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## **Principles and Procedures for Enacting Laws Adjusting Polish Law to EU Law**

**Keywords:** European Union, law adaptation, procedures for enacting laws

**Słowa kluczowe:** Unia Europejska, dostosowywanie prawa, tryb uchwalania ustaw

### **Summary**

The aim of the article is to present legal regulations and practice of adopting laws adapting Polish law to the law of the European Union. From the date of accession, the Republic of Poland is obliged to constantly monitor the law created within the European Union, to check the national provisions of law for compatibility with those of the EU and, if necessary, to adapt them to Community standards.

The necessity to fulfill the commitments undertaken by Poland has resulted not only in the change of the law content, but also of the legislative procedures.

### **Streszczenie**

## **Zasady i tryb uchwalania ustaw dostosowujących prawo polskie do prawa Unii Europejskiej**

Celem artykułu jest przedstawienie regulacji prawnych i praktyki uchwalania ustaw dostosowujących prawo polskie do prawa Unii Europejskiej. Od daty akcesji, Rzeczpospolita Polska zobligowana jest do stałego monitorowania tworzonego w ramach Unii Europejskiej prawa, sprawdzania zgodności przepisów krajowych z unijnymi, a w ra-

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zie potrzeby dostosowywania ich do norm wspólnotowych. Konieczność zrealizowania przez Polskę przyjętych na siebie zobowiązań spowodowało zmianę nie tylko treści prawa, ale także procedur jego stanowienia.

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## I.

The process of integration of the countries within the European Union is specifically expressed in the obligation to adapt their national law to EU legislation<sup>2</sup>.

Joining the European Union, Poland has committed itself to respecting and implementing the pre-accession rules of Community law, which undoubtedly stems from Art. 2 of the Act concerning the conditions of accession of the new Member States and the adjustments to the Treaties that constitute the basis of the European Union, being a component of the Accession Treaty, which was signed on 16 April 2003 in Athens, and came into force on 1 May 2004<sup>3</sup>. Pursuant to the provisions of the same Article, the new

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<sup>2</sup> This obligation has been defined not in the legal acts only, but also in the case law of the Court of Justice.

<sup>3</sup> Treaty between the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland (Member States of the European Union) and the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia, the Slovak Republic concerning the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Polish Republic, the Republic of Slovenia and the Slovak Republic to the European Union, signed in Athens on 16 April 2003. Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties constituting the basis of European Union. The Final Act (Dz.U. 2004 no. 90, item. 864).

Member States, from the date of accession on, are bound by the Treaties and acts adopted by the institutions of the Community and the European Central Bank prior to accession<sup>4</sup>. Furthermore, from the date of accession, the Republic of Poland is obliged to constantly monitor the law created within the European Union, to check the national provisions of law for compatibility with those of the EU and, if necessary, to adapt them to Community standards. The necessity to fulfill the commitments undertaken by Poland has resulted not only in the change of the law content, but also of the legislative procedures.

The accession to the European Union influenced both the functioning of the state bodies and its legal system, which actually became dualistic<sup>5</sup>, as from the day of the accession it consists of the law enacted by the national authorities as well as the law made by the institutions of the European Union.

Cooperation of the parliament with the government was, and so far has been, of great importance for the effective and efficient alignment of the state law with the European Union law. It is so because the organs of public authority are obliged to take action to implement the EU law, in compliance with the competences thereof.

General guidelines for cooperation between a parliament and the Council of Ministers have been included in the Protocol on the role of parliaments of European Union Member States, annexed to the Treaty of Amsterdam<sup>6</sup>. The principles and the scope of cooperation of the Sejm, the Senate and the Government, have been clarified in the Act of 11 March 2004 on Cooperation of the Council of Ministers with the Sejm and the Senate in matters re-

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<sup>4</sup> Art. 2 of the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties constituting the basis of European Union. The Final Act, *ibidem*.

