YEARBOOK 26

WARDYŃSKI + PARTNERS

Our 16th *Yearbook*. Financing and public procurement in the defence sector. European protectionism. Green organisations. Renewable energy projects. Mining concessions. Transparency of apartment prices. CAR/EAR insurance. Employers and competition law. B2B contracts. Temporary work. Matrix employment structures. Management stock options. Employee share ownership plans. Advance dividend distributions. Indemnification of board members. Squeeze-out of minority shareholders. Poland as a tax hub. Modern philanthrophy. Restitution of artworks. Reform of industrial designs. Regulatory protection of medicines. Product liability and medical devices. The AML Regulation.

ABOUT WARDYŃSKI & PARTNERS

Wardyński & Partners has been a vital part of the legal community in Poland since 1988. We focus on our clients' business needs, helping them find effective and practical solutions for their most difficult legal problems.

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There are over 150 lawyers in the firm, serving clients in Polish and English, but also, through our language desks, in Czech, French, German, Italian, Korean, Russian, Spanish and Ukrainian. We have offices in Warsaw, Kraków, Poznań and Wrocław.

We share our knowledge and experience through our portals In Principle and HRlaw.pl, the firm *Yearbook*, the newtech.law blog, lively commentary on the Public Procurement Law and the GDPR, and numerous other publications and reports.

2026 YEARBOOK

YEARBOOK 26

WARDYŃSKI + PARTNERS

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The 2026 *Yearbook* does not constitute legal advice or a basis for making business decisions.

CONTENTS

Dear Readers,

After 15 years of publishing the firm *Yearbook*, we can see how the choice of topics over the years has reflected the changing socio-economic moods in Poland, Europe and the world.

This year we begin with articles on the defence sector, whose dynamic growth is a sign of the times. We examine the legal aspects of national defence in terms of investment and public procurement.

Another hot topic in public procurement is European protectionism. After years of imbalance in the treatment of non-EU contractors in the EU, and EU contractors outside the EU, a range of measures have been enacted to protect the EU's internal market for public contracts. The article examines whether the changes will ultimately benefit that market.

We also review other changes in the law which may have the opposite impact from what was intended. Legitimate social participation in real estate development sometimes leads to abuse of their rights by environmental organisations. And the needed reform to zoning regulations may cause problems in carrying out also-needed renewable energy projects.

We devote further articles to the transfer of mining concessions, mandatory publication of home prices on the primary market, insurance against construction risks, and the reform of industrial designs in the European Union.

We also consider whether Poland has a chance to become the home of choice for wealthy entrepreneurs, investors, and specialists. We take a look at state-of-the-art, strategic philanthropy. We write about the difficulties facing individuals and institutions seeking to recover looted artworks.

We devote a lot of space to the labour market: actions by employers that could infringe competition law, the risk of

B2B contracts being reclassified as employment contracts, the evolution of temporary work, as well as matrix organisational structures where employees may report to superiors outside of their own company.

We explore stock options for employees and managers from both the capital markets side and the tax side.

Expanding on a theme we discussed last year, the impact of share trading on dividend payments, this year we focus on the distribution of advance dividends. Given the range of potential factual scenarios, this topic deserved more thorough study.

We write about indemnification agreements protecting members of corporate boards when there is a conflict of interest between parent and subsidiary. In the case of limited-liability companies, we explain the procedures that must be followed and the conditions that must be met for the majority shareholder to squeeze out minority shareholders.

We explore the current system of EU rules for regulatory protection of medicinal products, as well as how the new Product Liability Directive could affect the medical devices industry.

And we look ahead to the new obligations in the fight against money laundering and financing of terrorism, with next year's entry into force of the EU-wide AML Regulation.

We wish you fruitful reading!
The Editors

Financing investments in the defence sector

Poland and other EU member states are raising their defence spending. In 2024 EU countries spent EUR 343 billion on defence, 19% more than the previous year. In 2025 this figure was projected to hit EUR 381 billion. Poland spent 3.7% of its GDP on defence in 2024, placing it at the head of EU countries in this metric. All of these data point to the growing importance of financing for the defence sector. In this article we conduct an overview of financing sources and indicate several elements deserving of particular attention when arranging financing in this sector.

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The international perspective

Spending on the military and defence infrastructure is typically financed out of each country's national budget. A number of foreign sources of financing do exist, however, which can significantly support each country's efforts to invest in defence.

EU programmes

In response to the existing threats, the European Union is implementing or reorganising numerous programmes and instruments supporting the financing of the defence sector. These include:

- Security Action for Europe (SAFE)
- European Defence Industrial Development Programme
- Digital Europe Programme
- Horizon Europe
- European Defence Fund
- Connecting Europe Facility
- Strategic Technologies for Europe Platform.

Under the SAFE loan mechanism, up to EUR 150 billion will be earmarked for military spending. Of that, EUR 43.7 billion will go to Poland to finance projects such as air and anti-missile defence, artillery systems, and purchases of ammunition, drones, and anti-drone systems.

European Investment Bank

The European Investment Bank is playing a bigger and bigger role in financing defence at the European level. In its updated financial plan, the EIB's investments in the European security and defence sector have been raised to a record EUR 3.5 billion. Moreover,

long-term financing for SMEs in the European defence sector supply chain has been raised to EUR 3 billion. These funds will be released to companies via cooperation with commercial banks. The EIB is currently analysing dozens of projects from all around the EU for the possibility of financing them.

Export credit agencies

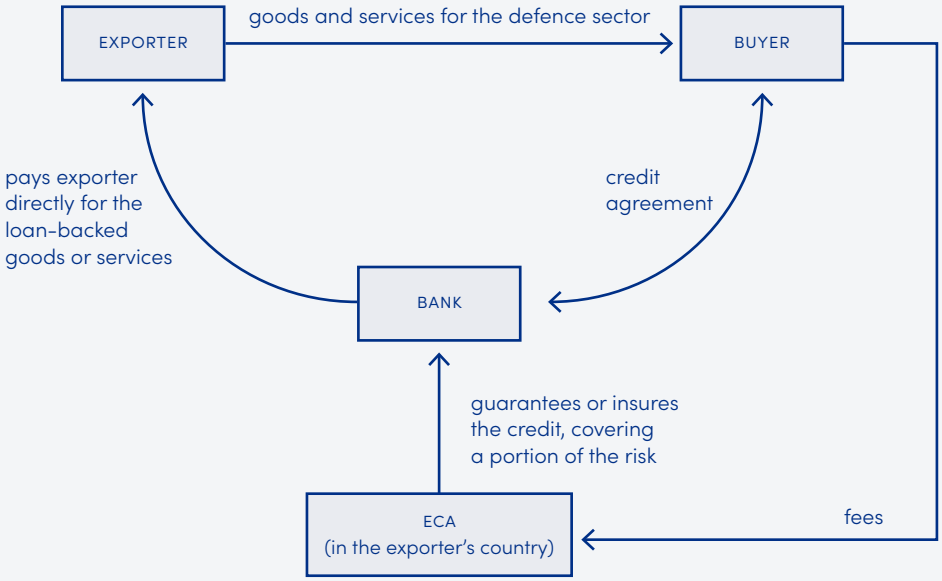
In international trade, a major role is played by financial institutions referred to collectively as export credit agencies (ECAs). These are usually state institutions supporting domestic exporters by granting them or their foreign customers financing, guarantees, and insurance for export transactions. The main aim of these agencies is to increase the competitiveness of national exports, especially when the commercial or political risk is too high for commercial banks.

ECAs are particularly important in the defence sector, where the financing costs and the risk associated with financing of projects are high, and thus commercial banks are afraid to provide financing, or when they do provide financing they do so under less favourable terms. The involvement of an ECA backing a supplier of technology or equipment from a country can significantly raise the attractiveness of the supplier's bid in competitive tenders.

Export credit agencies offer:

- **Export insurance** protecting exporters from the risk of non-payment by the foreign customer (e.g. due to insolvency or government policy)
- **Credit guarantees** allowing commercial banks to finance export transactions with less risk, as the ECA guarantees repayment of all or part of the credit
- **Direct credit** to foreign buyers of goods or services from domestic exporters
- **Refinancing**, where the ECA may buy out credit granted to purchasers of exported goods, thus improving the bank's financial liquidity.

