



## NEWS REPORT

<b>Update of flash report nr:</b>	109-PL-2 and 495 - PL-12/2010
<b>Date:</b>	12 November 2010
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<b>Title:</b>	New law on equal treatment
<b>Country:</b>	Poland
<b><u>Context</u></b>	The <i>Sejm</i> - lower house of Parliament -, enacted a new 'Act on the Implementation of Certain Provisions of the European Union in the Field of Equal Treatment'. It may finally lead to the full implementation of the Directives 2000/43 and 2000/78. However it also raises a number of concerns especially expressed by the civil society. The adoption procedure is not yet finished and the Act will now be debated by the Senate (higher house of the Parliament).
<b>Ground of discrimination:</b>	All grounds
<b>Source:</b>	Legislation, national equality body, political development
<b>Field:</b>	All fields
<b>Legislative provisions:</b>	"Act on the Implementation of Certain Provisions of the European Union in the Field of Equal Treatment" (passed by the <i>Sejm</i> on 29 October, 2010)

### Content

**Case/law/political development:** The "Act on the Implementation of Certain Provisions of the European Union in the Field of Equal Treatment" was passed by the *Sejm* on 29 October 2010 (*Ustawa o wdrożeniu niektórych przepisów Unii Europejskiej w zakresie równego traktowania*).

The enactment of the Act by the *Sejm* is the first step. The Act will be now debated by the Senate (higher house of the Parliament). It might be simply accepted by the Senate. But in case it is amended it would need to go back to the *Sejm* for approval and ultimately will be subject to the Presidential

signature (the President may also veto the Act or submit it for Constitutional Review to the Constitutional Tribunal).

Until now Poland has transposed the equality directives mainly in the employment field. There are still a number of gaps (for instance the non-implementation of the Racial Equality Directive beyond employment or the lack of the equality body). Gaps in the implementation already caused number of actions of the European Commission, including two referrals to the European Court of Justice (in May 2009 and May 2010).

Works of the Polish Government on draft Act on Equal Treatment (which aims to implement four Directives: 2000/43; 2000/78; 2004/113 and 2006/54) started in 2006. Successive versions (there have been several) of the draft Act significantly differed. At the beginning the scope of the Act was wide and went beyond the scope of Directives 2000/43 and 2000/78, it was in a sense anticipating the proposal of the new anti-discrimination horizontal directive discussed within the EC. It prohibited discrimination in access to social security, health care, education, access to publicly accessible goods and services (including housing), on the grounds of race and ethnic origin, nationality, gender, religion or beliefs, political beliefs, disability, age, sexual orientation, property, marital and family status. However subsequent versions of the draft law limited the scope of the Act. Finally the Act passed by the *Sejm* on 29 October 2010 is an almost verbatim implementation of the Directives and does not go beyond their scope.

It provides protection from discrimination in all fields outside employment only in relation to gender, race, ethnic origin and nationality (with additional limitations). The name of the draft law has been also changed, from 'Act on Equal Treatment' to 'Act on the Implementation of Certain Provisions of the European Union in the Field of Equal Treatment'.

The Act envisages the designation of the equality body, namely the existing Ombudsperson office (Commissioner for Civil Rights Protection). The draft law includes amendment to the Law on the Ombudsperson imposing on the Ombudsperson new competences regarding the provision of legal assistance as well as conducting independent research and issuing independent reports and recommendations. The draft law does not envisage however any additional resources, funding etc., for fulfilling these new obligations. The explanatory memorandum part to the draft explains that this is not needed and that the Ombudsperson office can conduct these new competences within the existing structure and budget. According to the Constitution (Article 80) the Ombudsperson deals with relations between state organs

and individuals. Therefore it is not fully clear whether at all, and if yes, to what extent it may intervene in disputes between private parties. The Act passed includes provision that reads as following: “In the implementation of the principle of equal treatment between private parties the Ombudsman may limit its action to pointing out to the applicant possible means of action”. The Government Plenipotentiary for Equal treatment (within the Chancellery of the Prime Minister) would also remain as a body coordinating equality policy within the Government.

**Internet link source and additional information:**

Documents related to the legislative process at the executive level, starting with draft law from May 21<sup>st</sup>, 2010 and including number of opinions on the draft law (in Polish)

at: [http://bip.kprm.gov.pl/kprm/dokumenty/61\\_3646.html](http://bip.kprm.gov.pl/kprm/dokumenty/61_3646.html)

The legislative process at the Parliament stage is described at:

1. Independent source: <http://sejmometr.pl/projekt/Xxfrb>

2. Official site of the Parliament:

<http://orka.sejm.gov.pl/proc6.nsf/0/27F7688C1274181AC12577D1004F4BB6?OpenDocument>