

**MONITORING AND ANALYSIS  
OF IMPLEMENTATION OF THE NATIONAL  
ACTION PROGRAM FOR EQUAL TREATMENT  
REGARDING GENDER, GENDER IDENTITY  
AND SEXUAL ORIENTATION (2013-2016)**

**SUMMARY REPORT**

**TORUŃ, APRIL-JUNE 2016**



## INTRODUCTION

### ORIGIN OF THE NATIONAL ACTION PROGRAM FOR EQUAL TREATMENT

The law from 03.12.2011 *on implementing of certain provisions of the European Union on equal treatment* (Polish Journal of Laws from 2010, No. 254, pos. 1700 with later amendments), often called the anti-discrimination law, entered into force on 01.01.2011. According to Article 22 of said law the Government Plenipotentiary for Equal Treatment “prepares and submits to the Council of Ministers a National Action Program for Equal Treatment, describing goals and priorities of actions for equal treatment, particularly in regard of:

- 1) raising of social awareness on equal treatment, including causes and effects of violations of the equal treatment principle,
- 2) counteracting violations of the equal treatment principle,
- 3) cooperating with social partners, non-governmental organisations and other entities regarding equal treatment”.

In accordance with the abovementioned provision the Government Plenipotentiary for Equal Treatment submitted the National Action Program for Equal Treatment for 2013-2016 (NAPET) to the Council of Ministers. It was accepted by the Council on 10.12.2013. Prior to that work on four consecutive drafts of NAPET commenced: the first was published on 20.02.2013 and underwent public consultations, the next three were dated 20.06.2013, 06.09.2013 and 08.10.2013. A detailed comparison – regarding the monitored actions – of the drafts and of the accepted NAPET was attached to the “Report regarding 2013”.

### STRUCTURE OF NAPET

NAPET consists of two main parts. First part contains a diagnosis and description of the current situation regarding equal treatment. The second part was divided into the following areas:

- Anti-discriminatory policy,
- Equal treatment on labour market and in social security system,
- Counteracting violence, including family violence, and increasing protection of victims of violence,
- Equal treatment in education system,
- Equal treatment in health care system,
- Equal treatment in accessing goods and services.

Main goals and specific goals were set for each of the abovementioned areas. Every specific goal was to be accomplished by a number of actions. For each and every action NAPET described:

- entities responsible for implementation of the action,
- entities to cooperate with during implementation of the action,
- deadline for completion of the action, which was in almost every case given as a year date; in case of multiannual actions (“continuous actions”) NAPET set only the commencement date.

### LEGAL STATUS AND SIGNIFICANCE OF NAPET

The authorities implement a number of actions mentioned in documents called “national programs”. Those actions refer to various aspects and fields of public life. The national programs themselves do not constitute a uniform nor separate category of state documents, differ when it comes to their importance and are created in various ways. For example: some national programs were created with regulations (Polish: *rozporządzenia*), which makes them law – generally applicable and binding (this applies to both documents with structure similar to that of NAPET<sup>1</sup> as well as to documents structured like normative acts<sup>2</sup>), while others were created with resolutions of the Council of Ministers – which makes them internally binding laws<sup>3</sup> (binding for all public entities subordinated to the Council of Ministers).

<sup>1</sup> See the regulation of the Council of Ministers from 15.02.2011 on the National Program of Preventing HIV Infections and Combating AIDS (Polish Journal of Laws from 2011, No. 44, pos. 227) or the repealed regulation of the Council of Ministers from 22.03.2011 on the National Program of Counteracting Drug Addiction for 2011-2016 (Polish Journal of Laws from 2011, No. 78, pos. 428) among other things.

<sup>2</sup> See the regulation of the Minister for Transport, Construction and Maritime Economy from 31.07.2012 on the National Program of Protection of Civil Aviation (Polish Journal of Laws from 2012, pos. 912).

<sup>3</sup> See the resolution No. 76 of the Council of Ministers from 29.04.2014 on the National Program of Combating Family Violence for 2014-2020 (*Monitor Polski* from 2014, pos. 445) or the resolution No. 164 of the Council of Ministers from 12.08.2014 on the National Program of Development of Social Economy (*Monitor Polski* from 2014, pos. 811).



It is different with NAPET: it is not a legal act at all and is not binding for anyone, even for the entities it mentions as responsible for implementing the program's actions. Furthermore, it is controversial to say that NAPET was "accepted" (by the Council of Ministers), mainly because the law *on implementing of certain provisions of the European Union on equal treatment* does not use such a term. The provisions of the law also do not mention that – upon submission of NAPET by the Government Plenipotentiary for Equal Treatment – the Council is to do anything, like taking a position on the program or approving it. One should therefore assume that the only condition for NAPET to become valid is its submission to the Council by the Plenipotentiary.

Additionally one should note, that the aforementioned law does not mention drafts of NAPET to undergo consultations or require approvals. The literal wording of Article 22 of the law indicates that the Plenipotentiary is the sole author of NAPET and is free to formulate it as he or she sees fit. In respect of preparations of NAPET in 2013 – which took almost the entire year – it means that there were no formal nor legal obstacles to submit its very first draft to the Council of Ministers.

Lack of any legal power of NAPET is an important circumstance, but it does not explain fully whether the document has any significance. According to the abovementioned Article 22 NAPET "describes goals and priorities of actions for equal treatment"; the law does not, however, explain whether these are to be goals and priorities of the state, the governmental administration, the Council of Ministers or its Plenipotentiary. The grounds of the governmental draft of the abovementioned law cast some light on this issue. The document (dated 16.09.2010) states that "it was assumed in Article 22 of the drafted law that achieving a cohesive equal treatment policy requires a National Action Program for Equal Treatment to be prepared. The program is to systemize actions regarding equal treatment undertaken by public administration and will be a continual process".

