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# TMT 2025

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## **Poland: Trends and Developments**

Agata Szeliga, Sylwia Macura-Targosz  
and Aleksandra Krześniak-Sałajczyk  
Sołtysiński Kawecki & Szlęzak



## Trends and Developments

### Contributed by:

Agata Szeliga, Sylwia Macura-Targosz and Aleksandra Krześniak-Sałajczyk  
**Softysiński Kawecki & Szlęzak**

**Softysiński Kawecki & Szlęzak (SK&S)** is one of Poland's leading full-service law firms. With more than 190 attorneys, the firm provides the highest standard of legal services in all areas of business activity and is well-reputed for the quality of its work and for its innovative approach to complex legal problems. Since the 1990s, SK&S has been closely associated with the ever-changing technology sector, especially the dynamically developing IT industry. The firm

provides high-quality legal services to both individuals and companies, covering the full scope of TMT issues. The team works alongside the firm's fintech, IP/IT, privacy and tax teams to provide an innovative interdisciplinary service, and to help businesses use state-of-the-art technologies in a safe, cost- and time-effective manner. SK&S was the founding member of the New Technologies Association.

## Authors



**Agata Szeliga** joined SK&S in 1998 and has been a partner since 2009. She specialises in new technologies and personal data protection and in state aid and public procurement. Agata

has advised on cloud computing for many years, especially on its deployment in the financial sector. She also advises on AI and the sharing of data generated by devices or applications and helps review IT solutions from a privacy perspective or handling sensitive data protection requests or complaints. Agata is a member of the European Commission's Expert Group on B2B data sharing and cloud computing contracts.



**Sylwia Macura-Targosz** is a senior associate at SK&S, specialising in IT, new technologies and e-commerce law. She is experienced in the field of IT system

implementation projects and licensing issues and also has expertise in personal data protection and privacy matters. Sylwia has advised in a number of IT and employment projects in which personal data was of importance. She also acts as a Data Protection Officer for certain SK&S clients and supports entrepreneurs in proceedings conducted by the President of the Personal Data Protection Office. She is a member of the Polish New Technologies Law Association.

## POLAND TRENDS AND DEVELOPMENTS

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**Contributed by:** Agata Szeliga, Sylwia Macura-Targosz and Aleksandra Krześniak-Sałajczyk,  
**Sołtysiński Kawecki & Szlęzak**



**Aleksandra Krześniak-**

**Sałajczyk** is an associate at SK&S, and an advocate at the Warsaw Bar Association. She specialises in intellectual property cases (copyright,

industrial property, combatting unfair competition, IT system implementation contracts) and regulatory issues in telecommunications law or broadcasting law.

Aleksandra supports entrepreneurs in proceedings conducted by Polish regulatory authorities (President of the Office of Electronic Communications, National Broadcasting Council).

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### Sołtysiński Kawecki & Szlęzak

Jasna 26  
00-054 Warsaw  
Poland

Tel: +48 22 608 70 00  
Fax: +48 22 608 70 01  
Email: [office@skslegal.pl](mailto:office@skslegal.pl)  
Web: [www.skslegal.pl](http://www.skslegal.pl)



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SZLĘZAK

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Sołtyśiński Kawecki & Szlęzak

## 2024: A Brief Summary

2024 was a year of many significant and long-awaited amendments to Polish law. First, a new Electronic Communications Law (ECL) was adopted – a law implementing the European Electronic Communications Code (Directive 2018/1972), which basically replaced the existing Telecommunications Law in its entirety. Due to the very broad scope that the ECL regulates, including issues of performing activities in the electronic communications market or spectrum management (radio/TV frequencies), the law is called *the telecommunications market code*. From the perspective of mobile operators or Internet providers, the new guidelines for concluding or renewing consumer contracts are essential. These include the obligation to inform about the conditions under which the existing contract will be renewed, the obligation to provide certain information in plain language before concluding the contract, or the obligation to transfer funds from the pre-paid card in the situation of transferring the number to a new operator (until now, the funds were mostly lost). In this regard, service providers should check the compliance of their end-users documentation (T&C, price lists, etc) with the new regulations. As a general rule, existing marketing consents remain in force as long as they meet the conditions specified by ECL. It is also worth mentioning the new prerogative of the President of the Office of Electronic Communications (President of the OEC) to issue area decisions. Area decisions are to:

- replace individual decisions of the President of the OEC; and
- apply to a specific area and address general conditions rather than specific entities.

