



European network of legal experts in gender equality and non-discrimination

FLASH REPORT

Country:	Greece
Title:	New Act 4604/2019 on substantive equality entered into force on 26 March 2019
Date:	1 July 2019
Expert:	Panagiota Petroglou
Context	
Issue at stake:	Substantive equality
Grounds of discrimination:	Gender, Sexual orientation, Transgender
Field of application:	Employment, Gender mainstreaming
Source:	National legislation
Applicable law:	Act 4604/2019 'on the promotion of substantive gender equality, prevention and fight against gender-based violence- Provisions on the award of nationality – Provisions on the elections for local authorities', OJ A 50/26.03.2019.

Content

Legal development: The new Act 4604/2019 on substantive equality entered into force on 26 March 2019.¹ According to the explanatory note, the new Act aims to establish substantive equality given that 'in societies with a long patriarchic tradition, such as the Greek one, the female sex has been undervalued and put in the margin in comparison to the male sex which evidently has greater economic and political power in the public and private life'.

Article 22 of the new Act amends the definitions of direct and indirect discrimination and sexual harassment on the grounds of sex (sexual orientation and gender identity), which were previously provided by Act 3896/2010,² implementing Directive 2006/54/EC (Recast),³ and provides new definitions for positive measures and positive action.

No reference to the EU Directives: The new Act on substantive equality does not make any reference to EU Directives, and is therefore not in conformity with Article 33 of the Directive 2006/54 and Article 18 of Directive 2000/78/EC, which provide that when

¹ Act 4604/2019 'on the promotion of substantive gender equality, prevention and fight against gender-based violence- Provisions on the award of nationality – Provisions on the elections for the local authorities', OJ A 50/26.03.2019, available at: <https://www.synigoros.gr/resources/20190416-n4604-2019.pdf>.

² Act 3896/2010, 'Implementation of the Principle of Equal Treatment of Men and Women in Matters of Employment and Occupation. Harmonisation of Existing Legislation with Directive 2006/54/EC of the European Parliament and the Council of 5 July 2006 and other provisions' (*Εφαρμογή της αρχής των ίσων ευκαιριών και της ίσης μεταχείρισης ανδρών και γυναικών σε θέματα εργασίας και απασχόλησης – Εναρμόνιση της κείμενης νομοθεσίας με την Οδηγία 2006/54/EK του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου, της 5ης Ιουλίου 2006 και άλλες συναφείς διατάξεις*), OJ A 207/08.12.2010, entered into force as of 8.12.2010.

³ Directive 2006/54/EC of the European Parliament and of the Council, 5 July 2006, on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)

Member States adopt measures implementing the Directive, the latter shall contain a reference to the Directive or be accompanied by such reference on the occasion of their official publication.

The new Act amends the definitions of direct and indirect discrimination and sexual harassment on the grounds of sex (and gender identity), which were previously provided by Act 3896/2010, implementing Directive 2006/54, and provides new definitions for positive measures and positive action, which all fall within the scope of the Directive 2006/54 without making any reference to the Directive.

Act 4604/2019 also provides new definitions of direct and indirect discrimination and sexual harassment on the ground of sexual orientation, without amending the definitions given by Act 4443/2016, implementing Directives 2000/43 and 2000/78. These changes lead to a significant lack of coherence regarding the definitions of direct and indirect discrimination in the national legal order, implementing Directives 2006/54 and 2000/78.

The content of the new Act: Definitions of direct and indirect discrimination on the grounds of sex, sexual orientation and gender identity are given both in Article 2 and again in Article 22 of the same Act 4604/2019. However, the definition of direct discrimination in Article 2⁴ differs from that in Article 22⁵ in that the words 'sexual orientation and gender identity' are omitted at the end of its last phrase. Moreover and most significantly, they fall short of the definitions of both Act 3896/2010, implementing Directive 2006/54, and Act 4443/2016, implementing Directives 2000/43 and 2000/78. More specifically:

- 1) **Direct discrimination:** the requirement of "evidently" less favorable treatment is restrictive in comparison to the wording of the above Directives, which do not use the word "evidently". Moreover, the definition of direct discrimination adopted by Act 4604/2019 uses only the present tense (*'excludes or puts in an inferior position'*), omitting the past perfect tense and the conditional tense (*'is, has been or would be treated in a comparable situation'*) used by the above Directives and the above Laws that implemented them; thus, no comparison to a past or hypothetical comparator is allowed;
- 2) **Indirect discrimination:** the use only of the present tense (*'excludes or puts in an inferior position'*) falls short of the wording of the above Directives (*'would put {...] at a particular disadvantage'*), which covers also the possibility of creating a particular disadvantage.