The above shows that the intention of the government was for NAPET not only to encompass the entirety of public administration, but also to arrange its activities, to have a real influence on it. This ambitious goal was not accomplished and the wording of the adopted law does not even allow NAPET to be considered a list of commitments regarding equal treatment made by governmental institutions mentioned in the program<sup>4</sup>. Together with a non-binding status of the document and the lack of additional or new funds<sup>5</sup> to finance its actions it makes NAPET look like a set of noncommittal declarations and announcements more than a coherent program meant to accomplish certain goals with precisely described actions and resources. Merely to signalize some of the conclusions included in subsequent parts of this report one should point out that the above circumstances had a significant influence on the implementation of the Program – as was determined during the monitoring of selected actions of NAPET.

One should also consider, that during the preparations of NAPET in 2013 its draft underwent several changes – caused by opinions and remarks made by ministries and other public institutions. Some actions – considered premature or going too far – were removed from the draft and deadlines for other actions were extended (for details see attachment to "Report regarding 2013"). It was also visible at that early stage that – regarding a number of actions – the opinion and position of the Government Plenipotentiary for Equal Treatment (expressed in the first draft of NAPET) differs from the opinion and position of the Ministry of Justice (expressed in its comments to the first draft of NAPET) and other institutions. Despite of the fact that several remarks regarding the draft of NAPET were included in the final wording of the program, differences of opinion regarding the programmed actions remained between the entities responsible for implementing NAPET. These differences were revealed by the monitoring, but are also visible in the annual reports on implementation of NAPET prepared by the Plenipotentiary<sup>6</sup>. This makes it difficult to consider NAPET a mutual undertaking of the entire government.

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<sup>4</sup> The Government Plenipotentiary for Equal Treatment viewed this differently. On 02.09.2015, during the first session of the Monitoring Panel of NAPET, the Plenipotentiary referred to actions set by the program as "tasks, which all the ministries obliged themselves to fulfill".

<sup>5</sup> As NAPET itself stated: "actions were assigned to the respective entities according to their competences and shall be implemented using their current budgets. Actions financed by the state budget will be financed using funds from the budget act for a given year, without the need to apply for additional funds from the state budget".

<sup>6</sup> This refers to reports regarding 2013 and 2014, as – by the time this summary report was prepared – the report regarding 2015 was not made public yet (the Plenipotentiary should have submitted that report to the Council of Ministers by 31.03.2016).



## MONITORING

### SCOPE

All NAPET actions regarding equal treatment in terms of gender, gender identity and sexual orientation, as well as in terms of counteracting discrimination and violence based on gender, gender identity and sexual orientation were monitored. This included all action which were to be implemented (completed or continued) in 2013, 2014 and 2015, as well as in the first few months of 2016. Additionally, NAPET actions concerning general anti-discrimination policy, meant to be implemented in the abovementioned period, were monitored.

The monitoring included:

- 34 NAPET actions meant to be implemented in 2013 (out of a total of 71 actions planned for 2013),
- 56 NAPET actions meant to be implemented in 2014 (out of a total of 108 actions planned for 2014),
- 37 NAPET actions meant to be implemented in 2015 and 2016 (out of a total of 82 actions planned for 2015 and 68 actions planned for 2016).

All findings regarding the implementation of particular actions were presented in respective reports for 2013, 2014 and 2015-2016.

### UTILIZED TOOLS

The monitoring was based on accessing public information, including information revealed in the Public Information Bulletin and through web pages of public entities (either responsible for implementing NAPET actions or meant to cooperate in implementation), including the web page of the Government Plenipotentiary for Equal Treatment, which contained the 2013 and 2014 annual reports on NAPET implementation. Collecting data on actions consisting of legal changes also included accessing data bases of legal acts and the web page of the Polish parliament. Furthermore, information was gathered from nonpublic entities, including non-governmental organizations, using surveys. Bulk of the collected data was obtained by means of requests to provide public information, which were prepared in form of questionnaires (for examples of such questionnaires – in Polish – see attachment No. 1 to this summary report). Additional information was collected by phone and e-mail. In total:

- 640 public entities were requested to provide public information,
- 288 non-public entities, including 232 non-governmental organizations, were asked to provide information.

For a list of all entities (Polish names only) approached to provide information, divided into public and nonpublic entities, see attachment No. 2 to this summary report.

The abovementioned numbers of entities approached to provide information require an explanation. Most of the monitored NAPET action was to be implemented by a handful of governmental institutions, mainly the Government Plenipotentiary for Equal Treatment, Ministry of Labor and Social Policy (currently: Ministry of Family, Labor and Social Policy), Ministry of Health, Ministry of National Education, Ministry of Internal Affairs (currently: Ministry of Internal Affairs and Administration) and Ministry of Justice. Regardless of that NAPET stipulated that a number of action will be implemented in cooperation with other entities. Only in very few cases NAPET actually named such cooperating entities or indicated them as a group, albeit in a way allowing to identify all entities in such group (e.g. “all ministries”, “voivodes”). In most cases, however, all NAPET did was to name a group or category of entities meant to cooperate in implementation of its actions. “Non-governmental organizations” was the group indicated in most cases, other groups referred to by NAPET in the same way included “representatives of the world of science”, “representatives of churches and religious unions”, “media representatives” as well as “local government units”. In order to verify whether the entities responsible for implementing of NAPET actions did cooperate with entities from the abovementioned groups, it was necessary to ask an appropriate number of such entities for information. For example:

- in case of the action “Promoting of textbooks holding a high educational value regarding equal treatment issues (recommendation of the Government Plenipotentiary for Equal Treatment following a motion of a Chapter consisting of various milieus, including scientific and expert milieus, as well as representatives of churches and religious unions)”, which the Plenipotentiary was to implement in 2014 in cooperation with non-governmental organizations, “representatives of scientific and expert milieus” and “representatives of churches and religious unions”, information was requested from 24 pedagogical faculties and chairs, as well as from 9 largest churches and religious unions,
- in case of the actions “Initiation of a broad public debate on the way persons from groups threatened by unequal treatment are presented in the media (with participation of known public figures, representatives of the scientific milieu and media experts)” as well as “Forging a broad coalition ‘Media of Equal Opportunities’



with the aim of propagating the topic of equal treatment in mass media”, both of which the Plenipotentiary was to implement in 2014 in cooperation with “media representatives” and “representatives of the scientific milieu” among others, information was requested from 15 journalism faculties and chairs, as well as from 36 medias, i.e. publishers or editorial offices of daily and weekly newspapers and websites, radio and television broadcasters and press agencies,