SCHEME FOR FINANCING BY ECA



The involvement of export credit agencies or the European Investment Bank also increases the mobilisation of private capital in financing rapidly growing expenditures in this sector. The role of commercial banks and funds in financing of this type is increasing, both as a supplement to government spending and in financing commercial ventures in the defence sector.

Regulatory changes, such as amendments to the Sustainable Finance Disclosure Regulation giving financial investors greater opportunities to consider investments and financing of assets from the defence sector, are intended to help increase the share of private capital in this area.

SFDR
Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector

National perspective

In Poland, apart from financing out of the state budget, there are also examples of commercial financing and venture-capital funding for defence.

Financing of the defence sector in Poland may be earmarked for:

- Acquisition of equipment, already produced or made to order, from Polish or foreign producers (e.g. from EU countries, the US, or South Korea)
- Development of production capacity and local infrastructure in Poland.

Although state-owned entities play the biggest role in the growth of the arms sector in Poland, the Ministry of National Defence has announced plans to open cooperation with the private sector, which has the necessary facilities, technology and knowhow.

Special role of Bank Gospodarstwa Krajowego

BGK is a development bank 100% controlled by the Polish State Treasury. Its main tasks include administering "pass-through funds" used to finance a portion of public spending. The most important of these funds in the context of the defence sector is the Armed Forces Support Fund established under the Homeland Defence Act.

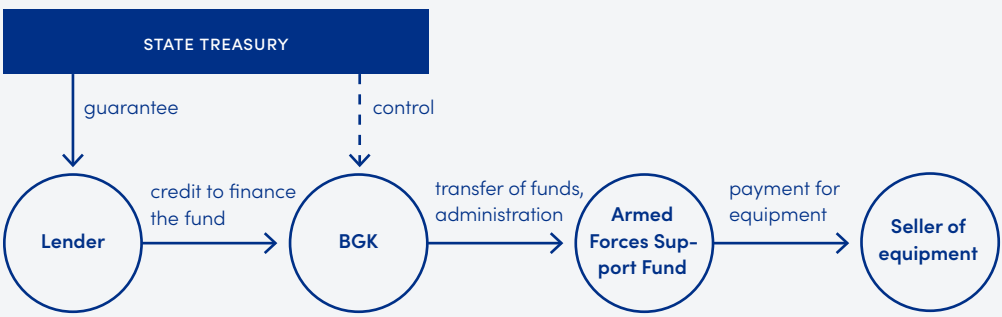
Art. 41 of the Homeland Defence Act of 11 March 2022

In the financing of government purchases for the defence sector, BGK acts as a borrower or an issuer of bonds. BGK may be the borrower for example in a government contract to purchase arms abroad financed by commercial banks and ECAs from the supplier's country. BGK passes the borrowed money on to the Armed Forces Support Fund, out of which investments are made such as the purchase of armaments for the needs of the Polish Armed Forces.

DESIGNATED USES FOR MONEY FROM THE ARMED FORCES SUPPORT FUND (ART. 41(2)–(3) OF THE HOMELAND DEFENCE ACT)

- Any purposes designated by the Ministry of National Defence in programmes for development of the Armed Forces
- Redemption and payment of interest on bonds issued for the purpose of financing the Armed Forces Support Fund and to cover the costs of issuing bonds
- Repayment of financing granted to the Armed Forces Support Fund from BGK's own resources
- Paying obligations arising out of any payments made by the State Treasury under guarantees of bonds issued for the purpose of financing the Armed Forces Support Fund
- Repaying credit incurred for the purpose of financing the Armed Forces Support Fund, along with interest and other related costs
- Payment of financial obligations other than credit and bonds, along with interest and other related costs.

SCHEME FOR FINANCING FROM STATE TREASURY GUARANTEES



State Treasury guarantees

An instrument facilitating investments worth billions of zlotys is guarantees from the State Treasury, which by law secure credit and loans incurred by BGK for financing the Armed Forces Support Fund. These State Treasury guarantees secure the credit incurred by BGK in full, which is an extremely important credibility factor for lenders. State Treasury guarantees play a key role in financing transactions of this type, as they secure the entire transaction with state funds.

Apart from executing government contracts, companies involved in the defence sector take out commercial credit from financial institutions, or issue bonds for these purposes. Although the state is often the sole or principal shareholder of Polish defence companies, these companies take out financing and grant security interests on terms similar to those found in commercial financing of other types of companies.

But these companies must also meet additional requirements to operate in the defence sector. Fulfilment of these requirements may be verified by banks or other entities financing the companies' operations.

These requirements include:

- Facility Security Clearance—a document confirming that the business has the ability to protect classified information; this certificate is necessary if performance of the contract will entail access to restricted information labelled "confidential," "secret" or "top secret"
- Concession from the Ministry of the Interior and Administration if the company plans to manufacture products intended for the military, the police or state services, conduct trading in weapons and ammunition, or repair, modification, storage or transport thereof under contract
- Approvals or opinions from the Minister of National Defence or the Minister of State Assets, depending on the requirements set forth in the companies' articles of association
- Other specific regulations, e.g. on intellectual property rights or cybersecurity.

Restrictions on access to classified information in defence companies may hinder the full assessment and due diligence analysis of financed projects.

Act on Economic Activity Involving Manufacture and Trade in Products for Use by the Military or Police of 22 June 2001

The special requirements and regulations arising in transactions of this type should be identified in the financing documents.

Additional challenges may be posed by the continually evolving sanctions regulations and restrictions on international trade in instances where the manufacturing chain is dependent on supplies from other countries (e.g. involving rare earth minerals or electronic components). These may carry over into provisions of the financing documents (e.g. events of default, acceleration of loan repayment, as well as specific representations and warranties), which

Regulation of the President of the Council of Ministers of 24 September 2021 on the List of Companies of Strategic Importance for the State Economy

DECISION NO. 305/MON of the Minister of National Defence of 24 October 2016 on the List of Undertakings Performing Defence and State Security Tasks in Cooperation with the Military Property Agency

consequently may diverge greatly from the standards usually encountered in credit agreements, such as the LMA standards.

From the perspective of the financing institutions, we should also note the potential difficulties in future enforcement of receivables out of enterprise assets which may be used for defence purposes. These limitations may arise from the classification of the entity as a company of strategic importance for the state economy or inclusion in the list of companies in Minister of National Defence decision 305/MON. These issues should be taken into account when securing the transaction, potentially by establishing security interests against the assets of such companies.

Venture capital as a form for financing the defence sector

The development of the defence sector is largely dependent on growth of technology. Financing methods typical for new technologies are used to support innovative defence solutions. One of these is the venture-capital model.

Both private and public venture-capital funds are displaying an interest in investing in defence startups. Notable examples include:

- In the NATO context, the NATO Innovation Fund, which provides backing for entities pursuing revolutionary new technologies in the areas of artificial intelligence, biotech, energy, manufacturing, space, and quantum computing
- Within the EU, the European Defence Fund, whose mission is to raise competitiveness by encouraging joint R&D in defence capabilities
- Poland is also considering the concept of a VC fund with the involvement of state-controlled entities alongside commercial investors, to invest in key segments of defence technology such as drones, cybersecurity, AI, delivery automation, and resource management.

Summary

Financing of the defence sector is strategically important for the state and its security, and this is reflected in the distinct features of financing in this area compared to financing of projects in other

sectors of the economy. The main source of financing is through the state, but the need for dynamic growth in defence capabilities (of Poland and other EU member states) is opening the way for private forms of financing as well as private commercial ventures.

This trend is evident in the increasing number of new programmes and funds launched at the EU and national levels, and in the increasing capital engagement of a range of support institutions (the European Investment Bank, export credit agencies) and commercial entities.

Defence spending will continue to grow, and along with it, the role of various sources for financing investments in this area.

The ins and outs of defence procurement

Defence contracts are often of high value and technologically complex, including prototyping, certification, and special processes for controlling the quality and safety of equipment. In practice, this means that a company seeking a defence contract must be prepared not only to meet the standard tender requirements, but also additional requirements such as security clearances for their staff, protection of classified information, and ensuring continuity of supply even in a crisis.

