taken with regard to an act considered by the Council of the EU. In the judgement of 24 November 2010 concerning the Lisbon Treaty the Tribunal discussed the competence of the Sejm and Senate regarding the new duties of parliaments resulting from the entry into force of the Lisbon Treaty. However, it introduced no significant additions, accepting the provisions of the new cooperation act, passed on 8 October 2010. It should be added that as of late (in a judgement of 16 November 2011) the Constitutional Tribunal has allowed for the possibility to examine the compliance of EU regulations with the Constitution (i.e. with the fundamental rights guaranteed by the Constitution). By doing so it went beyond the German “Solange II” formula, as it scrutinized an EU regulation (Council Regulation No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters), finding it compliant with the Constitution.</p> <p>2) <b>National Referendum:</b> The Parliament’s authority to approve ratification of international agreements (the ratification is performed by the President of the Republic of Poland) can be modified (by a referendum). It concerns only those agreements under which an international organization is vested with the competences of state authorities (Article 91 (1) of the Constitution). In the case of such agreements the approval of their ratification is legislated by a 2/3 majority both in the Sejm and the Senate. Nevertheless, this can be replaced with a referendum (the result of a referendum authorizes the President to ratify the agreement only if more than a half of all eligible voters take part in the referendum). However, the Parliament remains in control of this form of voting, as it is the Sejm which decides on the application of a referendum as a form of giving approval to the ratification of an international agreement.</p> <p>To date the only referendum that has taken place in Poland was concerned with the Treaty of Accession under which Poland joined the EU. The Referendum was held on 7 and 8 June 2003. The turnout was 58.9% of all eligible voters. 77.45% of voters were in favour of the ratification of the Treaty (i.e. in favour of Poland’s accession to the EU).</p> <p>The factor obstructing the application of the referendum voting is the very high threshold (over 50% of all eligible voters) required to recognize the result as binding. Hence, in the course of discussions amendments to be introduced to the Constitution it is proposed to recognize approval given by a majority of voters taking part in a referendum as authorizing the President to ratify the international agreement.</p>

<sup>2</sup> Dz. U. (Dziennik Ustaw – Journal of Laws) 2010, No. 213, item 1395

## 2. General Position of Parliament in the Constitutional Balance of the Member State: Political Factors

This section is about the basic political factors which might influence parliament's strength in relation to the government.

2.1	What is the type of government after the most recent elections e.g. single party, minority, coalition, oversized coalition government?		
	Coalition government of the Civic Platform ( <i>Platforma Obywatelska, PO</i> ) with 207 deputies (45%) and the Polish People's Party ( <i>Polskie Stronnictwo Ludowe, PSL</i> ) with 28 deputies (6.086%).		
2.2	When were the most recent general elections and what were the results? Could you please give a short list of the parliamentary groups, their no. of seats in parliament and ideological position?		
	Latest election in the LOWER HOUSE:	9 October 2011 <sup>3</sup> .	
	Name of the party	No. and percentage of seats in parliament	Ideological position (e.g. Communist, left liberal, socialist, liberal, right liberal, conservative, christian democrat, extreme right, ethnic minority or regionalist party)
	Civic Platform (PO)	207 (45%)	right liberal
	Law and Justice (PiS)	157 (34.13%)	conservative/right
	Palikot's Movement (RP)	40 (8.69%)	left liberal
	Polish People's Party (PSL)	28 (6.08%)	peasant party
	Democratic Left Alliance (SLD)	27 (5.86%)	socialist
	German Minority (MN)	1 <sup>4</sup> (0.21%)	ethnic minority
	Latest election in the UPPER HOUSE:	9 October 2011 <sup>5</sup> .	
	Name of the party	No. and percentage of seats in parliament (if applicable)	Ideological position (if not mentioned above)
	Civic Platform (PO)	63 (63%)	christian democrat
	Law and Justice (PiS)	31 (31%)	conservative/right
	Polish People's Party	2 (2%)	peasant party

<sup>3</sup> Information on Sejm deputies as of the election day, [http://www.sejm.gov.pl/Sejm7.nsf/page/poslowie\\_poczatek\\_kad](http://www.sejm.gov.pl/Sejm7.nsf/page/poslowie_poczatek_kad) (verified on 12 August 2012).