The second, long-awaited change was the implementation of the Copyright Directive (Directive

2019/790). This directive, along with other EU regulations (ie, Directive 2019/789 – SAT-CAB II Directive), was implemented in the Polish legal system through an amendment to the Act of 4 February 1994 on Copyright and Related Rights. The amendment introduced several important changes, two of which have evoked strong feelings. The first change involves providing royalties to authors (creators) and performers for streaming, meaning they will receive compensation for making their works available online, especially on video-on-demand platforms or streaming services. The second change introduces a new related right for press publishers. This amendment gives publishers the exclusive right to use press publications in specific areas, including reproduction and public display on the Internet. Furthermore, authors of works featured in these press publications are entitled to receive 50% of the revenue that the publisher earns from using the publication under this new related right.

As a rule, the amount of remuneration for press publishers should be agreed upon individually between platform providers and publishers. However, if the parties fail to reach an agreement in this regard, the body authorised to conduct mediation is the President of the OEC. If mediation is not successful – for example, the parties still fail to agree on the amount of remuneration – then the President of the OEC is authorised to issue a ruling on the amount of remuneration for the use of the new related right by platform providers to publishers.

The third significant change that had a major impact on the TMT sector was the entry into force of the Digital Services Act (EU Regulation 2022/2065; DSA). Although the law implementing the DSA in Poland is still in the legislative stage (see below for more details), many Internet entrepreneurs (e-commerce, hosting provid-

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Sołtysiński Kawecki & Szlęzak

ers, or marketplace) have already had to adapt their T&C to the new regulations and inform end users of the amendments. It seems that the key change in this area has been the implementation of mechanisms for reporting and verifying illegal content posted by users.

## 2025: Trends and Developments

Certainly, an important legislative change in 2025 will be the adoption of the law implementing the DSA – that is, an amendment to the Act of 18 July 2002 on the provision of electronic services and certain other laws. The law is currently at the legislative stage (the last bill dates back to December 2024), and its adoption is planned for Q1 2025. This bill aims to ensure the effective application of the DSA. According to the draft, the Digital Services Coordinator in Poland will be the President of the OEC. His tasks will include cooperation with national coordinators of other member states, the European Board for Digital Services and the European Commission. Competent authorities overseeing the implementation of DSA regulations in Poland will be the President of the OEC and the President of the Office of Competition and Consumer Protection (President of the OCCP) – each within their respective jurisdiction. In addition, a new consultative and advisory body, the National Council for Digital Services, is planned to be established under the President of the OEC. The purpose of the Council's functioning is to advise on matters related to ensuring the safe, predictable and trustworthy operation of the digital services market.

The bill also regulates the procedures involved in applying for injunctions against illegal content for providers of intermediary services. These procedures are to apply to four types of illegal content:

- (i) those that violate personal rights;

- (ii) those that constitute a prohibited act;
- (iii) those that violate intellectual property rights; and
- (iv) those that violate consumer protection rights.

Decisions in the cases referred to in points (i) – (iii) will be issued by the President of the OEC and not by a court, as was the case in an earlier version of the bill. The President of the OCCP will issue decisions in the cases referred to in point (iv). In particular – respectively – the President of the OEC or the President of the OCCP may order that access to the illegal content be prevented, which, in practice, will most likely be its removal. The entity that posted the illegal content, which is the subject of the injunction, is entitled to file a complaint with the court. Both the President of the OEC and the President of the OCCP will be authorised to impose administrative fines in the situations indicated in the bill. The maximum amount of fines is specified in the DSA.

The President of the OEC, as national Digital Services Coordinator, is also to certify out-of-court dispute resolution bodies or grant the status of trusted flaggers (whistleblowers) and vetted researchers. According to the draft, the law is to come into force within 30 days of its publication. Most likely, parliament will approve the law in Q1 2025.