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public procurement

Procurement processes in the defence sector are often highly complex. The procedures are time-consuming and unpredictable for contractors, and many years may pass between the time a purchasing decision is made and actual delivery of the equipment. The matter can be further complicated by political conditions or the actions of lobbying groups.

In an ordinary public procurement, primary weight is given to price and performance time. But in defence procurement, strategic issues often take priority: whether the equipment will be compatible with existing equipment, whether the supplier can guarantee servicing for decades to come, whether the supply chain is resilient to geopolitical disruptions.

What is the legal meaning of "defence procurement"?

Poland's Public Procurement Law defines defence procurement in objective terms, to cover such projects as:

- Supply of military equipment (including parts and software)
- Supply of sensitive equipment
- Works, supplies and services connected to securing facilities or the lifecycle of equipment
- Works and services intended solely for military purposes, or of a sensitive nature.

"Sensitive" means intended for purposes of security, and connected with classified information or other restricted information.

Essentially, the subject matter of the procurement is decisive on this classification, rather than the status of the contracting authority or the source of financing.

Thus, a defence procurement might involve the purchase of tanks for the army, as well as construction of a special security system for a strategic facility, or even maintenance services for military equipment. The Public Procurement Office divides such contracts

into "defence" (military) and "security" (non-military), where the second category involves "sensitive" equipment, works or services.

A characteristic feature of such contracts is that they are tied to classified information—subject to "top secret," "secret," "confidential" or "restricted" clauses (or other protected information). This entails special rules for communications (e.g. the use of hard copies, fax or the traditional postal service, limited transparency), and access to restricted documents only by authorised persons.

Special procedures—a different logic for awarding contracts

The defence provisions of the Public Procurement Law display numerous differences from classic procurements. Firstly, they admit departures from the principle of full electronic communications. And the main procedures are a limited tender and negotiations with publication of a contract notice, i.e. procedures involving pre-screening of contractors: not just anyone can participate in a defence procurement. The set of potential contractors may be limited to countries in the EU or the EEA or covered by certain international agreements. There are additional grounds for exclusion involving the security of information and supplies, as well as reliability from a defence perspective. The criteria for evaluating offers can and should reflect the peculiarities of defence. Apart from price and cost, other factors that must be considered include, for example, the security of supplies, interoperability, and operational properties.

The contracting authority may establish additional grounds for rejection of bids and invalidation of the procedure, and also set additional requirements, e.g. that the equipment offered is already being used by NATO forces or that the manufacturer holds certain quality certifications.

Non-competitive procedures, negotiations without publication of a contract notice, or single-source procurement may be used when the standard procedures could endanger the security or effectiveness of operations. They are permissible when there is an urgent operational need, in a crisis, when there is an absence of bids, when required by R&D specifications, or when offers of

THE CONTRACTING AUTHORITY EVALUATES

transport services for a mission are of short validity. Single-source procurement is also possible in the case of additional supplies or supplemental purchases, in order to ensure compatibility. In practice, this facilitates rapid purchases without competition—but only in strictly defined situations.

When the Public Procurement Law does not apply at all

Meanwhile, the Public Procurement Law provides for exclusions or limited applicability of the act for contracts where the documentation includes restricted clauses, or when required by an important interest of state security, special international procedures, intelligence operations, or R&D programmes, or when contracts are awarded in operating zones outside the EU. In practice, the most sensitive purchases can be made outside of the regime of the Public Procurement Law.

Who is an eligible contractor?

The set of eligible contractors in defence procurements is limited to those from EU or EEA member states, or countries with which relevant agreements are in place, although the contracting authority may admit other entities, and in that case they may be offered

less favourable terms. This is a major limitation arising from the need for security of supplies—the state wants to be certain that the supplier will not be influenced by hostile countries.

The exclusions cover the standard grounds as well as specific infringements of the security of information and supplies (with a five-year period for sanctions). The contract notice may also allow exclusions to be waived in the general interest, for example when an excluded contractor is the sole supplier of critical equipment.

Security comes first

The contracting authority can demand broad commitments from contractors and subcontractors concerning protection of the confidentiality of information, with the right to screen personnel involved in performance of the contract, and may also set requirements for the security of supplies (supply chain, exports, increased needs in a crisis, maintenance and upgrades).

In practice this means the need to implement solutions provided for in the Act on Protection of Classified Information, and guarantees that the contractor's personnel hold the appropriate security clearances. The contractor must also document the entire supply chain and guarantee the capacity to ramp up production in the event of a war or other crisis. In the case of supplies, the contract will include a commitment to provide long-term technical support and delivery of spare parts.

It is also possible to impose subcontracting requirements (through a selection procedure and by setting percentage ranges, up to a maximum of 30% of the contract value) without releasing the general contractor from liability. The contracting authority may require that a portion of the contract be performed by Polish firms—an element of offset policy to help grow the domestic defence industry.

New special act—a revolution in defence projects

A special act on strategic and key investments for defence and public safety has been in force since September 2025. It establishes special rules for preparing and implementing such projects, and designating protective zones around them. The special act responds to the need for rapid expansion of Poland's defence infrastructure in the face of geopolitical threats.

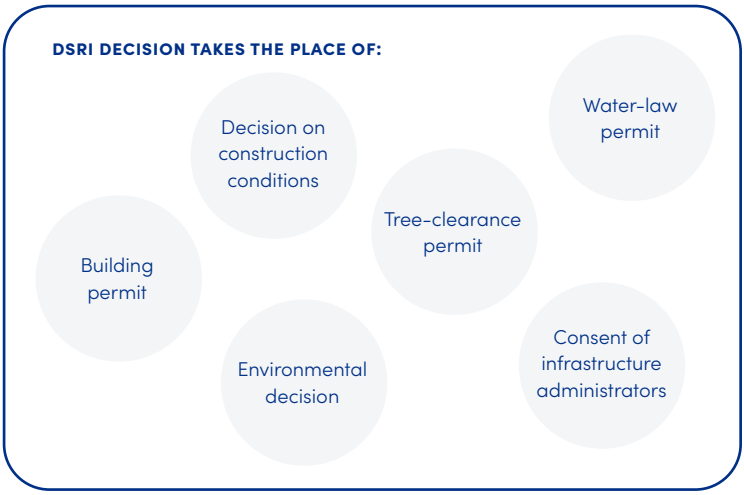
The special act generally excludes application of the Public Procurement Law to procurements by the Polish Armed Forces for unmanned aircraft and unmanned systems with drone countermeasures, so long as the solution has undergone testing by the Armed Forces, has a positive recommendation, and has the approval of the Ministry of National Defence. This exclusion also applies to accompanying projects (e.g. hangars, platforms and installations for operating drones).

In a decision containing classified information, the defence minister may designate a given project as a "key investment" that furthers an important interest of state security (i.e. under Art. 12 of the Public Procurement Law, a project that is exempt from that act). This gives the ministry significant latitude in designating priority projects.

DSRI, an administrative super-fast track

The central tool of the special act is the "decision on execution of a strategic investment" (DSRI), which the province governor (*wojewoda*) is supposed to issue within 90 days after submission of a complete application.

A DSRI decision replaces a number of standard decisions (e.g. construction, water and environmental), and opinions required for the decision are to be provided within 21 days—failure to provide an opinion within that time is deemed to mean a lack of objections. This is an example of "tacit approval."



The strategic investor files an application with the province governor for a licence to carry out a strategic project. The application is broad, identifying the property, the borders, protective zones, divisions and so on. The decision will specify such aspects as demarcation lines, approve the divisions and transfer of rights to real estate, and approve the construction design, and may impose technical and organisational conditions (securing the area, temporary structures, expansion of networks and roads, and restrictions on use of the property).

Appeals against a DSRI decision are considered within a brief timeframe, and filing of the appeal will not necessarily halt construction, particularly when the province governor makes the decision immediately enforceable.

A DSRI decision is less subject to attack, as it cannot be set aside in its entirety if it is only partially defective. This protects against a situation where a minor formal defect in one element of the decision could hold up the entire project.

Strategic or key projects are not subject to the environmental impact assessment regulations or the Water Law (or those acts apply only in a very limited range). The decision takes the place of permits under the Construction Law; spatial planning and revitalisation rules do not apply.