<sup>4</sup> Number of seats by electoral committees.

<sup>5</sup> Information on senators as of the day of election, <http://www.senat.gov.pl/o-senacie/senat-wspolczesny/dane-o-senatorach-wg-stanu-na-dzien-wyborow/> (verified on 12 August 2012).

	(PSL)		
	Electoral Committee of Marek Borowski Voters	1 (1%)	independent
	Electoral Committee of Rafał Dutkiewicz Voters	1 (1%)	independent
	Electoral Committee of Voters Cimoszewicz for Senat	1 (1%)	independent
	Electoral Committee of Kazimierz Kutz Voters	1 <sup>6</sup> (1%)	independent
2.3	How polarized was parliamentary debate over ratification of the Lisbon Treaty? Which parliamentary party groups supported and which opposed ratification?		
	<p>On 28 February 2008 the Sejm, acting pursuant to Article 90 (4) of the Constitution, passed a resolution<sup>7</sup> on the approval to ratify the Lisbon Treaty by a statute adopted in accordance with Article 90 (2) of the Constitution. The government presented a bill on the ratification to parliament<sup>8</sup>.</p> <p>On 1 April 2008 the bill was passed in the Sejm by a 2/3 majority of votes cast by at least half of the statutory number of deputies (452 deputies took part in the vote, out of which 384 voted in favour of the act (206 PO deputies, 89 PiS deputies, 50 LiD deputies, 31 PSL deputies, 8 independent deputies), 56 deputies (PiS) voted against it and 12 deputies (PiS) abstained from voting<sup>9</sup>, and on 2 April 2008 in the Senat (by analogous majority – 97 senators took part in the vote, out of which 74 voted in favour, 17 voted against and 6 abstained from voting)<sup>10</sup>.</p> <p>The results of the vote constitute only partial reflection of the controversial nature of the Sejm debate. PiS and the then President of Poland, L. Kaczyński, strived to simultaneously gain a statutory “guarantee” of the benefits “hard-won” at the final stage of negotiations on the Lisbon Treaty (L. Kaczyński headed the Polish representation; the then ruling party was PiS); their aim was to ensure that the future possibility of taking a decision on Poland’s withdrawal from the British Protocol, concerning the application of the Charter of Fundamental Rights, and on revision of the decision on the so called Ioannina compromise be prevented. PiS and the then President, L. Kaczyński, presented independent bills which authorized ratification of the Lisbon Treaty but extended beyond the content of the government’s bill (which included provisions concerning the approval of the Lisbon Treaty ratification only) and contained proposals which interfered with the content of the Treaty. This approach was criticized (until then the legislation of statutes relating to international agreements had been initiated by the government). Simultaneously a political compromise with regard to the above issues was reached, which was reflected in the provisions of the new cooperation act, adopted on 8 October 2010. The ratification of the Lisbon Treaty was approved by a statute that remained in conformity with the bill presented by the government (i.e. in accordance with established constitutional practice).</p>		

<sup>6</sup> Number of seats according to electoral committees.

<sup>7</sup> See M.P. (*Monitor Polski* – Polish Monitor) 2008 No. 19 item 197

<sup>8</sup> See Announcement (*Druk*) 280 of 25 February 2008.

<sup>9</sup> <http://orka.sejm.gov.pl/proc6.nsf/opisy/280.htm>

<sup>10</sup> See shorthand report of the 8 session of the Senate of the Republic of Poland of 2 April 2008, page 3 and subsequent.

### 3. New Provisions of the Lisbon Treaty on Direct Contact with EU Institutions

The Lisbon Treaty provides national parliaments with new opportunities for direct contact with the EU institutions. This section addresses the incorporation of the new Lisbon provisions into national law and concrete procedures. Questions 3.3 to 3.5 investigate in how far these procedures have been used.