- in case of the action “Trainings on the topic of violence in education programs addressed to men and boys as well as women and girls”, which the Plenipotentiary was to implement in 2013 in cooperation with local government units, as well as in case of the action “Activities undertaken to reinforce the political potential of women (education, mentoring programs, networking)”, which the Plenipotentiary was to implement from 2013 in cooperation with local government units, information was requested from 16 marshal offices, 77 powiat starosties (all from pomorskie voivodeship and kujawsko-pomorskie voivodeship, as well as 3 from every other voivodeship) and 404 municipal and commune offices (all from pomorskie voivodeship and kujawsko-pomorskie voivodeship, as well as 3 from every powiat approached for information).

Two criteria were taken into account when choosing non-governmental organizations to be asked for information: scope of activity and range of activity; while Warsaw-based organizations were not neglected in any way, the vast majority constitutes of NGOs from outside of Poland’s capital. Additionally, it was attempted to approach as many as possible of NGOs from poviats and communes which were requested to provide public information. This applied mainly to organizations dealing with women’s rights and providing aid to victims of violence, which – despite a local range – were the natural candidates to cooperate with while implementing such monitored actions as “Debates on hate crimes held at voivodeship level”, “Debates on cultural conditioning of violence and on counteracting violence against women and men while including a gender perspective held at voivodeship level”, “Trainings for members of interdisciplinary groups and workgroups on the topic of violence, including a gender perspective” or “Continuation of trainings for members of civil services responsible for counteracting violence, including domestic violence, while taking a gender perspective into account”. NGOs dealing with women’s rights were also asked for information on cooperation in implementing such NAPET actions like “Promoting female participation in economic process of decision making”, “Promoting the issue of equal payment for women and men for work at the same positions and for work of equal value”, “Promoting the increase of women studying exact sciences”, “Elimination of stereotypes regarding women’s career choices in school textbooks”, “Active promotion of sports in which women and girls can participate”. NGOs taking care of national, ethnic and racial minorities as well as aid organizations taking care of female refugees, were asked about cooperation in implementing the action “Perfecting the gynecological care model including a cultural diversity of women”, among other things. Other non-governmental organizations which could have cooperated in implementing of NAPET were selected in similar fashion.



## CONCLUSIONS

Basing on data collected during the monitoring of NAPET implementation the following conclusions were formulated.

### CONCLUSIONS REGARDING NAPET AND ITS IMPLEMENTATION

- 1.** NAPET included a number of actions, which would have been implemented regardless of the program. The following are examples of such actions: creation of local plenipotentiaries for equal treatment, part of trainings mentioned in NAPET (in case of one such action NAPET went so far to state, that the action consists of *a continuation* of trainings) and implementation of EU regulations (e.g. Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 *on combating sexual abuse and sexual exploitation of children, and child pornography*). The above was confirmed in the annual report on NAPET implementation for 2013, in which the Government Plenipotentiary admitted, that “despite the fact that the Program entered into force at the end of Q4 2013, most entities mentioned in NAPET implemented the actions according to schedule. This was influenced by the fact, that the Program’s structure included both new actions to be undertaken in the assumed time perspective as well as gathering in one place, arranging and putting into order those key equality activities, which are already implemented in various ministries and subordinated institutions”. The above proves that entities responsible for implementation of NAPET actions did so regardless of NAPET and basing on current regulations, earlier governmental programs and other circumstances; these actions were identical to those in NAPET. The fact, that in the above scope NAPET did not create anything new, explains why the acceptance of the program on 10.12.2013 had no effect on those actions. One should also note, that the absence of NAPET during 11 months of 2013, which was the first year included in the program, was not responsible for a single failure to implement an action (in the monitored scope).
- 2.** For some NAPET action no deadline for completion was set, despite the fact that the nature of these actions indicated that they are not “continuous”, that they have to produce an effect, end in a specific way. The following are examples of such NAPET actions:

  - Expert consultations on the current shape of the law; the fact that this action was to end at a specific time was confirmed by the initial wording of NAPET, which stated that the consultations will be completed in 2013 and that the same year either the law will be amended or replaced by a new bill; an additional confirmation is provided by the fact that the above action was placed in the main goal “Raising of standards of anti-discrimination policy” – it is hard to believe that accomplishing a goal like that would be possible with “never-ending” consultations,
  - “Preparing of teacher advancement programs and methodological materials for teachers and specialists performing tasks in the psychological-pedagogical support area (including pedagogues, psychologists, speech therapists, career advisers) raising awareness of the issues of equal treatment, diversity and non-discrimination as well as promoting these issues in teacher learning courses”, which was to be implemented “from 2013”.
- 3.** Many of the monitored NAPET actions were described in a highly generalized or underspecified manner. Additionally, in case of a vast majority of monitored actions NAPET did not specify the expected effect nor measurable result of the action, or even the scale, in which the action should be implemented. An example of a highly generalized description is provided by the action “Promoting the idea of equal chances of women and men as well as mechanism allowing to reconcile work and family life”. With no guidelines nor details given in NAPET this capacious and enigmatic wording could result in the action being implemented in various ways<sup>7</sup>. An example of an underspecified, vague description is provided by the action “Appointing Coordinators for Equal Treatment in all ministries and selected subordinated units” – NAPET did not indicate any “subordinated units”. In case of all actions involving trainings, mentoring or networking NAPET did not indicate how many persons are to be trained, mentored etc. Since no minimum value was set (for a given year nor for the period 2013-2016), it is unclear how many persons needed to participate in trainings etc. for the action to be considered

<sup>7</sup> Interestingly enough, the Government Plenipotentiary seemed to be aware of this. On 02.09.2015, during the first session of the Monitoring Panel of NAPET, the Plenipotentiary commented on all NAPET actions which involved promotion of “certain solutions or ideas” that “one must notice the sporadic activity and lack of ideas among the entities responsible for implementing these actions. The problem is that promotion is often limited to publishing the information on the institution’s webpage. No thought is given to planning the promotion in order to increase its range”.



implemented. Furthermore, it was never clearly stated who should be trained, mentored etc.; descriptions of all NAPET actions involving the abovementioned activities use vague references like “people working directly with victims of violence” or “representatives of public institutions”. This directly influenced the way these action were implemented, as demonstrated by the below examples.