<sup>5</sup> R. Grzeszczak, *Prawnoustrojowe konsekwencje członkostwa Polski w Unii Europejskiej – wybrane aspekty z perspektywy pięciu lat praktyki członkostwa* [in:] *Polska pięć lat w Unii Europejskiej*, ed. S. Konopacki, Łódź 2009, p. 98 et seq.

<sup>6</sup> The Treaty of Amsterdam of 2 October 1997, amending the Treaty on European Union, the Treaties establishing the European Communities and other related acts (Dz.U. 2004 no. 90, item 31).

lated to the membership of the Republic of Poland in the European Union<sup>7</sup>, sometimes called the Cooperation Act<sup>8</sup>.

This Act imposed the obligation, inter alia, on the Council of Ministers, to submit legal acts, drafts, documents and information to the Sejm and the Senate (or their subsidiary bodies, competent under the Rules of Procedures of Chambers). However, the omission of the obligation to consult with the Senate, in accordance with Art. 9 of the Act<sup>9</sup>, resulted in referral of a proposal to the Constitutional Tribunal. The Constitutional Tribunal decided<sup>10</sup> that diminishing of the Senate role in shaping Poland's position in negotiations, violates the constitutional principle which states that the legislative power in Poland is exercised by the Sejm and the Senate. The Act was amended according to the judgment the Constitutional Tribunal<sup>11</sup>.

## II.

The most important, from the point of view of the procedure of adjusting Polish law to the European Union legislation were, however, the changes in the content of the Rules of Procedure of the Sejm.

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<sup>7</sup> The Act of 11 March 2004 on the cooperation of the Council of Ministers with the Sejm and the Senate in matters relating to the membership of the Republic of Poland's membership of the European Union (Dz.U. no. 52, item 515, as amended). It should be noted that the currently applicable legal instrument in this field is the Act of 8 October 2010 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 (Dz.U. no. 213, item 1395), which derogated the Act of 11 March 2004.

<sup>8</sup> For further reading: C. Mik, B. Pawłowski, *Ustawa o współpracy Rady Ministrów z Sejmem i Senatem w sprawach związanych z członkostwem Rzeczypospolitej Polskiej w Unii Europejskiej: komentarz*, "Kwartalnik Prawa Publicznego" 2004, no. 2, p. 248 et seq.

<sup>9</sup> Art. 9 of the Act of 11 March 2004. on the cooperation of the Council of Ministers with the Sejm and the Senate in matters relating to the membership of the Republic of Poland's membership of the European Union.

<sup>10</sup> See: Constitutional Tribunal judgment of 12 January 2005., Ref. Act K 24/04, <http://www.trybunal.gov.pl> (10.11.2017).

<sup>11</sup> The new wording of § 1 and 3 in the Art. 9, taking into account the obligation to consult with both the Sejm and the Senate, came into force on 8 September 2005. (Dz.U. 2005 no. 160, item 1342).

Already during the period of the pre-accession negotiations, the amendment of the Rules of Parliament was introduced, which consisted primarily in adding Chapter 1c to the section II. This Chapter regulated the principles and procedures of processing bill drafts which adapt Polish law to the EU law<sup>12</sup>. In addition to the new chapter, the amendment to the Rules of Procedure of the Sejm of 13 July 2000, imposed on applicants the obligation to submit Polish translation of the text of the provisions of the European Union, to which Polish law is to be adapted. This obligation did not concern the group of MPs, but it was the responsibility of the President, the Council of Ministers, the Senate and a parliamentary committee<sup>13</sup>. The *ratio legis* of this provision was to enable the Members of Parliament to get acquainted with the contents of the European law and to assess the necessity to adapt Polish law to the EU regulations.

A special legislative mode, governed by Art. 56u–56zf, which is a *lex specialis*<sup>14</sup> in relation to the ordinary legislative mode, introduced a number of new solutions.