3-1	<p>Have there been any regulations adopted by your member state to incorporate the new powers that are entrusted to the national parliaments by the Treaty of Lisbon? If so, please list the regulations in their appropriate categories:</p> <ul style="list-style-type: none"> <li>a. Constitutional provisions</li> <li>b. Legal provisions - Statutory provisions</li> <li>c. Parliamentary Standing Orders</li> <li>d. Other (please specify)</li> </ul> <p>Is this process complete or ongoing?</p>
Lower house	<p>1) The entry into force of the Lisbon Treaty resulted in passing of a new act on 8 October 2010 (cooperation act) on the cooperation of the Council of Ministers with the Sejm and the Senate in matters relating to the Republic of Poland's membership of the European Union (it came into force on 13 February 2011). It replaced the previous act of 11 March 2004.</p> <p>2) The rules of procedure of the Sejm have been amended (Monitor Polski 2012, poz. 32). It has been extended by provisions concerning the transmission of information on EU affairs, enforcement of the subsidiarity principle, initiation of the procedure of lodging complaints with the ECJ (Article 148 b (1), Sub-paragraphs 3, 5 - 8, 11, 11 a - f; Article 148 ca - cf, Article 169 (2), Sub-paragraph 3a).</p> <p>3) In 2010 it was undertaken (mainly in the form of a project of the President of the Republic of Poland) to revise the provisions of the Constitution of the Republic of Poland concerned with EU affairs (introduction of a separate chapter "Poland's membership of the European Union"). A dedicated committee, named Extraordinary Committee, was appointed for this purpose and on 14 July 2011 it proposed a draft of the "Act on the revision of the Constitution of the Republic of Poland". One of the articles of the chapter to be introduced, Article 227 h, confirmed the competence of the Sejm and the Senate that were vested with these bodies by the Lisbon Treaty. This provision equalized the positions of the two chambers with regard to EU affairs and constituted an exception to the general provisions of the Constitution, according to which the Polish bicameralism is of unequal character. The project was a result of a difficult political compromise and subject to criticism due to the limited incorporation of solutions introduced by the Lisbon Treaty and demands based on earlier constitutional practice (the disputes concentrated on the form of giving approval to revisions of the Treaties by application of the so called passerelles. In the new term of office of the Sejm (after the election of autumn 2011) work on revising the Constitution has not been resumed.</p>
Upper house	<p>Paragraphs 1 and 3 above refer to the Senate as well.</p> <p>In addition, the Rules and Regulations of the Senate have been amended – provisions concerning the subsidiarity principle, expressing opposition and scrutinising EU documents (Article 75 b (1), Sub-paragraphs 1 and 3, Article 75 d – g of the Rules and Regulations of the Senate of the Republic of Poland).</p>

3.2	What exactly are the rules (i.e. parliamentary bodies involved, procedure, regional parliament's involvement, cooperation in bicameral systems) for...
3.2 i	The "Political Dialogue" with the Commission
Lower house	Since 2006, i.e. since the commencement of the so-called Barroso Initiative, the EAC has been involved in the informal political debate with the European Commission. The EAC practice to date indicates that it receives opinions and sends them to the European Commission. Until August 2011 the EAC has received no response from the European Commission to its opinions regarding EU documents <sup>11</sup> .
Upper house	The Senate EAC practice to date indicates that this body is not significantly active in this area. So far the EAC has formulated and sent to the European Commission 10 opinions (including 5 sent in 2010 and no opinions issued between from 2007 to 2009). Opinions of the EAC and responses of the European Commission are published on the Senate's website and transmitted to members of the Senate EAC <sup>12</sup> . The EAC's documents indicate that the European Commission's responses are too imprecise <sup>13</sup> .
3.2 ii	The Early Warning Mechanism (EWM)
Lower house	The EAC or a group of at least 15 deputies can present a draft resolution on identifying a draft legislative act of the EU as non-compliant with the principle of subsidiarity. A substantiated opinion is annexed to the Sejm resolution. The Marshal of the Sejm transmits the substantiated opinion to the relevant EU institution (Article 148 cc of the Rules and Regulations of the Sejm). The first case of the application of the EWM concerns a proposal for a regulation (COM(2012) 130) regarding the enforcement of the right to undertake collective action with respect to the freedom of doing business and freedom of providing services (the so-called Monti II Regulation). The EAC issued an opinion stating that the principle of subsidiarity had been violated by the draft regulation (27 April 2012). The final and substantiated opinion regarding the draft regulation was adopted by the whole chamber by a resolution (11 May 2012).
Upper house	If a Senate committee adopts an opinion stating that the scrutinised proposal for a legislative act fails to comply with the principle of subsidiarity, it submits a request to the Marshal of the Senate that an appropriate resolution be adopted (with annexed draft of the Senate opinion on the non-compliance of the draft with the principle of subsidiarity). Afterwards the Marshal of the Senate forwards the draft opinion of the Senate to relevant committees, including the Senate EAC (Article 75 d of the Rules and Regulation of the Senate). The substantiated opinion is adopted by a resolution of the Senate. The Senate did not participate in the first EWM; it did not present a substantiated opinion on the draft of the Monti II Regulation. The Senate EAC sent its opinion on the non-compliance of the draft regulation to the European Commission by way of political dialogue <sup>14</sup> .