The action “Trainings on the topic of violence in education programs addressed to men and boys as well as women and girls”, planned for 2013, was implemented in the following way: the entity responsible for its implementation, the Government Plenipotentiary for Equal Treatment, *participated* in the project “All different, all equal. Increasing the participation of Olecko’s youth in life of the local community”, which was carried out by the Feminoteka Foundation in one (1) town (Olecko). The Plenipotentiary *participated* in the project (and by doing so – implemented the NAPET action) by taking part (not by moderation nor organizing) in a single meeting in Olecko (furthermore, the meeting was not a training session of any kind). Focusing on the very limited scale this action was implemented in (participation in one meeting in one town) it is very difficult to consider the action actually implemented – and even if, there is no doubt it was not the kind of implementation that NAPET, a governmental document with the word “national” in its title, is all about.

Another example is provided by the action “Raising the awareness level on equal treatment issues among employees of public institutions (including judges, civil servants and policemen)”, which most ministries implemented by adding equal treatment issues to trainings of the so-called ‘preparatory service for civil service’. As a result, during the entire 2013-2016 period ministries which employ hundreds of people have trained mere several dozens of newly hired employees.

4. NAPET is unknown to some of its action’s recipients as well as to some of the entities meant to cooperate in implementing of its actions. This is was observed in case of local government units and non-governmental organizations.
5. NAPET was prepared and implemented one year too late. The law on implementing of certain provisions of the European Union on equal treatment states in Article 32, that the first annual report on implementation of NAPET was to be submitted by 31.03.2013, which implies that the first year the program was to be implemented should have been 2012. Moreover, NAPET included action to be implemented in 2013 – despite the fact that its first draft was from 20.02.2013, and the final draft was submitted to the Council of Ministers on 10.12.2013.
6. Part of the monitored NAPET actions did not begin on time. Some of the delays were openly admitted, while others were hidden, e.g. stating that “the implementation commenced”, but “it is necessary to continue” the implementation for another year (which NAPET did not include). “Commencing” implementation often meant things like sending a sole memo, “getting into contact” with another entity responsible for implementing of the action etc. (for examples see the action “Forging a broad coalition ‘Media of Equal Opportunities’ with the aim of propagating the topic of equal treatment in mass media”, which – by the way – never got implemented).
7. Part of the monitored NAPET actions were not implemented<sup>8</sup> or were partially<sup>9</sup> implemented or were not implemented within due time.  
Out of 34 monitored actions planned for implementation in 2013 9 were partially implemented and 13 were not implemented.  
Out of 56 monitored actions planned for implementation in 2014 10 were partially implemented and 33 were not implemented.  
Out of 37 monitored actions planned for implementation in 2015 and 2016 7 were partially implemented and 11 were not implemented.  
Only some of the reasons for the above were discovered<sup>10</sup>. Those included:
  - full or partial implementation of an action before NAPET was prepared (see the action “Appointing Coordinators for Equal Treatment in all ministries and selected subordinated units”: in all ministries existing in 2013 coordinators were appointed in 2011; see also the action “Appointing of Voivodeship

<sup>8</sup> Lack of implementation is to be understood as lack of implementing of an action by all entities responsible for that, regardless of the number of these entities.

<sup>9</sup> Partial implementation is to be understood as implementing of an action by some, but not all, entities responsible for that, regardless of the number of these entities.

<sup>10</sup> Despite the fact that all questionnaires contained a question in this regard, most entities did not reveal the reasons for not implementing NAPET actions.



Plenipotentiaries for Equal Treatment in all Voivodeship Offices”: in three offices the plenipotentiaries were appointed in 2011-2012);

- lack of implementing of another NAPET action, which was the condition for implementing of a monitored action; e.g. the action “Coordinating the implementation of the Convention” was not performed in 2014, as it was dependent on the implementation of the action “Submitting the *Convention on preventing and combating violence against women and domestic violence* for ratification by the President of Poland after obtaining a consent of the Sejm” (the convention entered into force on 01.08.2015);
- lack of funds; e.g. the Marshall Office of the lubuskie voivodship did not implement the action “Debates on hate crimes held at voivodeship level” in 2014 because of “a lack of funds”, while the State Agency for the Prevention of Alcohol-Related Problems did not – for the same reasons – implement the action “Setting up a round-the-clock (24/7), free of charge, nationwide helpline providing advice regarding all types of violence while respecting confidentiality or anonymity of callers”;
- lack of staff and/or proper structure, which would be responsible for implementation; this was the case with the action “Preparing a set of key factors allowing to monitor the situation of groups endangered by discrimination”;
- lack of jurisdiction; e.g. referring to the action “Cooperation between governmental administration and non-governmental organization and social partners in monitoring of equality policies”, which was to be implemented by “all ministries”, the Ministry of Science and Higher Education stated, that “cooperation with NGOs in monitoring of equality policies is not in the jurisdiction of the Ministry”;
- lack of will or “lack of need”; e.g. the action “Amending of penal code regulations – depending on the outcome of the analysis mentioned in item 1”<sup>11</sup> was not implemented, because the Ministry of Justice deemed such amendment unnecessary (this was the position of the Ministry even before the first draft of NAPET), while the action “Perfecting the gynecological care model including a cultural diversity of women” was not implemented, because both the Ministry of Health and the Office for Foreigners – independently of each other – stated that they received no complaints regarding gynecological care (meaning: implementing of the abovementioned NAPET action is unnecessary).