> **DSRI is a revolutionary solution. One decision takes the place of dozens of approvals.**

Protective zones—new restrictions around strategic facilities

When an application to establish a protective zone is filed, the head of the local commune (*wójt*) will suspend the issuance of conditions for construction and siting for public purposes, until the zone is established. The province governor will establish the zone through an act of local law (after obtaining the opinion of the head of the commune), and local zoning plans will not apply insofar as they are inconsistent with the prohibitions or restrictions for the protective zone.

These prohibitions concern such matters as construction, utility transmission installations, hazardous materials, electromagnetic emissions, landfills, forest management, and water protection. The owners are entitled to compensation or buyout of a portion of their property.

This is vital information for businesses operating in the vicinity of planned or existing defence facilities—they may become subject to restrictions in their operations, but opportunities for cooperation in securing the protective zone may also arise.

SAFE programme—billions from the EU for Polish defence

In September 2025 the European Commission awarded Poland PLN 43.7 billion from the SAFE programme (Support for Arms and Firearms in Europe). This made Poland the biggest beneficiary of this EU fund totalling EUR 150 billion.

The SAFE instrument is the first pillar of the ReArm Europe Plan—Readiness 2030, developed by the Commission, which proposes raising over EUR 800 billion in defence spending. This is a system of preferential long-term loans for the member states. Funds from the SAFE programme can be used only for strictly defined categories of defence-related products.

The priorities for Poland are air and missile defence, artillery systems, ammunition, drones and anti-drone systems, troop mobility, and the Eastern Sheld project—construction of fortifications and defence infrastructure along the eastern border.

The allocation of SAFE funds will not only strengthen the military, but also provide a powerful stimulus for the Polish economy. According to government projections, the defence industry should become a flywheel driving the economy. For Polish businesses, this is a signal that it is worth investing in manufacturing capacity, certifications, and the development of defence technologies.

European protectionism in public procurement

For a long time, contractors from third countries benefited from the uniform market for public procurement in the EU without being subject to the regulatory restrictions imposed on EU-based bidders. Meanwhile, contractors from the EU often did not receive equal access to public procurements in the same third countries. This may explain the increasingly stronger strain of European protectionism in the awarding of public contracts. Poland has taken an especially restrictive approach in this area.

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public procurement

A uniform market for public procurement functions within the EU's internal market, where public contracts are awarded in accordance with defined rules, and proceedings are generally conducted under uniform procedures. This framework is based on EU regulations and case law from the Court of Justice of the European Union, directed primarily to the member states and contractors from the member states.

For a long time contractors from third countries benefitted from this system by participating in procurement proceedings but without being subject to the regulatory restrictions imposed on EU-based bidders. This competitive asymmetry had another side as well: contractors from the EU encountered barriers to access to public procurement markets in third countries (no reciprocity-based access).

These and other circumstances led EU authorities, followed by some of the member states, to implement a range of initiatives in the spirit of proactive European protectionism, with the aim of protecting the internal market for public contracts.

Commission guidance on bidders from third countries

C-652/22, *Kolin Inşaat Turizm Sanayi ve Ticaret AŞ v Državna komisija za kontrolu postupaka javne nabave*

Even before issuance of the judgment in *Kolin,* the EU took steps heralding a trend of European protectionism in the field of public procurement.

One of the first shots across the bow was the communication "EU-China—A strategic outlook" from March 2019. This document, focusing on dealings with China, proposed ten actions to be discussed and ratified by the European Council. Here we cite three of them.

SECTIONS OF THE COMMUNICATION "EU-CHINA—A STRATEGIC OUTLOOK"

ACTION 6	To promote reciprocity and open up procurement opportunities in China, the European Parliament and the Council should adopt the International Procurement Instrument before the end of 2019
ACTION 7	The Commission will publish guidance by mid-2019 on the participation of foreign bidders and goods in the EU procurement market
ACTION 8	To fully address the distortive effects of foreign state ownership and state financing in the internal market, the Commission will identify before the end of 2019 how to fill existing gaps in EU law

Joint Communication of the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy to the European Parliament, the European Council and the Council, "EU-China—A strategic outlook," JOIN/2019/5

In pursuit of these actions, on 13 August 2019 the Commission adopted its Guidance on the participation of third-country bidders and goods in the EU procurement market. This document no longer focused solely on China, and was designed to support contracting authorities by raising their understanding of practical aspects of procedures for award of public contracts set forth in EU laws, in situations where bidders from third countries take part in the proceedings.

The Commission pointed out that in a number of international agreements, such as the WTO Government Procurement Agreement (GPA) and bilateral free-trade agreements with chapters on public procurement, the EU undertook to ensure access to its public procurement market to contractors from specific third countries with respect to certain construction works, supplies and services. The signatories of these agreements are entitled to be treated no less favourably than contractors from the EU (within the areas covered by the agreements). But this does not apply to bidders from third countries that are not parties to such agreements with the EU, whose situation looks different, as the Commission stressed.

Although the guidance was clear, it did not actually carry over to the possibility or conditions for involvement of non-EU contractors in EU-based procurement. In practice, there was no differentiation in their position.

Foreign Subsidies Regulation

Only a further step, in the form of a binding law (not just guidance), could be regarded as a full initiative by the EU to protect the uniform market for public procurement. This refers to Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market, which entered into force on 12 January 2023.

This sweeping regulation equipped the European Commission with real oversight instruments to combat distortions to the internal market due to financial contributions from third countries. Among other powers, the Commission may issue a decision prohibiting the award of a contract to a specific contractor, particularly when the Commission finds that the contractor benefits from a foreign subsidy distorting the internal market but fails to offer remedial commitments, or the proposed commitments are neither appropriate nor sufficient to fully and effectively remedy the distortion.

This applies to contracts with very high values, as Regulation 2022/2560 is limited by threshold amounts, and the oversight proceedings are also conducted depending on the amounts of the foreign subsidies, the size of the contract, and whether the contract is divided into parts. For this reason as well, the regulation affects contractors who are generally interested in the highest-value contracts. But, as the practice shows, these are the contracts attracting the greatest interest of foreign contractors, and it is here that the distorting financial contributions most often occur.

Rulings by the Court of Justice in *Kolin* and *Qingdao*

A breakthrough in this area came with the judgment by the Court of Justice of 22 October 2024 in C-652/22, *Kolin*, subsequently confirmed by the judgment of 13 March 2025 in C-266/22, *Qingdao*.

C-266/22, *CRRC Qingdao Sifang Co. Ltd, Astra Vagoane Călători SA v Autoritatea pentru Reformă Feroviară, Alstom Ferroviaria SpA*

In these judgments, the Court of Justice held that contractors from outside the EU (as well as contractors from countries which have not entered into an agreement with the EU guaranteeing mutual, equal access to their markets) do not have a right to be treated equally in public procurement proceedings. However, the Court of

Justice held that the competence to decide on whether a specific contract award procedure should be open or closed to contractors from third countries lies with the competent contracting authority.

These rulings applied to the entire internal market, regardless of the value of the contract. It should be pointed out that these rulings, while they undoubtedly further the protection of the EU internal market by limiting outside influences, essentially do not constitute a source of new law. The Court of Justice only found that access to the public procurement market is guaranteed exclusively for contractors from the EU or countries which have concluded relevant agreements with the EU. These guarantees are found in the Sectoral Directive and the Classic Directive, but the directives do not recognise such guarantees for contractors from third countries not indicated in the directives.

But these holdings almost immediately raised doubts whether they need to be implemented in the legal systems of the EU member states. In Poland, the Public Procurement Office, recognising the significance of these judgments, has published a series of guidelines and instructions concerning practical implementation of the holdings. Consequently, the first contracts awarded in proceedings in which access to contractors from third countries was restricted are now being executed.

CLASSIC DIRECTIVE
Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (specifically Art. 25)

SECTORAL DIRECTIVE
Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (specifically Art. 43)

Amendment to Poland's Public Procurement Law

From the perspective of the end of 2025, the furthest-reaching protectionist measure with respect to the Polish market is the amending act of 9 July 2025, which went into effect on 9 September 2025. It amended both the Public Procurement Law and the Act on Concession Contracts for Construction Works or Services.