<sup>11</sup> Annex to the Sixteenth Bi-annual Report on Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny: Replies of National Parliaments and the European Parliament, October 2011, p. 162.

<sup>12</sup> Annex to the Sixteenth Bi-annual Report ..., pp. 167 – 168.

<sup>13</sup> Ibidem, s. 168.

<sup>14</sup> <http://www.ipex.eu/IPEXL-WEB/scrutiny/APP20120064/plsen.do> (verified on 12 August 2012).

3.2 iii	The "Passerelle clause"
Lower house	<p>1) Provisions of the cooperation act of 2010 <b>concerning the role of the Sejm and Senate:</b></p> <ul style="list-style-type: none"> <li>– Article 14 of the act relates to a decision made by the President regarding the position taken by a representative of Poland at the EU Council on a draft legal act of the European Union referred to in Article 31 (3), Article 42 (2) of the Treaty on European Union or in Article 312 (2), second subparagraph, of the Treaty on the Functioning of the European Union or in Protocol (No. 9) on the decision of the Council relating to the implementation of Article 16 (4) of the Treaty on European Union and Article 238 (2) of the Treaty on the Functioning of the European Union; Article 14 of the act applies also to a draft legal act of the EU referred to in Article 48 (7) of the Treaty on European Union; the President of the Republic of Poland takes such a decision at the request of the government and with consent granted by statute (passed by a simple majority);</li> <li>– Article 15 relates to a decision made by the President regarding the position taken by a representative of Poland at the EU Council on a draft legal act of the European Union referred to in Article 153 (2), fourth subparagraph, Article 192 (2), second subparagraph, Article 333 (1) or Article 333 (2) of the Treaty on the Functioning of the European Union; Article 14 of the act applies also to a draft legal act of the EU referred to in Article 81 (3) of the Treaty on the Functioning of the European Union; the President takes such a decision at the request of the government and with consent granted by statute (passed by the Sejm and the Senate by a simple majority);</li> <li>– if the President has not taken the decision referred to in Article 14 and Article 15 of the act, the representative of Poland votes for the rejection of this legal act;</li> <li>– Article 23 of the act introduces changes to the Act of 14 April 2000 on international agreements regarding the <i>passerelle</i> procedure (Article 48 (6) of the Treaty on European Union, Article 25, Article 218 (8), second subparagraph, second sentence, Article 223 (1), Article 262 and Article 311, third subparagraph of the Treaty on the Functioning of the European Union); the "approval" referred to in these articles of the Treaty on European Union and the Treaty on the Functioning of the European Union, given by the Member States in accordance with their "constitutional requirements", in Poland is expressed by ratification (i.e. in accordance with the provisions of Article 89 (1) and Article 90 of the Constitution of the Republic of Poland).</li> </ul> <p>2) Provisions of the Rules and Regulations of the Sejm concerning the <i>passerelle</i> procedure:</p> <ul style="list-style-type: none"> <li>– under Article 148ca of the Rules and Regulations of the Sejm after having examined an initiative of the European Council to adopt a decision on the basis of Article 48 (7) of the Treaty on European Union; the EAC can present a draft resolution on the expression of opposition to this decision; if the resolution is adopted, the Marshal of the Sejm notifies it to the relevant EU institution;</li> <li>– analogous procedure is applicable to a proposal from the European Commission made on the basis of Article 81 (3) of the Treaty on the Functioning of the European Union; the EAC can present a draft resolution on the expression of opposition to this decision (Article 148cb of the Rules and Regulations of the Sejm).</li> </ul>
Upper house	<p>Provisions of the Rules and Regulations of the Senate of the Republic of Poland concerning the <i>passerelle</i> procedure</p> <ul style="list-style-type: none"> <li>– in accordance with Article 75f of the Rules and Regulations of the Senate the</li> </ul>