8. NAPET actions which involved amending existing laws or passing new laws or which required a law to be amended or passed indicated the wrong institutions as entities responsible for implementing. For example:

- the actions “Implementing Directive 2011/93/EU of the European Parliament and of the Council into the Polish legal system”, “Amending the Penal Code of 06.06.1997 regarding prosecution of crimes indicated in Chapter XXV, that is Articles 197, 198 and 199 § 1 as well as amending of Article 185a of the Penal Procedure Code of 06.06.1997 regarding interrogation of victims of sexual violence during the investigation and court proceedings” and “Amending of penal code regulations – depending on the outcome of the analysis mentioned in item 1” (specific goal 3.4 “Raising the level of legal protection of groups endangered by discrimination”) were to be implemented by the Ministry of Justice,
- the action “Amending of Article 39 of the law of 05.12.1996 on the professions of a physician and a dentist regarding the duty of a physician invoking the ‘conscience clause’ to indicate were the patient can receive the requested health service” was to be implemented by the Ministry of Health,

despite the fact that both aforementioned ministries have a very limited influence on the amending and passing of laws by the Sejm and could – at best – prepare draft bills.

9. NAPET included actions which required political support (political will) to be implemented – a factor missing from the very beginning of the Program. E.g. actions connected with the *Convention on preventing and combating violence against women and domestic violence* (the action “Carrying out the process of preparing

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<sup>11</sup> The referred action (“action from item 1”) was “Analysis of the legal system, including penal law, regarding proper organizational and legislative changes” and was about analysing whether Polish law provides sufficient protection from hate crimes (bias motivated crimes). Back in 2013 Polish law considered only a selected few crimes to be hate crimes – and only when they were committed with proper motivation. Articles 256 and 257 of the Penal Code stated that the crimes need to be motivated by bias towards race, ethnicity, nationality, confession or lack of it; Article 119 of the Penal Code included the above premises and an additional one: political affiliation. The first draft of NAPET from 20.02.2013 included the specific goal “Amending the Penal Code of 06.06.1997 raising the level of legal protection of groups endangered by discrimination” and the action “Amending Articles 119, 256 and 257 of the Penal Code of 06.06.1997 by adding sexual orientation, gender identity, disability, age and gender to the list of premises”. Following “remarks” submitted by the Ministry of Justice, (which stated that the idea of extending hate crime protection onto new groups (including women and LGBT persons) is *unnecessary*, because Polish law already protects from hate crimes) the specific goal and the action were removed and replaced with two actions: an analysis (which the ministry never carried out, ignoring NAPET) and an amendment of the law dependent on the results of the analysis. Articles 119, 256 and 257 of the Polish Penal Code remain unchanged, with no hate crime protection for women and LGBT persons available.



a motion for ratification of the Convention”, planned for 2013, the action “Submitting the *Convention on preventing and combating violence against women and domestic violence* for ratification by the President of Poland after obtaining a consent of the Sejm”, planned for “2013/2014”, and the action “Coordinating the implementation of the Convention”, planned for implementation “from 2014”, action “Amending of penal code regulations – depending on the outcome of the analysis mentioned in item 1” (specific goal 3.4 “Raising the level of legal protection of groups endangered by discrimination”) and the action “Amending of Article 39 of the law of 05.12.1996 on the professions of a physician and a dentist regarding the duty of a physician invoking the ‘conscience clause’ to indicate where the patient can receive the requested health service”. While there is nothing wrong with including actions like the above in NAPET, it is counterproductive to include such actions when there is no consent regarding them within the Sejm majority nor the government.

10. Despite the fact that nothing was preventing it, NAPET was not updated, clarified nor amended in any other way or scope since it was submitted to the Councils of Ministers on 10.12.2013. At the same time there was a number of circumstances justifying an amendment, like the lack of implementation of some actions and implementing actions not within due time.
11. No entity nor collective body was actually coordinating the implementation of NAPET actions. The role of the Government Plenipotentiary was limited to implementing of certain action (attributed to this entity) and to collecting reports from ministries – to combine them into an annual report on NAPET implementation. The Monitoring Panel of NAPET met for the first (and only) time on 02.09.2015<sup>12</sup>, 21 months after NAPET was submitted to the Council of Ministers and 9 months prior to the planned completion<sup>13</sup> of NAPET implementation.
12. Besides a final evaluation of the Program as a whole (planned for the second half of 2016), NAPET did not include any evaluation, assessment or audit actions of the monitored actions<sup>14</sup>. Neither did NAPET include any form of verification of whether the specific goals set by the Program were accomplished. These shortcomings were especially noticeable with the protracted process of creating the Monitoring Panel of NAPET<sup>15</sup> and with “continuous actions”.
13. In case of some actions NAPET indicated more entities responsible for implementation than it was necessary. For example: the action “Adding the equal treatment assessment of documents to the ‘Directives for assessing the results of legislation’” was to be implemented by the Ministry of Economy and the Government Plenipotentiary for Equal Treatment. However, since the document “Guidelines for carrying out of a legislation assessment and for public consultations” was prepared by the above ministry, which could – in accordance with the aforementioned NAPET action – add the equal treatment assessment to that document, the participation of the Plenipotentiary was completely superfluous.
14. Some of the monitored NAPET actions were implemented by other entities than indicated by the program (including their subordinated units). For example:

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<sup>12</sup> Parliamentary elections to both the Sejm and Senate, which were held on 25.10.2015, altered the political landscape of Poland. The government of Ewa Kopacz, including the Government Plenipotentiary for Equal Treatment of that time, Małgorzata Fuszara, resigned on 16.11.2015. The new Plenipotentiary, Wojciech Kaczmarczyk, was introduced on 08.01.2016. The Office of the Plenipotentiary – up to that point a separate unit within the Chancellery of the Prime Minister, responsible for administrative management of the Plenipotentiary, providing its staff etc. – was terminated. The position of the Plenipotentiary changed its name to “Government Plenipotentiary for Civic Society and Equal Treatment”.