The amendment addressed the possibility and conditions for seeking the award of a public contract in Poland by contractors with their registered office or residence in a third country, i.e. not a member state of the EU or a party to the WTO GPA or other international agreements to which the EU is a party ensuring access to public procurement markets on a reciprocal and equal basis. The amendment also applies to construction works, supplies, and services from such countries.

The Polish parliament introduced the following rules in the Public Procurement Law:

Public Procurement Law Art. 16b(1)(1)

– A decision on whether to admit third countries to participate in a contract award procedure is to be taken by the contracting authority in each specific procurement, and the substance of the decision must be reflected in the tender documents.

Public Procurement Law Art. 16a, in connection with Art. 226(1)(5a) and Art. 343(3)(4a)

– If the contracting authority does not specify in the tender documentation or contract announcement that it will admit to the procedure contractors from "third countries not parties to international agreements," this means that such contractors will *not* be allowed to seek the award of that contract.

Public Procurement Law Art. 16b(1)(1)

– If the contracting authority does admit contractors from such third countries to participate in the procedure, it must state this in the tender documents or contract announcement.

Public Procurement Law Art. 16b(2)

– If the contracting authority does admit contractors from such third countries to participate in the procedure, it will also be able to apply in respect to those contractors different (less favourable) conditions for participation in the procedure; for example:
  - Apply different grounds for exclusion or affirmative prerequisites for participation in the procedure
  - Require the submission of different subjective or objective types of evidence.

Public Procurement Law Art. 505(1a)

– Contractors, participants in a contest, or other entities from such third countries shall not be entitled to measures of legal review, e.g. the right to appeal to the National Appeal Chamber.

Will greater protectionism be advantageous for Poland?

These actions undoubtedly fall within the trend toward European protectionism in the field of public procurement. Currently it is up to the contracting authority to decide whether a specific procurement will be open only to European contractors, and thus closed to participation of contractors from third countries not bound by agreements with the EU.

But restricting participation in a contract award procedure solely to European contractors can carry serious consequences. This is because the European market (expanded to include countries

with which the EU has signed relevant agreements) may not offer solutions meeting the requirements of the procurement, or there may not be very many such contractors capable of executing the contract. Moreover, as a rule, the contracting authority may not obtain this information until after it opens the bids.

It should be stressed that the rulings by the Court of Justice, and their interpretation by the Public Procurement Office in Poland, suggested that if the contracting authority is silent on the matter, then the participation of contractors from third countries should be allowed. Now the law in Poland applies the opposite rule on this issue. Thus, when it comes to European protectionism in public procurement, Polish lawmakers have taken a restrictive approach. But will this ultimately be advantageous for the public procurement system? This has yet to be tested in practice.

Ecological organisations in the construction and development process: The use and abuse of law

The broad guarantees of participation by ecological organisations in environmental matters largely derive from standards of international law and are designed to effectively protect the environment. But the lack of oversight of how these entitlements are exercised may lead to abuses. This particularly threatens the interests of investors, both private and public.

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ENVIRONMENTAL IMPACT ASSESSMENT ACT
Act on Access to Information on the Environment and Environmental Protection, Social Participation in Environmental Protection, and Environmental Impact Assessments of 3 October 2008

The Polish legal system gives social organisations, including ecological organisations, broad opportunities to participate in administrative proceedings concerning the legal interests of others. The regulations in this respect are included in the Administrative Procedure Code and in specific laws, particularly the Environmental Impact Assessment Act.

In this area, Polish lawmakers have recognised the great importance of ecological organisations, awarding them broad procedural rights.

What is an ecological organisation?

EIA Act Art. 3(10)

An "ecological organisation" is defined as a social organisation whose statutory purpose is protection of the environment. A "social organisation," in turn, has a legal definition, but unfortunately it is vague and suffers from logical errors; it lists examples and cross-references a defined term, but does not indicate any defining criteria. Under that definition, social organisations include professional organisations, self-regulatory bodies, cooperative organisations, and other social organisations.

Administrative Procedure Code Art. 5 §2(5)

This problem has been dealt with by the courts, which in the case law have essentially adopted additional criteria for determining whether an entity falls within the concept of a social organisation. According to the administrative courts, groups of citizens lacking any statutory grounds for acting autonomously, and not entered in the relevant official register, are not regarded as social organisations.

Supreme Administrative Court judgment of 12 March 2015 (case no. I OSK 2363/13); see also judgment of the Supreme Administrative Court in Warsaw of 29 April 2003 (case no. IV SA 2841/01)

It may thus be recognised that to be a social organisation, an entity must have a statutorily defined basis for its activity and be subject to entry in the relevant official register. Consequently, foundations, as well as commercial companies or partnerships, could all fit into the concept of a social organisation. By contrast, auxiliary units of local communes, as well as residential cooperatives, would fall outside the concept of a social organisation.

Rules for ecological organisations' involvement in proceedings requiring social participation

Undoubtedly, the engagement and admission of ecological organisations to participate in various types of legal proceedings are the standard in a democracy under the rule of law, where institutions of civil society play a major role. In proceedings before administrative bodies and the administrative courts, ecological organisations act in the public interest and have broad standing in litigation.

The activity of ecological organisations is particularly noticeable in the real estate development and construction process. Upon fulfilling only token conditions, such organisations may take part in administrative proceedings involving environmental protection, "with the rights of a party." This means that they have the same procedural rights as the parties (e.g. they can file appeals), but cannot directly control the subject of the proceedings (for example, they cannot withdraw the investor's application for issuance of an environmental decision).

Certainly, such broad entitlements can be used to pursue protection of the environment, but can also be used to pursue other ends contrary to the intentions of the parliament. Ecological organisations can effectively delay or completely block the execution of specific development projects. This means that it is necessary to have regulations in place for preventing abuse of procedural entitlements inconsistent with the aim of these entitlements.

Under current law, the ground allowing an ecological organisation to appear in proceedings is **an interest in matters of protection of the environment or nature**. This interest must be formally documented by including purposes of environmental protection or nature protection in the organisation's statute (or other systemic document, such as the bylaws or founding agreement).

An ecological organisation may join a proceeding requiring social participation with the rights of a party so long as the organisation has **conducted statutory activity involving environmental protection or nature protection for at least 12 months prior to commencement of the proceeding**.

EIA Act Art. 44(1)

If any of these conditions are not met, the body conducting the proceeding should refuse to admit the organisation to participate in the proceeding. This requires an order, against which only the

organisation in question has a right to appeal. However, the Environmental Impact Assessment Act does not expressly indicate the legal form for admitting an organisation to participate in the proceeding. In practice, this makes it hard for the other parties to challenge the admission of an ecological organisation.

A special and also controversial entitlement of ecological organisations is the ability to appeal against a decision by the administrative body of first instance in a proceeding requiring social participation, if justified by the organisation's statutory purposes—even if the organisation did not participate in the proceeding at the first instance. Filing of an appeal is also regarded as the equivalent of asserting a desire to participate in the appellate proceeding initiated by filing of the appeal. The ecological organisation then participates in the appellate proceeding with the rights of a party.

EIA Act Art. 44(2)

The controversy surrounding this construction is because under the Administrative Procedure Code the right to file an appeal is vested in a party to the proceeding, i.e. an entity meeting the characteristics set forth in Art. 28 of the code. A social organisation, however, as an entity acting "with the rights of a party," is not a party to the proceeding. Accordingly, it should obtain standing to file an appeal only by obtaining the rights of a party in the proceeding before the first-instance administrative body.

Administrative Procedure Code Art. 127 §1

The rule that an ecological organisation may file a complaint with the administrative court in an analogous situation—regardless of whether the organisation took part in the earlier stages of the procedure—raises even greater doubts.

EIA Act Art. 44(3)

This construction is highly controversial from the perspective of the Administrative Court Procedure Law. Art. 44(3) of the EIA Act flatly contradicts Art. 50 §1 and Art. 52 §1 of the Administrative Court Procedure Law and does not appear to provide an adequately justified exception from the general rules. Despite these asserted doubts, this provision remains in force and is applied in practice.