	<p>Marshal of the Senate forwards to the relevant committees, including the Senate EAC, matters for consideration in the case of which the Senate is entitled to express opposition pursuant to Article 48 (7) of the Treaty on European Union and Article 81 (3) of the Treaty on the Functioning of the European Union; having considered the matter, the committees present the Senate with a joint report expressing their opinion by the deadline determined by the Marshal of the Senate;</p> <ul style="list-style-type: none"> <li>- in accordance with Article 75g the Senate passes a resolution concerning the opposition with regard to the above-mentioned matters by an absolute majority of votes in the presence of at least one half of the statutory number of Senators.</li> </ul>
3.2 iv	<p>The action of annulment before ECJ on breach with the subsidiarity principle (What quota of MPs is needed to enforce the action of annulment?)</p>
Lower house	<p>The initiation of lodging a complaint with the ECJ is governed by the cooperation act of 2010 and the Rules and Regulations of the Sejm.</p> <p>1) The provisions of the cooperation act (Article 17 (1)) are applicable to the Sejm and Senate:</p> <ul style="list-style-type: none"> <li>- the Marshal of the Sejm or the Marshal of the Senate sends resolutions of their respective chambers on lodging a complaint with the ECJ to the government;</li> <li>- the government promptly lodges a complaint with the ECJ;</li> <li>- both the Sejm and the Senate can decide on the withdrawal of the complaint.</li> </ul> <p>2) The provisions of the Rules and Regulations of the Sejm (Article 148cd):</p> <ul style="list-style-type: none"> <li>- the EAC or a group of at least 15 deputies can present a draft resolution on lodging a complaint with the ECJ</li> <li>- in the proceedings before the ECJ concerning the above-mentioned matters the Sejm is represented by a plenipotentiary appointed by the Marshal of the Sejm;</li> <li>- the same entity that proposed the draft resolution on lodging a complaint presents a draft resolution on its withdrawal.</li> </ul> <p>To date there has been no case where the Sejm has initiated the procedure for lodging a complaint with the ECJ.</p>
Upper house	<p>The initiation of lodging a complaint with the ECJ is governed by the cooperation act of 2010 and the Rules and Regulations of the Senate.</p> <p>1) The provisions of the cooperation act (Article 17 (1)) – as above;</p> <p>2) The provisions of the Rules and Regulations of the Senate (Article 75e):</p> <ul style="list-style-type: none"> <li>- the committee can propose a draft resolution of the Senate on lodging a complaint with the ECJ;</li> <li>- afterwards the Marshal of the Senate forwards the draft resolution to the relevant committees, including the Senate EAC.</li> </ul> <p>To date there has been no case where the Senate has initiated the procedure for lodging a complaint with the ECJ.</p>
3.2 v	<p>Accession of new member states to the EU</p>
Lower house	<p>Both the Sejm and the Senate participate in the procedure of ratification of accession treaties by passing an act which entitles the President to ratify the treaty. This is governed by Article 89 (1), Subparagraph 3 and 5 of the Constitution of the Republic of Poland,</p>