<sup>13</sup> This refers to the penultimate paragraph of NAPET, which states that “actions of the Program were planned until the end of the first half of 2016. The second half of 2016 will be used for a final evaluation of the Program and working out recommendations for the next edition of the Program”.

<sup>14</sup> At the same time NAPET did include one (1) action which was about evaluating another NAPET action: it was the action “Evaluation of the effect of the campaign” (specific goal “Raising public awareness regarding the influence of preventive healthcare on welfare of people aged 50+”; action was not monitored), which referred to the action “Media campaign addressed to people aged 50+ and their environment aimed at presenting the influence of preventive healthcare on their welfare” (also not monitored).

<sup>15</sup> Despite the fact that NAPET – in its last paragraphs – mentioned the need for a Monitoring Panel and an intent to create one, 2013 and most of 2014 were fruitless in that regard. The first draft of a regulation creating the Panel was dated 31.10.2014; the regulation was passed on 13.04.2015, after several weeks of governmental consultations. The Panel was created with a decree of the Prime Minister (Polish: *zarządzenie Prezesa Rady Ministrów*), which is a legal act internally binding – this means that the Panel was created with a document of greater legal significance than the governmental program it was meant to monitor.



- regarding the implementing of the action “Preparing of teacher advancement programs and methodological materials for teachers and specialists performing tasks in the psychological-pedagogical support area (including pedagogues, psychologists, speech therapists, career advisers) raising awareness of the issues of equal treatment, diversity and non-discrimination as well as promoting these issues in teacher learning courses” the Ministry of Education described the activities of the Centre for Education Development – commenting, that the Centre is a unit managed by the ministry<sup>16</sup>;
  - regarding the implementing of the action “Continuation of trainings for members of civil services responsible for counteracting violence, including domestic violence, while taking a gender perspective into account” the Ministry of Internal Affairs did not describe any of its activities; instead, the ministry described the activity of the Police (it is noteworthy, that the description differed from that provided by the Polish Police HQ on the same issue) – while both the ministry and the Police were meant to cooperate in implementing of that action;
  - regarding the implementing of the action “Trainings for representatives of public institutions on equal treatment issues” in 2015 the Ministry of Justice admitted, that its personnel was not trained at all, and described trainings carried out in the National School of Judiciary and Public Prosecution and in the Training Centre for Prison Officers;
  - regarding the implementing of the action “Trainings for members of interdisciplinary groups and workgroups on the topic of violence, including a gender perspective” the Ministry for Labor and Social Policy (an entity responsible for implementing this action “together with Voivodeship Marshalls”) stated that it does not take part in the trainings, limiting itself to preparing reports and training guidelines “while carrying out of trainings is a task of the voivodeship local government, imposed by the law on counteracting of domestic violence”;
  - regarding the implementing of the action “Analysis and monitoring of the implementation of the law from 03.12.2011 on implementing of certain provisions of the European Union on equal treatment” the Government Plenipotentiary did not carry out any monitoring activities – instead it requested data collected by the Ministry of Justice during its monitoring (the Ministry of Defence was also collecting data on its own);
  - regarding the implementing of the action “Analysis of international law on monitoring of pay gap” the Plenipotentiary requested the Sejm’s Bureau of Research to prepare an information on pay gap monitoring methods used in EU member states and on measures aimed at decreasing inequalities of payment for women and men.
15. NAPET included many actions which were to be implemented by more than one entity; however, NAPET did not specify how this joint implementation was to be carried out nor did it explain the difference between it and cooperation in implementing an action. Furthermore, the program did not divide the responsibilities between entities jointly implementing actions. As a result, the following occurred.

#### 15.1. Lack of joint implementation

Despite the assumption made in NAPET (“The entities engaged in implementing of actions planned in the National Action Program for Equal Treatment for 2013-2016 consist of ministries and other institutions of central administration. The entities responsible for implementing of actions cooperate with each other according to the horizontal assumption of equality policy”) and with the exception of a very few actions, all responsible entities implemented the actions on their own, without even contacting other institutions responsible for implementing of the same actions. In the annual reports on NAPET implementation and in the provided public information the above was, however, presented as activity carried out in accordance with the program<sup>17</sup>. The Government Plenipotentiary addressed this problem during the first session of the Monitoring Panel of NAPET<sup>18</sup>.

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<sup>16</sup> This is also an example of how inconsistent NAPET is: in case of this action the Centre, despite the fact of actually implementing it, was not even an entity meant for cooperation. At the same time NAPET indicated the Centre and the Ministry for Education to be both responsible for implementing the action “Trainings on anti-discrimination education for experts and teachers aiming to eliminate errors and insert equal treatment issues into textbooks, educational materials and didactic content”.

<sup>17</sup> At the same time the entities ignored all questions regarding joint implementation of NAPET actions.

<sup>18</sup> Minutes of the session include the following statement of the Plenipotentiary: “most institutions indicated by the Program as responsible for implementing of actions hardly ever undertake to cooperate with other public institutions, which often results in lack of complementarity between different actions of the same goal. This sometimes happens when there is more than one entity responsible for implementing an action and each of those entities does it on its own, without cooperating with others. This gets negatively reflected in the quality of the implementation, as every entity focuses on its competences and no added value is created in form of a coherent concept for implementing the action”.



**15.2.** Lack of cooperation between entities responsible for implementing of actions and entities meant to cooperate in implementing of actions, including non-governmental organizations<sup>19</sup> and local government units<sup>20</sup>.

