

OPINION

Pursuant to Article 7 para. 4 of the Act of 8 October 2010 on Cooperation of the Council of Ministers with the Sejm and the Senate in Matters Related to the Republic of Poland's Membership in the European Union (Journal of Laws of 2010, No 213, item 1395), the European Union Affairs Committee submits the following opinion on the EU draft legal act, adopted at the sitting on 14 February 2012:

The European Union Affairs Committee (EUAC) supports the principal concept of the **proposal for a Decision of the European Parliament and of the Council on serious cross-border threats to health (COM(2011)866)**, i.e. the improved protection of the European Union citizens against numerous cross-border threats to their health. These threats can be events caused by communicable diseases, biological agents responsible for non-communicable diseases, chemical, environmental and climate-related threats (e.g. heat waves, cold spells), as well as threats of unknown origin (including those of malicious intentional origin).

The EUAC strongly opposes, however, the adoption by the European Commission, by means of delegated acts, common temporary public health measures mentioned in Art. 12 of the Proposal.

The legal basis for addressing serious cross-border health threats at EU level has been reinforced with the Lisbon Treaty. The EU can now take action in this field, except for any harmonisation of the laws and regulations of the Member States. The EU must complement and support national policies and encourage cooperation between Member States, without superseding their competence in that field.

It seems, however, that this principle will be violated in case of measures adopted by the European Commission by means of delegated acts, which the Member States will be enforced to implement in order to combat the specific cross-border threat to health (Art. 12). In these cases, it might mean a too profound interference of the EU into the competence of the Member States, without taking into account differences in their healthcare systems and financial capabilities, and that will run counter to Art. 6 of the Treaty on the Functioning of the European Union (TFEU).

The application of the delegated acts in these areas is objectionable for yet another reason: in accordance with Art. 290 of the TFEU delegated acts supplement or amend certain non-essential elements of the legislative act. It is difficult, however, to consider a non-essential the fact of imposing upon a Member State, this and not the other, means of combating a particular threat to public health, e.g. the necessity to purchase a certain vaccine in case of an influenza pandemic.

The application of implementing acts seems more appropriate here. Firstly, common temporary public health measures constitute an execution of this Decision rather than its supplementing. Secondly, the EUAC is of the opinion that the Member States should have an opportunity to influence their content. Such opportunity would arise if the control procedure over the adoption of implementing acts set out in the Regulation (EU) No 182/2011 were applied.