The second, long-awaited legislation will be an amendment to the Act of 5 July 2018 on the National Cybersecurity System, implementing the NIS-2 Directive (Directive 2022/2555). The draft introduces a new division of entities governed by the Act's provision. Instead of the existing key service operators and digital providers, the legislator introduces a division into essential and important entities. Compared to the current law, the catalogue of economic sectors covered



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by the bill's provisions has been significantly expanded. The essential sectors have been supplemented with, among others, collective sewage disposal, management of ICT services, outer space or public administrations (including units of the public finance sector, research institutes, or bodies such as the National Bank of Poland or the National Health Fund). In addition, an essential entity is also an electronic communications entrepreneur, which is at least:

- a medium-sized business;
- a cyber security managed services provider, which is at least a medium-sized business; or
- a domain name registration service provider.
- In turn, the catalogue of important sectors has been expanded to include, among others:
- postal services;
- nuclear power investments;
- waste management;
- the chemicals sector (production, manufacturing, distribution);
- the food sector (production, processing and distribution);
- the production of other goods and equipment (medical products, computers, electronic devices, optical devices, machinery, motor vehicles, transportation equipment); and
- scientific research.

The catalogue of digital service providers (important entities) has changed slightly. According to the draft, such entities will be e-commerce, search engines, and social service network platform providers. In addition, an electronic communications entrepreneur who is a micro or small business is also an important entity.

An important change is the introduction of the principle of self-identification for essential and important entities. Previously, the authority responsible for cybersecurity issued decisions

to recognise an entity as a key service operator. According to the new draft, essential and important entities will now be required to self-register on a list maintained by the minister responsible for informatisation. These entities must submit an application for inclusion on the list within three months of meeting the criteria for recognition as either an essential or important entity.

Changes are also planned to the personal liability of managers of essential and important entities. Under current regulations, a penalty of no more than 200% of the manager's monthly salary may be imposed on the manager of a key service operator for failing to exercise due diligence in fulfilling certain obligations. The draft expands the possibility of imposing an administrative penalty on managers of essential and important entities and increases the maximum penalty by up to 600% of salary. If the manager of an essential or important entity is a multi-member body and no responsible person has been appointed, all members of the body are liable. The entity's manager may be, in particular, a member of the board of directors, a partner in charge of the company's affairs, or an individual conducting a business activity. According to the draft, the law will enter into force within a month of its announcement. At the moment, it is difficult to accurately predict when the new legislation will be adopted by parliament.

## *e-Delivery*

Another legislative change is the implementation of the e-Delivery (electronic delivery) service, which is the electronic equivalent of a registered letter with confirmation of receipt. The service is intended to help citizens and entrepreneurs communicate with the public administration. e-Delivery was introduced under the Act of 18 November 2020 on electronic delivery. Electronic delivery service is to be provided either by

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the designated operator (currently Poczta Polska S.A.) or by private, qualified providers of trusted services.

The obligation to have an e-Delivery address will apply to different entities at different points in time. As of 1 January 2025, the following non-public entities are required to establish an e-Delivery address:

- professionals of public trust (attorneys, legal advisors, notaries, etc);
- entities registered in the National Court Register as of 1 January 2025 (this includes companies, foundations, associations);
- entities applying for entry in the Central Registration and Information on Business as of 1 January 2025.

For non-public entities registered in the National Court Register or Central Register and Information on Business Activity before 1 January 2025, the obligation to establish an e-Delivery address takes effect in the later months of 2025 or 2026 (depending on the date of entry into the relevant register). Also, as of 1 January 2025, specific public authorities (as well as government authorities and budget units that either support them or support other public authorities or local government units) must have an e-Delivery address. However, in the case of public bodies, the legislator has allowed the obligation to be waived until the end of 2025 due to organisational reasons on the part of the body (with the public body itself making the decision in this regard).

For the purposes of e-Deliveries, a database of electronic addresses has been established, which is maintained by the minister responsible for informatisation (currently the Minister of Digital Affairs). Once an entity's address is entered into the above-mentioned database, all official

correspondence from public authorities using e-Delivery will be sent exclusively through this platform. Detailed instructions on how to apply for the creation of an address for e-Delivery can be found on the Ministry of Digital Affairs' website (available in Polish). The service is free of charge.

### *Consumer protection measures*

The President of the OCCP continues the actions initiated in 2023 towards strengthening consumer protection on the Internet. The actions of the President of the OCCP are directed against entrepreneurs who infringe on consumers' rights by failing to provide them with the information required by law or by using "*dark patterns*" (ie, practices of unfairly exploiting knowledge of consumers' online behaviour to influence their purchase decisions), in particular through improper price presentation, lack of information on who the seller is, use of false counters and misleading statements. In particular, the President of the OCCP is investigating Asian e-commerce platforms that have not complied with the obligations imposed by the EU Omnibus Directive and are thus misleading customers. The President of the OCCP has made allegations of consumer rights violations against the e-commerce platform Temu and has opened investigations into this case. The current action by the President of the OCCP on Asian e-commerce platforms is not unique but is part of a broader trend that also covers other countries in the European Union.