It was especially noticeable during the monitoring, that public entities meant to cooperate in implementing of NAPET actions, stated that:

there are other public entities relevant for that issue (usually it was the very entity in charge of implementing the action),

they did not receive an invitation nor an offer to cooperate from the entity responsible for implementing the action, that they were not approached regarding that issue (even ministries filed such replies, e.g. when asked about cooperation in implementing of the action “Analysis and monitoring of the implementation of the law from 03.12.2011 *on implementing of certain provisions of the European Union on equal treatment*”. With less than a handful exceptions there was no cooperation described in NAPET<sup>21</sup>, including cooperation with non-governmental organizations.

A separate problem, but occurring in connection with the above, was that the entities meant to cooperate in implementing action not only did not cooperate, but performed certain tasks of their own; however, when providing public information, these entities presented the above as cooperation. Despite a seemingly obvious division into “entities responsible for implementing” and “entities meant to cooperate in implementing” it was not so, that entities from the first group only implemented action, while the entities from the second group only cooperated in that. E.g. in case of the action “Publicizing information on regulations allowing fathers to actively participate in upbringing and care for children” the Plenipotentiary, despite of being “only” an entity meant to cooperate in implementing, not only did not cooperate with the Ministry of Labor and Social Policy (the responsible entity), but also carried out a nearly two-year-long media campaign “Polish Dad” (Polish: *Tato polski*), which included the above action.

## CONCLUSIONS REGARDING PROVIDING OF PUBLIC INFORMATION

**16.** No answers to a significant number of questions in questionnaires used to collect public information. This applied in a lesser degree to questions about implementing a given action or cooperating in implementation (these were the very first questions in every questionnaire) and in a higher degree to detailed questions, especially those about the manner an action was implemented or cooperation was carried out and about the personnel responsible for implementation or cooperation (the goal of all detailed question was not only to collect data, but also to verify whether the answer that implementation or cooperation did in fact take place).

**17.** A lot of the provided public data was irrelevant and did not relate to NAPET actions indicated in the questionnaires (it is unknown why this happened, particularly whether this resulted from misunderstanding what a given NAPET action was actually about or from an attempt to hide the fact that an action was not implemented). For example:

- instead of providing data on the implementation of the action “Analysis and monitoring of the implementation of the law from 03.12.2011 *on implementing of certain provisions of the European Union on equal treatment*” most ministries provided data on implementing NAPET or on aiding the Government Plenipotentiary in preparing an annual report on NAPET implementation,
- instead of providing data on the implementation of the action “Cooperation between governmental administration and non-governmental organization and social partners in monitoring of equality policies”

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<sup>19</sup> At the same time NAPET stated that “while implementing the attributed actions each and every entity responsible for that should – to the fullest degree – include cooperation with non-governmental organizations. This requires securing of proper funds, so that certain actions can be contracted out to NGOs”.

<sup>20</sup> NAPET stated that “while implementing some actions the Program mentions cooperation with local government units. This means that the entities responsible for implementing of actions can cooperate with local government units and use their experts and experience in a given area”.

<sup>21</sup> It should be also noted, that an “inversion” of roles between the entity responsible for implementation and the entity meant to cooperate in implementation was observed. E.g. in 2015 the implementation of the action “Promoting female participation in economic process of decision making” by the responsible entities (Ministry of Economy, Ministry of Treasury and the Government Plenipotentiary) was overshadowed by the activity of the Ministry of Labor and Social Policy, which took place within the project “Equality of women and men in making economic decisions as a tool of social change”. In addition, the Ministry of Labor and Social Policy cooperated in the above project with all three entities responsible for implementing the NAPET action. Due to this fact, the Ministry of Labor and Social Policy rose to become the de facto responsible entity, while the three entities meant to play this role were degraded to a supporting position.



most ministries provided data on cooperating with non-governmental organization in a broader sense (and none of that cooperation had anything to do with monitoring of equality policies”.

18. In some cases the provided public information was limited to a statement that a given entity performs its duties in accordance with the law or performs duties described by the law. A similar problem occurred during the preparation of annual reports on NAPET implementation by the Government Plenipotentiary for Equal Treatment, which was based on information provided by all entities responsible for implementing NAPET actions<sup>22</sup>.
19. In case of implementation of some NAPET actions divergent information was collected from different entities responsible for implementation or meant to cooperate in implementation. For example: the Ministry of Labor and Social Policy stated that debates on functioning of interdisciplinary groups took place in all 16 voivodeships, while information collected from Voivodeship Offices indicated, that the debates only took place in 7 voivodeships (in remaining voivodeships the NAPET action was implemented in a different manner or not at all). In case of some actions the above could have resulted from the description of the action being highly generalized (e.g. the action “Continuation of trainings for members of civil services responsible for counteracting violence, including domestic violence, while taking a gender perspective into account”) and from assigning the implementation of an action to more than one entity (while providing information each of them reported something else).
20. None of the annual reports on NAPET<sup>23</sup> implementation was submitted by the Government Plenipotentiary for Equal Treatment to the Council of Ministers on time, that is by 31<sup>st</sup> March of the year following the year the report is about (Article 23 item 3 of the law *on implementing of certain provisions of the European Union on equal treatment*): the report on 2013 was submitted on 27.06.2014, the report on 2014 was submitted on 05.06.2015; there is no information available regarding the report on 2015 nor its submission.

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<sup>22</sup> The Government Plenipotentiary did notice this problem. Minutes from the first session of the Monitoring Panel of NAPET (02.09.2015) contain a conclusion of the Plenipotentiary based on data collected on NAPET implementation in 2014: “the analysis of individuals reports also shows, that the tendency to quote certain documents or provisions of the law instead of providing information on implementation of actions has been maintained. Quoting regulations without actually providing information on their implementation might be resulting from the fact that the ministries are aware of their duties, but are either accepting that these duties are not performed or they do not monitor nor collect data on implementing of said duties”.