ADMINISTRATIVE COURT PROCEDURE LAW ART. 50 §1
a social organisation may file a complaint with the administrative court in a case in which it participated in the administrative proceeding

ADMINISTRATIVE COURT PROCEDURE LAW ART. 52 §1
a complaint may be filed with the administrative court after exhausting the appellate remedies which were available to the complainant in the proceeding before the competent body in the matter

Room for abuse

The involvement of ecological organisations in the process of preparing and carrying out projects is an integral element of the realities of the Polish real estate development process. But the practice shows that ecological organisations acting in environmental matters sometimes commit abuses of the law. This applies particularly to situations where the procedural entitlements awarded to the organisations are used for ends contrary to the legislative intent, for example to delay the proceedings before the administrative authorities or the administrative courts.

This results in overburdening of the public administration and the administrative courts, as well as waste of public funds. In consequence, this delays other proceedings which the administration or the courts cannot take up instead. The abuse of procedural rights by ecological organisations in administrative proceedings and administrative court proceedings also negatively impacts the interests of investors. Oftentimes the investors themselves are publicly owned companies pursuing ends vitally important for the strategic interests of the state.

In our view, the means of supervision and oversight existing under current law, as well as other legal instruments applicable to ecological organisations abusing their rights, are inadequate. There are no such instruments in the general administrative procedure, nor in the administrative court procedure. Moreover, there are no provisions in this respect in the specific regulations, i.e. first and foremost in the Environmental Impact Assessment Act.

The only point of reference might be the Associations Law and the Foundations Act. But these are general laws, basically unsuited to the specific operations of ecological organisations and the procedural rights they enjoy in proceedings requiring social participation.

Associations Law of 7 April 1989
Foundations Act of 6 April 1984

These laws, as a tool for checking the activity of organisations, generally provide for measures of a supervisory nature. Under the Associations Law, supervision of the activity of associations is exercised by the chief executive of the province (*wojewoda*) or the county (*starosta*), by examining the legality of the organisation's operations. The supervisory body is vested with certain rights regarding associations. It may for example demand information from

the authorities of the association, and if the information is not provided it can impose a fine of up to PLN 5,000 in each instance. More severe sanctions are vested in the court, which upon application of the supervisory body or the prosecutor may even dissolve the association if its operations display gross or persistent violation of the law or the association's statute and the conditions do not exist for restoring the association's operations to compliance with the law or the association's statute.

The Foundations Act does not expressly use the notion of "supervision," but the rules are essentially similar to those in the Associations Law. Supervisory functions are performed by the relevant government minister or by the county executive, and the most serious sanctions are meted out by the court.

These solutions do not appear sufficient. First and foremost, they do not directly affect the course of the specific proceedings before the administrative body or the administrative court. Consequently, they cannot effectively combat practices of delaying or blocking these proceedings. The practice also shows that the regulations concerning supervision of foundations and associations are applied only extremely rarely in cases of abuse of procedural rights by ecological organisations, and remain ineffective at the very least for this reason.

The need for legislative intervention

In summary, there is no doubt that social participation plays an important role in the environmental protection system, and will continue to do so. It's a good thing that ecological organisations take part in legislative and administrative processes. Polish law has recognised the importance of these organisations by awarding them broad procedural entitlements, including the ability to challenge the decisions of administrative bodies of the first and second instance across a significant number of proceedings, even if the organisations have not been involved in the proceedings up to that point.

But without appropriate oversight mechanisms, the broad procedural rights of ecological organisations can be exploited for ends inconsistent with their purpose. This state of affairs poses a danger

to the parties to the proceeding and can result in the waste of public funds.

In our view, the current regulations do not provide the right instruments to combat abuses, and this encourages more abuse. It would be good for lawmakers to consider the regulations we have discussed, and introduce provisions narrowing the existing room for abuse.

Renewable energy installations following the spatial planning reform

As Poland phases out the generation of electricity from fossil fuels at high-capacity integrated units, the country should set aside large areas for the siting of more widely distributed, lower-capacity plants generating power from renewable energy sources. The ongoing reform of the spatial planning and land management system will have a major impact on this process, as it introduces new restrictions but also facilitates the installation of wind turbines, photovoltaics, and biogas plants.

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Green transition

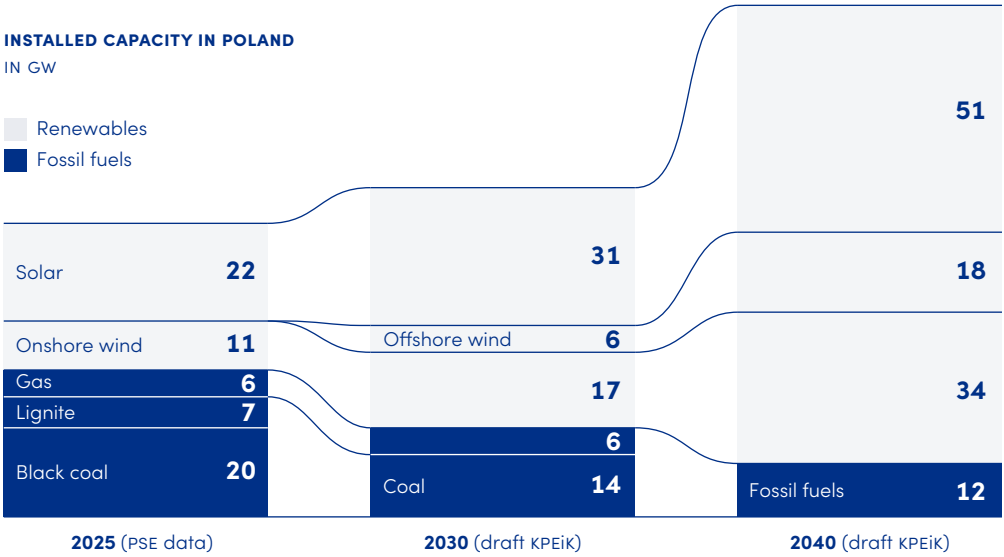
For years the Polish power industry has been identified with huge plants generating electricity from coal or lignite near the deposits of these minerals and in large industrial areas. The industry has been symbolised by the coal-fired power plants in Kozienice, Opole, Turów, Konin and Jaworzno, as well as Europe's largest coal-fired power plant in Bełchatów, whose units have a combined capacity of over 5,000 MW.

Over the longer term, maintaining the current state of affairs would have a negative impact on the competitiveness of the Polish economy, which, as in other countries, is greatly dependent on the price of electricity used in industry and services. The system for trading of rights to emit greenhouse gases, an instrument of the EU's climate policy aimed at combating global warming and air pollution, effectively drives up the cost of generating power from fossil fuels—in the case of both coal and natural gas.

The response to the challenges facing the Polish power system is to steadily increase the share in the energy mix of units generating electricity from renewable sources, i.e. wind, solar and hydro, as well as biogas from agricultural byproducts.

For 20 years we have observed, if not an increase by leaps and bounds, at least gradual and steady growth in the share of renewables in the Polish energy mix, which is visible in the publicly accessible statistics. During the first decade of the 21st century, coal accounted for over 90% of the electricity generated in Poland. The share of renewable sources did not exceed 4% during that period, and largely involved the use of biomass for cogeneration at installations along with coal—an ineffective process for meeting climate policy targets.

Since then there have been major changes in the size and structure of the renewables sector, which today meets 30% of the national demand for electricity, mostly thanks to the use of photovoltaic



panels and onshore wind farms. According to market forecasts and government plans (the proposed National Energy and Climate Plan—KPEiK), this trend should continue, and the share of renewables should still grow, exceeding 50% after 2030.

A characteristic feature of renewables-based energy is the broad distribution of generation sources throughout Poland. Additionally, extrapolating from today's technologies, it may be assumed that construction of a photovoltaic farm with a capacity of 1 MW will require the dedication of 1.5 hectares of land, while a single wind turbine would occupy (to a lesser extent) up to 1 ha. This means that further progress of the energy transition will require large areas of land in the upcoming years where renewable installations can be built.

Spatial planning reform

The reform of the spatial planning system in Poland, which has been rolled out in stages since 2023, will also have a major impact on the execution of renewable energy projects. This reform has introduced the biggest changes in years in the rules for shaping land use policy. Although the main aim of the proponents of the

reform was to bring order to the planning system and increase the transparency of the real estate development process, in practice these changes may result in temporary restrictions on the ability to site new projects, particularly during the interim period until full implementation of the new planning solutions. This will also affect renewables installations, which are addressed separately in the new regulations.