The committee designated as the one responsible for examining draft bills aiming at adapting Polish law to EU law, was an extraordinary committee, established under Art. 56w – Committee of the European Law<sup>15</sup>. In justified cases, the Marshal of the Sejm was entitled (after consultation with the committee Presidium) to refer the project to one of the standing committees as well. In the case of the adjustment bill being at the same time the draft of a code, the competent committee was an extraordinary committee for the change of codification, which excluded proceedings under chapter 1c<sup>16</sup>.

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<sup>12</sup> Resolution of the Polish Sejm of 13 July 2000 on the amendment of the Rules of Procedure of the Polish Sejm (M.P. no. 21, item 428).

<sup>13</sup> See: Art. 1 sec.1, *ibidem*.

<sup>14</sup> According to Art. 56u of the new chapter, the provisions of Section II of Chapter 1, 1a and 6 are applicable in the proceedings with drafts of adjustment bills, unless the regulations provide otherwise; this means that the rules governing the ordinary legislative procedure, dealing with urgent projects and meetings of parliamentary committees, applied only if they were not subject to regulation by the newly added Chapter 1c.

<sup>15</sup> In accordance with Art. 56z, the commission consisted of no. more than 45 MPs appointed by the Parliament upon request of the Presidium of the Sejm.

<sup>16</sup> The appropriate mode was the mode specified in section 1b of the Rules of Procedure of the Sejm – that is, the procedure of draft codes, the so-called “code mode”.

The derogations from the ordinary legislative mode related primarily to the timing of the subsequent stages of the legislative process, and they also tightened the formal requirements.

The first reading of an adjustment bill had to take place not earlier than on the third day after the delivery of the bill to the Members of Parliament. The actual delivery could be replaced by displaying of the draft in Chancellery of the Sejm, or sending it in electronic form. In accordance with Art. 56za, section 3, the legislative procedure could not be initiated unless the Members were served with the Polish translation of European law.

The Committee of the European Law to which the bill was directed, determined the schedule of work on the project in question, which was, if applicable, to take into account cooperation with other committees. So set a schedule was sent to the Marshal of the Sejm and the Commission on European Integration for the purpose of issuing opinions on the draft and monitoring the process of alignment. An important novelty was the introduction of the right to propose amendments, in writing, at the meeting of the Committee of the European Law by at least three MPs being its members. If the amendment was rejected (which could happen by an absolute majority), a group of at least three proposing members were entitled to request for the inclusion of this amendment as a minority motion in the report on the committee work.

The next adjustment mode distinctiveness was the introduction of the obligation to conduct a second reading at the session of the Sejm directly following the delivery of the report on the Committee's work. Other, later date of the second reading was admissible after consulting the Presidium of the Committee by the Marshal of the Sejm. A group of at least 5 members was entitled to the right to propose amendments to the bill at second reading. Amendments were to be submitted in writing with an indication of the resulting consequences for the text of the draft.

### III.

Since the accession of Poland to the European Union, the Rules of the Sejm include new regulations for dealing with draft bills, aimed at implementing

the EU law. These rules were introduced under the resolution of the Sejm of 20 February 2004 on amending the Rules of Procedure of the Polish Sejm<sup>17</sup>. Furthermore, certain provisions of the Cooperation Act relate to legislative proceedings. It should be noted that the Act of 11 March 2004 was replaced by the Act of 8 October 2010 on cooperation between the Council of Ministers with the Sejm and the Senate in matters related to Poland's membership in the EU<sup>18</sup>. The regulations concerning the cooperation of the government with the parliament in the creation of Polish legislation implementing EU law are contained respectively in Chap. III of the Cooperation Act of 2004 and in Chap. IV of the Cooperation Act of 2010.

Due to the fact that the national legislature is obliged to timely implement EU legislation and ensure its effectiveness, the regulations stipulate the deadline for submitting of draft bills implementing Union law.