And Upper house (together)	<p>because accession of a third state does not change the scope of competences of state authorities conferred upon the EU. Therefore the consent has the form of an ordinary statute. The statute adopted by the Sejm and Senate grants consent to the President of the Republic of Poland to ratify the treaty at issue.</p> <p>Up till now (in the case of ratification of the treaties of Accession of Bulgaria and Romania) the applicable regulation was Article 89 (1) of the Constitution, i.e. the statute was adopted by the Sejm and Senate by a simple majority. The same procedure was applied in the case of the Treaty of Accession of Croatia<sup>15</sup>. However, in this case the parliamentary opposition (PiS) and several experts noted that this Treaty of Accession modified the scope of competences conferred upon the EU, and thus Article 90 of the Constitution had to be applied (the opposition did not hide their intention to exert political pressure on the government with respect to EU affairs). The ratification procedure is in progress.</p>						
3-3	How actively does the parliament engage in the political dialogue and “early warning mechanism” with the Commission?						
Lower house		<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
	<b>Opinion</b>	1	0	5	0	2	5
	<b>Reasoned Opinion</b>	-	-	-	-	2	5
<p>Opinion – opinions adopted as part of political dialogue with the European Commission</p> <p>Reasoned Opinion – opinions adopted by way of compliance with the subsidiarity principle in accordance with Protocol 2 (the Lisbon Treaty).</p>							
Upper house		<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
	<b>Opinion</b>	1	0	0	0	5	4
	<b>Reasoned Opinion</b>	-	-	-	-	4	4 <sup>16</sup>
Terminology – as above.							
3-4	Has parliament ever threatened to bring a legislative act to the ECJ because of subsidiarity concerns?						
Lower house	No.						
Upper house	No.						
3-5	<p>If applicable to your member state, how does parliament proceed on the ratification of:</p> <p>a. Treaty Establishing the European Stability Mechanism, signed 2 Feb 2012</p> <p>b. Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, signed 2 March 2012</p>						
Lower	re a) Treaty Establishing the European Stability Mechanism:						

<sup>15</sup> <http://www.sejm.gov.pl/Sejm7.nsf/PrzebiegProc.xsp?nr=460> (verified on 23 August 2012).

<sup>16</sup> [http://ec.europa.eu/dgs/secretariat\\_general/relations/relations\\_other/np0/index\\_en.htm](http://ec.europa.eu/dgs/secretariat_general/relations/relations_other/np0/index_en.htm) (verified on 12 August 2012).

house	<p>Poland has approved the decision of the European Council ref. 2011/199/UE on the supplementation of Article 136 TFEU:</p> <ul style="list-style-type: none"> <li>– pursuant to Article 89 (1), Subparagraph 3 of the Constitution the Sejm (on 11 May 2012) and the Senate (on 30 May 2012) adopted a statute approving the ratification of the decision of the European Council ref. 2011/199/UE of 25 March 2011;</li> <li>– the statute was adopted by the Sejm and Senate by a simple majority;</li> <li>– the President signed the statute on 26 June 2012<sup>17</sup>.</li> </ul> <p>However, under the provisions of the Treaty Establishing the European Stability Mechanism, Poland (as a Member State of the EU outside the Eurozone) cannot be a party to this Treaty at present. Hence the appropriate ratification procedure has not been undertaken. The form of the future ratification has not been considered either (if Poland joins the Eurozone, it will have to become a party to this Treaty);</p> <p>Nevertheless the form of giving “approval” to the decision of the European Commission ref. 2011/199/UE aroused controversy. Some experts noted that the decision stipulates conferral of additional competences upon the EU and called for the application of the procedure of approving its ratification on the basis of Article 90 of the Constitution (which would have necessitated obtaining a 2/3 majority in the Sejm and Senate and thus a possibility of blocking the approval by the opposition). In the course of discussions the government emphasized that the provisions of Article 48 (6) TEU explicitly state that decisions of the European Council taken decision on their basis “shall not increase” the competences of the EU: therefore it is sufficient to give approval in accordance with Article 89 (1) of the Constitution (by an ordinary statute). As has already been mentioned, this is what happened.</p> <p>re b) Poland has signed the Treaty on Stability Coordination and Governance in the Economic and Monetary Union, however until the moment of preparing this report the government has not undertaken the ratification procedure (presumably awaiting the ruling of the German Constitutional Tribunal).</p> <p>The discussion about the form of giving approval to the ratification has outlined two approaches: a part of experts point out that the fiscal union treaty leads to the conferral of new competences upon the EU, and thus the application of Article 90 of the Constitution is necessary. The government and majority of experts, however, support the approach that it will be sufficient to give consent to the ratification of the Treaty by an ordinary statute (Article 89 (1) of the Constitution), as it is concluded “outside” the European Union and, regardless of this, it does not interfere with the competences of Polish state authorities.</p>
Upper house	The answer is the same as with regard to the Sejm.

<sup>17</sup> <http://www.sejm.gov.pl/Sejm7.nsf/PrzebiegProc.xsp?nr=37> (verified on 13 August 2012).