General plans

The amendment introduced into the spatial planning system in Poland a new planning instrument, known as the "master plan," which will replace the existing study of conditions and directions for spatial development. Unlike the earlier study, the master plan will be an act of local law, which means that the determinations in the plan will be binding when adopting local zoning plans (MPZP) and issuing decisions on building conditions (WZ). This is a big change, as previously WZ decisions did not have to comply with the study.

The master plan will cover the entire area of the commune and divide it into discrete planning zones, several of which will be key for the siting of renewable energy projects in the future:

- SZ (multifunctional zone including homesteads), where it will be possible to locate biogas plants (under an additional designation)
- SU (service zone), where solar power plants can be sited (under an additional designation)
- SH (large-format retail zone), where solar power plants can be sited (under an additional designation)
- SR (agricultural production zone), where it will be possible to place biogas, solar, wind or hydro plants (under an additional designation)
- SO (open zone), where biogas, solar, wind, hydro and geothermal plants can be sited (under an additional designation).

Existing studies of conditions and directions for spatial development will remain in force only until the master plan enters into force, but no later than 30 June 2026. Communes which don't manage to adopt a master plan on time will no longer be able to issue

WZ decisions or adopt new MPZPs, which in practice will result in a halt to new development projects. But in most of the communes across the country, work on a master plan is only at the early stages, so it can be anticipated that starting in July 2026 development projects will be interrupted for many months, until the master plan is adopted.

Local zoning plans

The amended regulations will impose stricter rules for siting of larger renewable energy installations, most of which will be allowed to be built only on the basis of an MPZP (which has also been the case for several years with respect to onshore wind farms). The requirement for siting on the basis of an MPZP has been introduced for renewable projects not installed in buildings, located on:

- Agricultural land in classes I–III or on forest land
- Agricultural land of class IV, with an installed power generation capacity greater than 150 kW, or land used to conduct commercial generation of electricity, or
- Other land, for an installed power generation capacity greater than 1,000 kW.

At the same time, the requirements are relaxed for smaller installations. The new regulations expressly provide that if the MPZP allows for the siting of buildings, it will also allow the installation of photovoltaic panels on those buildings.

The requirement of an MPZP for larger renewables installations will undoubtedly increase the number of adopted and amended MPZPs. To expedite the process for major renewable projects, a simplified procedure has been introduced which can be used if the local plan or amendment to the local plan concerns exclusively the siting of renewables installations other than wind power plants. The simplified procedure reduces the formalities (for example, social consultations may last only 14 days), which is intended to allow faster drafting and adoption of this planning instrument, in as little as a few months. However, the regulations greatly limit the ability to use the simplified procedure—it cannot be used for example for terrain with high-quality agricultural soil, or in national parks, nature preserves, or their buffer zones.

Integrated development plans

Another solution is the introduction of a special type of local zoning plan known as an "integrated development plan" (ZPI), which can also be used for siting of renewable energy installations. The ZPI is a tool for cooperation between the commune and the investor, and covers the terrain of the principal project as well as the complementary project (e.g. expansion of technical infrastructure or public roads).

The scope of the complementary project is subject to negotiation, and it is up to the investor to draft the ZPI. Adoption of the ZPI requires the conclusion of an urban planning agreement governing the parties' mutual obligations, including the possibility for the investor to cover the costs of adoption of the plan. In the case of renewable energy installations other than wind power plants, the negotiations may begin without prior consent of the commune council to take up drafting of the ZPI. In this case as well, the period for social consultations is also limited to 14 days.

Consequences of planning changes

The introduction of an obligation to site renewable energy projects on the basis of an MPZP will carry major consequences for these projects, such as:

- Prolonged processing time—WZ decisions have generally been issued within about three months, but adoption of an MPZP will usually take not just a few months, but even in some cases up to several years
- Broader social participation—in the procedure for issuance of a WZ decision, the number of parties was limited, while in adoption of an MPZP the set of participants is much broader, which can lead to protests and blocking of projects
- Higher costs for investors—given the lengthiness and complexity of the procedure for adoption of an MPZP, it should be anticipated that investors will incur higher costs (particularly in the case of an integrated development plan).

Decisions on building conditions

In light of the changes discussed here, particularly in connection with the general requirement to execute renewable energy installations on the basis of an MPZP, the role of WZ decisions in the process of siting of renewables projects will gradually decline. It should also be borne in mind that starting 1 January 2026, WZ decisions will be issued for a specific timeframe, and will remain in force for five years after they become final. Decisions that became final prior to 1 January 2026 will be exempt from this rule, and thus will remain in effect indefinitely. Moreover, as a rule it will be possible to issue WZ decisions only after adoption of a master plan, and essentially only with respect to the area of supplementary construction specified in the master plan.

Summary

In the near future the new spatial planning regulations will pose a major challenge for investors planning to carry out renewable energy projects. It is hard to predict at this juncture how the new regulations will be implemented in practice. However, it must be mentioned that many local governments have fallen seriously behind in implementing the new regulations, at least at the stage of drafting and adoption of master plans, which will be vital for the overall spatial planning system in Poland.

The increased level of social participation in the spatial planning process may also pose a threat to renewable energy installations, which, although needed, in many cases rouse opposition from local communities who are concerned about living near wind turbines or biogas plants. But considering that many renewable energy installations will be used specifically to satisfy local needs, hopefully the planning practice will be guided by rational considerations enabling continued stable growth of the renewable energy sector.

Transferring an administrative decision? Practical issues in mining concessions and reclamation

The permissibility of transferring the rights and obligations under an administrative decision still generates many doubts, particularly when the regulations are unclear and leave the public administration room for divergent interpretations. In this article we examine when the rights and obligations arising out of a concession to extract mineral deposits can be transferred, and how the transfer could affect the duty to conduct post-mining reclamation. These cases can pose difficulties for businesses.

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Administrative succession

Under a maxim of Roman law, public law cannot be changed by agreement of private persons (*jus publicum privatorum pactis mutari non potest*). This principle is still reflected in the regulations governing succession under Polish administrative law. The great majority of legal commentators take the view that because rights and obligations arising under public law are tied to specific entities, they cannot be transferred by a civil transaction. In other words, the rule is that a right (or obligation) arising under an administrative decision (such as a concession to extract mineral deposits) cannot be transferred to another entity unless this is expressly permitted by a specific regulation.

Administrative determinations, typically in the form of administrative decisions, are addressed to individually designated entities, imposing specific duties on them or awarding them specific entitlements.

This is reflected in the decisions from the administrative courts. For example, in the judgment of the Supreme Administrative Court of Poland of 15 September 2020 (case no. II GSK 3523/17), concerning the permissibility of transferring a licence to operate a pharmacy, the court pointed to the rule that rights and obligations under administrative law are tied to the person for whom they were established, and essentially are untransferable. An exception to this rule, providing for general succession (with certain restrictions) of these rights and obligations, was first introduced by Art. 494 §2 of the Commercial Companies Code, and thus before that code entered into force in 2001 there was no regulation providing for general succession of rights and obligations in the case of a merger of limited-liability companies. (The Supreme Administrative Court made a similar ruling in the judgment of 9 February 2023, II GSK 1287/19.)

But there are currently many exceptions to this rule. They arise either from general regulations (e.g. in the Commercial Companies Code), or from specific statutes, e.g. involving environmental law or mining law. However, the operation of these regulations in practice continues to raise numerous doubts. And in the case of the Geological and Mining Law there is usually an absence of rulings from the administrative courts which would help clarify these difficulties in interpretation.

For example, Art. 189(1) of the Environmental Protection Law allows for assumption of the rights and obligations under a licence for an installation, while Art. 36 of the Geological and Mining Law permits the transfer of a concession.

Geological and mining concessions

Transfer of a concession is permissible under Art. 36 of the Geological and Mining Law. However, this requires fulfilment of certain conditions, including obtaining the consent of the concessioning body and a showing by the transferee that it meets the conditions required to obtain a concession. But the other conditions in this provision may raise doubts, as they refer to general clauses such as the public interest, state security, and rational administration of mineral deposits.