As a rule, two situations are distinguished. Firstly, if the due date of EU law implementation exceeds the period of six months, then the Council of Ministers shall submit the bill no. later than five months before the deadline for implementation. Secondly, if the time for implementing does not exceed 6 months, the Council of Ministers is obliged to submit to the Sejm a draft of an implementing bill no. later than three months before the deadline for implementation under EU law.

The act allows exemptions from the rules above, because in particularly justified cases, the Council of Ministers, after consulting the Parliamentary Committee on European Affairs, as the authority competent under the Rules of Procedure of the Sejm, may submit a bill implementing EU law, without observance of the specific deadlines. It should be added that Art. 18 § 4 of the Act of 8 October 2010 imposed one more duty on the Council of Ministers, related to the monitoring of the legislative process of bills implementing EU law. This article obliges the government to present the two Chambers of the Parliament with the information about the work on laws that implement legal acts of the European Union whose due date has already expired or expires within three months of the presentation of information, in order to further motivate parlia-

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<sup>17</sup> Resolution of the Polish Sejm of 20 February 2004 on amending the Rules of Procedure of the Polish Sejm (M.P. no. 12, item 182).

<sup>18</sup> Dz.U. no. 213, item 1395.

mentarians to work effectively and improve the implementation of EU regulations in Poland<sup>19</sup>.

The procedure for the preparation of an implementing law draft is not the subject of this article, however, for order's sake, a few of its aspects should be mentioned. Namely, an adjustment bill draft is developed in the way of cooperation between the national coordinator of directives transposition and the minister (or ministers) materially relevant, because of the subject matter<sup>20</sup>. The national coordinator for transposition constantly monitors the publication of new legislation in the Official Journal of the European Union, and in the event of the publication of the new regulations, appoints the minister competent with regard to the subject, who will be responsible for the adjustment of Polish law. An important message conveyed by the coordinator is the deadline by which EU law is to be implemented.

If it is decided that meeting EU standards requires changes in Polish law, the minister (or ministers – for interdepartmental projects) compile(s) a list of legal acts that need to be changed or indicates the need for a completely new regulation. Proceedings on bills in the exercise of legislative initiative of the Council of Ministers is governed by the Rules of Procedures of the Council of Ministers<sup>21</sup>. In the process of a draft preparation of a bill implementing the EU law, a role is also played by the Committee for European Affairs<sup>22</sup>, which gives opinions concerning the compatibility of draft laws, prepared by the Council of Ministers, with European Union law, before their referral to the Sejm.

Since 2004, the proceedings with draft bills aimed at the implementation of European Union law, is governed by section 5a of the Rules of Procedure of the Sejm, which was added by the resolution of Polish Sejm of 20 February

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<sup>19</sup> A. Fuksiewicz, *Sejm i Senat rok po wejściu w życie traktatu lizbońskiego – dostosowanie do reformy instytucjonalnej*, Warszawa 2011, p. 9.

<sup>20</sup> See further: Modification of transposition procedures of legal regulations of the European Union, adopted by the European Committee of the Council of Ministers on 27 April 2007, [www.polskawue.gov.pl](http://www.polskawue.gov.pl) (11.11.2017).

<sup>21</sup> Since 1 January 2014 the binding document is the Resolution no. 190 of the Council of Ministers issued on 29 October, 2013 (M.P. 2013, item 979).

<sup>22</sup> Appointed under the Act of 27 August 2009 on the Committee for European Affairs (Dz.U. no. 161, item 1227). This committee replaced Committee for European Integration, functioning from 1 October 1996.



2004, amending the the Rules of Procedure of the Polish Sejm<sup>23</sup>. In the light of those provisions, the previously existing standards governing special legislative mode have been repealed.

In the case of bills that have to comply with European Union law, the Council of Ministers submitting the project to the the Sejm is obliged to grant the project with the “clause of the implementation”<sup>24</sup> and to indicate that this is a bill implementing EU law. If the legislative initiative is implemented by any entity other than the government, then the Marshal of the Sejm, at the stage of preliminary inspection, before referring the bill to the first reading, shall decide whether it is a bill implementing European Union law<sup>25</sup>.