In view of the above, Act 4604/2019 causes regression in the protection of the right to gender equality (including gender identity) and prohibition of discrimination on the ground of sexual orientation, which is prohibited by EU law (see Article 27 of Directive 2006/54). This is the more so as Act 4604/2019 is intended to ensure that the objective pursued by Directive 2006/54 may be attained.

Moreover, Article 22(1) of Act 4604/2019 amended Article 2(d) of Act 3896/2010 transposing Directive 2006/54 and replaced its definition of 'sexual harassment' by a definition which, compared to the definition of the Directive, is narrower in that it does not stipulate 'with the purpose or effect' as the Directive does. This is a serious regression with respect to the EU gender equality *acquis*. Act 4604/2019, to the extent that it amended or rephrased the existing definition of sexual harassment is an example of poor law making leading to legal uncertainty. By omitting any reference to Directive 2006/54, it is in clear violation of its implementation requirements. Moreover, it undermines the coherence of

⁴ Article 2(6)(a) Act 4604/2019 reads: 'direct discrimination': any act or omission that excludes or places in an evidently inferior position persons because of sex, sexual orientation and gender identity; moreover, any instruction, instigation or systematic encouragement of persons to discriminate in an unfavourable or unequal way against other persons on the grounds of sex, sexual orientation and gender identity.

⁵ Article 22(2)(a) Act 4604/2019 reads: "'direct discrimination': any act or omission that excludes or places in an evidently inferior position persons because of sex, sexual orientation and gender identity; moreover, any instruction, instigation or systematic encouragement of persons to discriminate in an unfavourable or unequal way against other persons on the grounds of sex".

national law implementing the gender equality and anti-discrimination Directives and it creates a lack of clarity and legal uncertainty, prohibited by EU law in the implementation of the Directives.

Moreover, Article 2 of the new Act distinguishes between '*positive action*' and '*positive measures*', providing a different definition for each of these concepts. However, the only term used in Article 116(2) of the Constitution and in Act 3896/2010 (Article 19), as well as in Article 157(4) TFEU and Article 23(2) of the EU Charter of Fundamental Rights, is '*positive measures*'. Great confusion and legal uncertainty are thus created, *inter alia* because it is only the term '*positive measures*' that appears further in the Act, while the term '*positive action*' does not appear in any other provision of the Act. Moreover, these definitions limit the scope of the above concepts to the public sector only.

The new definitions of Act 4604/2019 on positive measures compared to the provisions definitions of these concepts provided in Article 19 of Act 3896/2010 are narrower because they do not stipulate in a straightforward way that positive measures do not constitute discrimination, as the general provisions of Article 116(2) of the Constitution and Article 19 Act 3896/2010 do. This is a serious regression with respect to the gender equality *acquis* in Greece.

Finally, the right of intervention in favour of the victim of discrimination before the courts at all stages, provided by Article 23 of Act 4604/2019, is restricted to trade unions and excludes women's NGOs. The relevant provision of Article 22(2) of Act 3896/2010 which is still in force provides the right of intervention before any administrative authority and any court for any legal entity with a relevant legitimate aim (i.e. not only for trade unions but also for women's NGOs and non-profit unions for human rights). Thus, the provision of Art 23 Act 4604/2019 falls short of the relevant provision of the Directive and its implementing law 3896/2010 and may create legal uncertainty and lack of safety as to whether the relevant right of NGOs to intervene in favour of the victim of discrimination in such procedures is still valid. This is also a serious regression with respect to the gender equality *acquis* in Greece.

Internet link source: Act 4604/2019, available at:
<https://eshop.forin.gr/laws/law/3731/n-4604-2019#!/?article=33831>.