For example: in the report for 2014 it was stated that the Ministry of Sports and Tourism implemented the action “Equalizing chances of women and men in access to sports” by “performing actions regarding equalizing chances of women and men in access to sports in accordance with the law from 25.06.2010 on sports”. The report also stated that according to the abovementioned law “financial benefits for Olympic medalists are paid in equal amounts for women and men” (this information was not accompanied by an explanation of what this issue has to do with equalizing chances in access to sports). Additionally the report mentioned that two regulations issued by the ministry (in 2012, not during the 2013-2016 NAPET period) provide that sports scholarships and rewards for internationally achieved results are equal for women and men (this information was also not accompanied by an explanation of what this issue has to do with equalizing chances in access to sports).

<sup>23</sup> Grounds for the governmental draft of the law *on implementing of certain provisions of the European Union on equal treatment* stated that “annual reports on implementation of the National Action Program for Equal Treatment will allow to analyse the issues of counteracting discrimination and violating the equal treatment principle, to opinion actions aimed at eliminating discrimination and recommending the most effective ways to achieve the assumed goals. The Government Plenipotentiary for Equal Treatment was obliged to submit reports, information, motions and recommendation regarding the implementation of the equal treatment principle, as well as annual reports on the Program’s implementation, to the Council of Ministers”.



## RECOMMENDATIONS

- I. NAPET must be binding for all entities responsible for implementing the Program's actions. One should strive to make NAPET binding for all public entities meant to cooperate in implementing of actions.
- II. Implementation of actions should be assigned exclusively to entities which sufficient staff (allowing an entity to implement an action on its own) or/and sufficient funds (allowing an entity to contract out the implementation to specialists, among other things) and competences – even at the expense of limiting the total number of programmed actions in relation to NAPET for 2013-2016.
- III. When assigning implementation of an action to more than one entity it is necessary to describe at least a basic division of responsibilities between the entities or to indicate the scope of implementation to each of the entities.
- IV. When programming an action to be implemented in cooperation with entities belonging to a group or category it is necessary to oblige the institution responsible for implementation to approach a specified number of such entities (e.g. by sending an invitation or offer regarding cooperation).
- V. Actions must be described in a precise and unambiguous way. Measurable indicators should be applied whenever possible to describe the expected range and scale of implementation as well as to allow monitoring of progress of implementation of a given action. For “continuous actions” indicators should be set for each years or shorter periods, in which the actions are to be implemented (“milestones”). Immeasurable and descriptive indicators should be applied only with no other solution possible.
- VI. Programming actions which will be implemented regardless of NAPET should be avoided.
- VII. Programming actions dependent on future and uncertain event, including the implementation of other NAPET actions, should be avoided.
- VIII. Programming actions requiring funds without providing proper funds should not take place.
- IX. Programming actions which exceed competences of entities responsible for their implementation should not take place.
- X. Updating NAPET should be obligatory in at least the following situations: (i) action implementation did not commence in due time (in case of shortening the time to implement an action, an updated NAPET should describe a way to make up for the lost time), (ii) action implementation did not end in due time, (iii) replacing an action with another (to accomplish the same specific goal), (iv) lack of implementation (an updated NAPET should describe the way to accomplish the specific goal without implementing the action).
- XI. Implementation of NAPET must be monitored and coordinated by a selected entity (the Government Plenipotentiary for Equal Treatment seems the logical choice) or a permanent collective body (to play this role the current Monitoring Panel would have to become permanent) meeting at least once every three months.
- XII. Evaluation and/or audit of implemented actions should be mandatory, with results passed over to the entity or collective body monitoring and coordinating the implementation of NAPET.
- XIII. Reporting on implementation of NAPET actions should be mandatory for all entities responsible for implementation, with reports submitted at least once every six months directly to the entity or collective body monitoring and coordinating the implementation of NAPET.
- XIV. Next NAPET should be adopted in 2016.
- XV. The Council of Ministers or an entity selected by the Council should carry out an information campaign about the next NAPET, including sending the program to all public entities it mentions regarding implementation of actions or cooperation in implementing of actions, explain the status and importance of the program.



## ABOUT THE PROJECT | ABOUT THE PROGRAM

The project “Monitoring and analysis of implementation of the National Action Program for Equal Treatment regarding gender, gender identity and sexual orientation (2013-2016)” is carried out by two Polish non-governmental organizations: the Diversity Workshop – An Association for Lesbians, Gays, Bisexual Persons, Transgender Persons and Queer Persons (Polish: *Stowarzyszenie na Rzecz Lesbijek, Gejów, Osób Biseksualnych, Osób Transpłciowych Oraz Osób Queer „Pracownia Różnorodności”*) and the Association Love Does Not Exclude (Polish: *Stowarzyszenie Miłość Nie Wyklucza*). The project is carried out basing on an agreement concluded by the above with the Stefan Batory Foundation (Polish: *Fundacja im. Stefana Batorego*), partnered by the Polish Children and Youth Foundation (Polish: *Polska Fundacja Dzieci i Młodzieży*).

The project is carried out within the Citizens for Democracy (Polish: *Obywatele dla Demokracji*) program, financed from the European Economic Area (EEA) Grants. The Stefan Batory Foundation, acting in partnership with the Polish Children and Youth Foundation, operates the Citizens for Democracy program.

Information on the Citizens for Democracy program can be found at [www.ngofund.org.pl](http://www.ngofund.org.pl)

OBYWATELE  
DLA DEMOKRACJI



Information on the EEA Grants can be found at <http://eeagrants.org>



Information on the Stefan Batory Foundation can be found at [www.batory.org.pl](http://www.batory.org.pl)



Information on the Polish Children and Youth Foundation can be found at [www.pcyf.org.pl](http://www.pcyf.org.pl)



Information on the Association Love Does Not Exclude can be found at <http://miloscniewyklucza.pl>



Information on the Diversity Workshop can be found at [www.spr.org.pl](http://www.spr.org.pl)