By giving the course to the draft, the Marshal of the Sejm establishes the timetable for elaboration of the draft in order to atone deadlines set out in EU law. The draft is directed to the appropriate, due to the subject matter, parliamentary committee. The committee, having regard to the timetable of the Sejm work on the draft, also sets its internal schedule, which is then transmitted to the Marshal of the Sejm.

In order to discipline the Members of Parliament, their ability of interfering with the content of the bill in the adjustment mode has been limited, since an amendment may be brought by a group of at least three members, while in the ordinary legislative course the right to submit amendments is granted to all Members as individuals. If in the course of work the committee supports the proposal to reject a draft bill implementing European Union law, such a proposal must be approved by an absolute majority of the committee votes.

For the other stages of the legislative process in the Sejm, the provisions governing ordinary legislative mode are applied, provided that the second reading of the bill implementing EU law takes place at the sitting of the Sejm directly following the delivery of the report on the committee’s work to the Members.

Following the adoption by the Sejm of an act implementing European Union law, this act shall be sent to the Senate. Marshal of the Senate directs it immediately to the appropriate, due to the subject matter, Senate committees. In accordance with the Rules of the Senate, the substantive committees

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<sup>23</sup> Dz.U. no. 12, item 182.

<sup>24</sup> M. Fedorowicz, *Ustawa po akcesji Polski do Unii Europejskiej (wybrane zagadnienia)*, “Kwartalnik Prawa Publicznego” 2004, no. 2, pp. 71–100.

<sup>25</sup> Art. 95a sec. 3 of the Rules of Procedure of the Sejm.

that deal with regulations implementing the European law, can ask the Senate Committee on European Affairs for an opinion on the whole or on a part of this act. Committees, after considering the bill implementing European Union law, prepare a draft Senate resolution concerning the bill. The time available for preparing the draft<sup>26</sup> is determined individually for each adjustment bill by the Marshal of the Senate and takes into account the deadline for implementation set out in the acts of the European Union. In their reports, committees may propose the adoption of the bill without amendments, the adoption of the bill with amendments or rejection. The Senate adopts a resolution on the bill by a simple majority of votes in the presence of at least half of the statutory number of Senators. The resolution of the Senate shall be immediately forwarded to the Marshal of the Sejm<sup>27</sup>. It should be recalled that in a situation where the Senate within 30 days of the bill referral by the the Sejm does not adopt an appropriate resolution, the law is considered adopted in the form accepted by the Sejm.

If the Senate passed a resolution on the adoption of a bill with amendments, the amendments of the Senate, according to Art. 95f of the Rules of Procedure of the Sejm, shall be dealt with by the Sejm at its next session.

#### IV.

In the current legal status, each bill submitted to the Marshal of the Sejm should, in the light of Art. 34 section 2 point 7 of the Rules of Procedure of the Sejm include applicant's statement, contained in the explanatory memorandum to the bill, on the bill compliance with the European Union law, or a declaration that the subject of the regulation is not covered by the EU law.

The legitimacy of the declaration is verified by experts of the Sejm Chancellery before the first reading. The verification does not apply to the statements attached to draft bills submitted by the Council of Ministers and the President. In the case of any doubts concerning the project compatibility

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<sup>26</sup> In the case of bills not performing European Union law, time for the Senate committee to prepare the report is 18 days.

<sup>27</sup> If the Senate within 30 days of the bill referral by the Sejm does not adopt an appropriate resolution.

with the EU law, the Marshal of the Sejm, after consultation with the Presidium of the Sejm, may refer the draft to the Legislative Committee. After analysing the draft, the Committee classifies it as inadmissible if such a position will be supported by a qualified majority of 3/5 votes in the presence of at least half of the members of the Committee. The same procedure applies to drafts, which are supposed to violate the law or the basic principles of legislative drafting. A draft recognition as inadmissible results in the entitlement of the Marshal of the Sejm to desist proceedings concerning the draft and not to process it further.

