

Poland: EU Trademark Directive Transposition - Almost done!

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In a plenary vote that took place on January 17, 2019, the lower house of the Polish Parliament (Sejm) adopted a **bill amending the IP Law**, the main purpose of which is - not a big surprise these days - to transpose the EU Trademark Directive 2015/2436 to the Polish trademark system (with just a short delay against the transposition deadline of January 14). Even though this is not the end of the legislative procedure - the bill will now go to the upper house (Senat) and then to the President for their review and approval - we can already happily announce that, as far as (mostly proper) transposition of the EU Trademark Directive in Poland is concerned, we are almost done.

The time will come to look more closely into the amending bill (once finally approved and published). It is, however, worth to note that besides numerous amendments aimed at making the Polish IP Law fully in line with the EU Trademark Directive's provisions, the bill also contains some important extra provisions.

As regards the transposition of the Directive's provisions, the adopted bill covers all that are **obligatory** and some which are **optional** - just to mention: abandonment of the graphical representation requirement, redefinition of some absolute grounds for refusal, redefinition of guarantee and collective marks, introduction of a new mechanism for renewals, new non-use defenses, extended licensee's rights or, last but not least, remedies against counterfeit goods in transit and against infringing preparatory acts.

With respect to **the extra amendments and additions** to the IP Law, which are

not necessarily linked with the Directive's transposition, some of these aim at **upgrading the procedures** before the Polish Patent Office, especially those related to examination of international registrations designating Poland and to oppositions (not a revolution here, as the existing pre-grant opposition procedure was quite nicely introduced to the Polish IP Law already in 2016 – as reported [here](#)). Additionally, the amending bill explicitly provides for a **liability of intermediaries** for trademark infringements (to be more or less in line with [the IP Enforcement Directive 2004/48/EC](#)) and clarifies that the existing **criminal measures** can also be applied against counterfeiters of EU trademarks (not only national marks). The vast majority of these changes is warmly welcome by Polish trademark practitioners, though, as usual, there are some (minor) loopholes and pitfalls that we will need to live with.

What is important, the draft bill was quite intensively and openly consulted by the lawmakers with interested stakeholders at various stages of the legislative procedure (this author was heavily involved in the process on behalf of the Polish Group of AIPPI and the Polish Chamber of Patent Attorneys). Consequently, there are not many reasons to complain about the final product.