The President of the OCCP's actions also address another concern – the advertising of an alcoholic beverage on the Internet, in particular on social media such as Instagram or Facebook. Currently, work on amending the Polish Act of 26 October 1982 on Upbringing in Sobriety and Counteracting Alcoholism is in progress, which (at the moment) mainly covers the issue of the

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appearance of alcoholic beverage packaging and the appearance and content of information placed on it. However, there are proposals that the amendment should also cover the issue of whether the sale of alcoholic beverages on the Internet is permissible. At present, the issue of the admissibility of online sales of alcoholic beverages is not explicitly regulated in Polish law.

## *E-commerce*

The next challenge for the e-commerce industry will be the implementation of European accessibility standards for certain products and services considered crucial for the daily, free functioning of people with disabilities and functional limitations. As of 28 June 2025, the Act of 26 April 2024 on Ensuring Compliance with Accessibility Requirements for Certain Products and Services by Economic Entities will be enacted. The Act implements Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services (European Accessibility Act). The new rules impose obligations to adapt to the needs of people with disabilities and persons with special needs – such as products and services, inter alia, as desktop computers, laptops, smartphones, tablets, e-book readers, access to audiovisual media services, retail banking, dissemination of e-books or e-commerce services. The obligations apply to manufacturers, authorised representatives, importers, distributors and service providers. Consumers will be entitled to complain to the economic entity about the failure to ensure accessibility requirements. In addition, economic entities that do not comply with the statutory requirements will be subject to an administrative penalty of up to ten times the average salary or up to 10% of the economic entity's turnover for the previous year.

## *New EU regulations and The Draft Act*

On 1 August 2024, Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No. 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (AI Act) – the world's first comprehensive legal regulation related to the subject of AI – came into force. In Poland, on 16 October 2024, the Draft Act on Artificial Intelligence Systems was published. The primary objective of this legislation is to align Polish regulations with the requirements imposed by the AI Act, which mandates EU member states to establish a supervision system for artificial intelligence that complies with EU regulations.

The Draft Act is at the stage of completed public consultations, and the Act should be enacted by 2 August 2025, when the provisions of the AI Act on national market regulators will start to apply. The Draft Act applies to entities that, most generally, create and implement AI systems or use them professionally in their organisations.

One of the primary goals of the Draft Act is to establish a body to oversee the area of artificial intelligence in Poland. According to the Draft Act, this role will be assumed by a newly established collegiate body, the Commission for the Development and Security of Artificial Intelligence. The Commission's key activity will be to monitor the AI market and support businesses in implementing the provisions of the AI Act, in particular, to ensure the safe use of artificial intelligence systems. The Commission will be empowered to issue general and individual interpretations for companies and best practice recommendations on the use of artificial intelli-



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gence. The Commission will also be empowered to impose administrative penalties, including penalties for non-compliance with safety standards, inadequate risk assessment, or improper reporting of AI-related incidents.

The Draft Act also provides for the establishment of the Social Artificial Intelligence Board – a body whose task is to express opinions and positions on matters referred to it by the Commission and the possibility of filing complaints (to the Commission) for violations of the AI Act, especially on the issue of prohibited practices.

EU Regulation 2023/2854 of the European Parliament and of the Council of 13 December 2023 on harmonised rules on fair access to and use of data and amending Regulation (EU) 2017/2394 and Directive (EU) 2020/1828 (Data Act) entered into force on 11 January 2024 and will become applicable from 12 September 2025. The Data Act primarily covers issues such as:

- the mandatory sharing to users or third parties of non-personal data generated by products connected to the Internet and related services; and
- facilitating switching between cloud service providers.

In Poland, public pre-consultation on the designation of authorities responsible for the application and enforcement of the Data Act has been completed. However, it is currently unclear what these authorities will be. This authority is most likely to be the current telecommunication and postal regulator (*Prezes Urzędu Komunikacji Elektronicznej*), provided that the monitoring of the application of the Data Act with respect to personal data will be performed by the current personal data regulator (*Prezes Urzędu Ochrony Danych Osobowych*).

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