The next stage of testing a draft bill by the Sejm, in terms of compliance with EU law, occurs in the first reading. The committee responsible, to which the bill was addressed, is obliged to consult the minister competent for the Republic of Poland membership in the European Union<sup>28</sup>. The obligation to consult the minister responsible for EU membership, that is the Minister of Foreign Affairs, was introduced by the provisions of the resolution of the Polish Sejm of 17 December 2009, on amending the Rules of Procedure of the Polish Sejm, which entered into force on 1 January 2010<sup>29</sup>. Before that, the committee responsible was obliged to consult the Committee for European Integration. It should be noted that at each stage of the legislative process, the employees of the Legal Service of the Chancellery of the Sejm are involved. Their competences include the presentation of proposals and comments on the legislative and legal issues. The issues of draft bills compatibility with the EU law belongs to that area as well<sup>30</sup>.

The adoption of the specific legislative mode towards adjust drafts, and, after 1 May 2004, towards the drafts executing the law of European Union, was aimed at intensifying work on the harmonization of Polish and European law.

Timeframe determination of the various stages of the legislative procedure imposes work discipline on MPs, which is very important, as EU law standards specify the period during which Member States are to implement them. The aim of the legislature, which established the principles and procedures for adoption of bills exercising the European Union law, was to pro-

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<sup>28</sup> Art. 42.4 of Rules of Procedure of the Polish Sejm.

<sup>29</sup> M.P. no. 81, item 998.

<sup>30</sup> See Art. 70 section 1 of Rules of Procedure of the Polish Sejm.

vide full transparency of the law and to legitimize EU legislation in the domestic legal order.

The efficiency of parliamentary work depends, however, not on the formal rules of the procedure, but on the parliamentaries' willingness to take advantage of the legal mechanisms.

Until 1 September 2014, the Sejm passed 152 adjusting Acts (before Poland's accession to the European Union), and a total of 361 laws implementing European Union law<sup>31</sup>. Numerical data concerning the adoption of implementing laws in the particular Sejm terms are presented in the table below.

**Table no. 1. Acts implementing European Union law adopted by the Sejm in the years 2004–2014**

Term of the Sejm	Years	Acts implementing European Union law
IV	2001–2005	52
V	2005–2007	64
VI	2007–2011	170
VII	2011–2014	75

Source: Own elaboration of the Author

Poland is one of the countries that have the greatest delays in EU law implementation. It seems, however, that it does not result from the excessive lengthiness of parliamentary proceedings<sup>32</sup>, but mostly arises from tardiness in preparing draft laws implementing European Union law. The procedure is very formalized, fortified with many requirements and deadlines. However, it is modified<sup>33</sup>, in order to improve efficiency and timeliness in perform-

<sup>31</sup> According to data provided by the Chancellery of the Sejm, [www.sejm.gov.pl](http://www.sejm.gov.pl) (10.11.2017).

<sup>32</sup> The pace of the parliament work, depends on, besides the formal requirements defined by the legislation in force, primarily on the parliamentary majority possessed by a party or a coalition.

<sup>33</sup> Introduction of the Electronic System of European Law Transposition (E-step) would be a good example. As a base, the system allows for continuous monitoring of the implementation, displaying, inter alia: the name of the piece of EU legislation, the deadline of its implementation, convergence tables, the authority responsible (the minister leading) and the like.

ing EU commitments. Sometimes the delay is also due to political reasons or fear of the implementation costs, as in the case of Directive 2011/24/EC on patients' rights in cross-border healthcare, or in the case of the Directive of the European Parliament and of the Council of 31 March 2004, no. 2004/23/EC and their implementation directives: 2006/17/EC of 8 February 2006 on certain technical requirements for human tissues and cells donation, collection and testing, and 2006/86/EC of 24 October 2006, to the extent relevant for in vitro fertilization.

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