The nature of the consent by the concessioning body to transfer of the concession is itself a fairly problematic issue, and beyond the scope of this article.

In practice, another key element is the form of the transaction in which the concession is to be transferred.

M&A transactions in the mining industry in Poland most often involve the transfer of the enterprise (or an organised part of the enterprise) of the holder of the concession, i.e. an asset deal, but may also take the form of a share deal, a corporate merger, or a corporate division.

Regardless of the form selected for the transaction, numerous problems relating to transfer of the concession may arise in practice.

First and foremost, the concessioning bodies take different positions on the scope of their discretion in consenting to transfer of a concession. Some of them take the view that if the acquirer meets all of the formal conditions, the body is obligated to give its consent to the transfer. Others regard this as a discretionary decision, allowing them to refuse even if the acquirer meets all the requirements.

A situation where the transaction is carried out without obtaining the consent of the concessioning body is also problematic. In such circumstances, the civil contract remains valid, but the

concession does not pass to the acquirer. Thus, in practice there is a risk that a situation may arise in which neither of the parties can legally conduct mining, and this may lead to claims for damages between the parties to the deal. This issue should be addressed at the stage of structuring the transaction and appropriately reflected in the transaction documents.

Additional doubts arise in the relationship between transfer of the concession and the duty to conduct reclamation of the land. This issue is closely tied to the issue of succession to administrative rights and obligations, because in practice there are often changes in the entities during the course of exploitation of the deposits, or after extraction is completed but before the reclamation obligation is carried out.

Reclamation

Conducting reclamation after the completion of mining operations is mandatory. In this context, it is reasonable to ask whether transfer of the concession also covers transfer of the duty of reclamation for the activity of the prior concession holder, or if the acquirer of the concession is responsible only for reclamation for its own activity.

It should first be pointed out that effective transfer of the concession to another entity does not transfer the decision establishing the reclamation plan. Under Art. 36(7) of the Geological and Mining Law, transfer of a concession also transfers the rights and obligations arising out of other decisions issued under that act. However, reclamation issues are examined under the Act on Protection of Agricultural and Forest Land, as expressly stated in the cross-reference in Art. 129(2) of the Geological and Mining Law. In practice this means that a separate administrative proceeding must be launched after the transfer of the concession.

Because reclamation is conducted most often after the completion of mining operations, the rule that the reclamation obligation is borne by the entity that actually caused degradation of the land, and not every subsequent owner of the property or other entity, takes on vital importance. The decision on the reclamation plan is addressed to a specific entity and is subject to transfer only under the rules set forth in the Act on Protection of Agricultural

and Forest Land. This means that transfer of ownership of the real estate, sale of the enterprise, or even sale of an organised part of the enterprise, does not cause the reclamation obligation to automatically pass to the buyer, if it was the seller that actually caused the degradation.

The absence of clear provisions on transfer of the reclamation obligation causes serious practical problems. In the case of commercial transactions, the parties are often unaware that the reclamation obligation may remain with the seller despite sale of the land or infrastructure or even transfer of the concession. This leads to situations where the seller continues to bear the reclamation obligation but no longer holds the land, or may lack the funds to carry out reclamation. Meanwhile, the acquirer becomes the owner of degraded land but has no legal duty to reclaim the land, which may lead to enduring damage to the environment.

Concluding remarks

The principle of the non-transferability of public-law rights and obligations still plays a major role in the Polish legal system. While the needs of commerce and the requirements of EU law have led to adoption of regulations establishing exceptions to this rule, these regulations can have significant limitations.

Certain complications are also attributable to the multiplicity of regulations and, often, the different procedures followed by various administrative bodies. That does not foster legal certainty or commercial stability.

Examples from practice show that there is often a great need for the permissibility of transferring rights and obligations under administrative decisions, in order to ensure the certainty and security of commercial transactions. But an analysis of the mining and reclamation regulations shows that these provisions need to be re-examined by the legislature so that their application by administrative authorities does not generate doubts.

Transparency of apartment prices —a new obligation for residential developers

An amendment to the Residential Developers Act entered into force on 11 July 2025, imposing on developers and certain other businesses a duty to publish the prices of apartments and houses on their own websites and to report these figures daily to the state-run portal dane.gov.pl. This is one of the most important changes in the regulation of Poland's residential property market in recent years, aimed at increasing transparency and protecting buyers.

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Origin and aims of the amendment

The Polish parliament found that it was hard for homebuyers to access complete, accurate and current prices of apartments and houses on the primary market. Some residential developers published complete price lists, while others posted sample prices of a few apartments in each project, and some never disclosed prices on their websites, forcing potential buyers to contact the sales office. This made it difficult or impossible to compare offers, and placed buyers in a weaker negotiating position. Often the developer could adjust the offered price of a unit to match the buyer's perceived financial capacity.

RESIDENTIAL DEVELOPERS ACT
Act on Protection of the Rights of Buyers of a Residential Unit or Single-Family House and the Developers Guarantee Fund of 20 May 2021

The amending act of 25 May 2025 added the new Art. 19a and 19b to the Residential Developers Act.

The amendment to the Residential Developers Act was intended to standardise information about units, reduce price manipulation, and ensure equal access to data. Lawmakers wanted to increase market transparency and strengthen the negotiating position of buyers, among other things through an archive of prices over time. They also wanted to facilitate analysis of the market, both for potential buyers and for financial analysts, media, and public institutions. Thanks to the central portal dane.gov.pl, anyone can check apartment prices across different developments and regions of the country.

The consensus in the residential developers' sector is that the rules are warranted, but they complain about the too-brief grace period for implementing the necessary technical solutions. Essentially they had just one month from adoption of the amendment until it went into effect.

Duty to publish information

The new Art. 19a of the Residential Developers Act requires each developer to operate its own website and to publish certain information there. The site could be a group domain or a sub-domain. However, publishing information exclusively through a broker or on a classified postings site will not meet the requirement to operate the developer's own website for purposes of the act.

If any price covered by the publication obligation changes, each change must be posted the same day, providing the date of the change and maintaining a history of earlier prices. This means that the buyer can check how the price of the unit they are interested in has varied over time. However, there is no duty to disclose actual transaction prices—rather, it is the offer price that is published. The address of the site where the developer publishes this data must be included in ads, announcements and sales offers.

Duty to report prices

The second pillar of the amendment is a duty to report prices to the state. The new Art. 19b requires daily (once every 24 hours) submission to the minister for digital affairs of information on the price per square metre of usable floor area of each offered apartment or house, as well as the overall property or parts thereof which are the subject of the sale, and the price of auxiliary spaces or rights necessary to use the apartment or house, if not included in the total price.

The minister for digital affairs publishes this data on the portal dane.gov.pl. Developers must report 7 days a week, 365 days a year—even if the developer has not changed anything in its offer, it must confirm every day in the state-run system that the data are still current.

THE WEBSITE MUST INCLUDE

This information must be presented clearly and accessibly.

www.residential-development.pl

The general section of the informational prospectus for the development

- The location of the development
- Details identifying the developer and the development
- How to contact the developer

GROSS PRICES

- The price **per square metre** of each apartment or single-family house on offer
- The **total** price of each offered unit or house
- The price of **auxiliary spaces** (e.g. storage units, parking places), if the price for such amenities is not included in the price of the apartment or house
- **Other** payments (e.g. for a fit-out package) which the buyer makes to the developer in performance of the contract transferring ownership.

THE DEVELOPER MUST

- Maintain its own website, with easy navigation and clearly linked with the developer
- Include the website address in all marketing materials
- Publish on the site the full breakdown of gross prices: the price per square metre, the total price, and additional elements and charges, in a legible format enabling comparisons
- Update price changes the same day
- Archive the price history, with dates, and ensure easy access to the history
- Ensure everyday reporting consistent with the contents of the site, including on weekends and whether or not there have been any changes
- Monitor the consistency of communications (any discrepancy between the sales office and the website will be resolved to the customer's advantage, and exposes the developer to potential sanctions).

Who is subject to the new regulations?

The obligation to publish and report pricing information applies to two categories of entities: residential developers, and other undertakings as defined in the Residential Developers Act.

A residential developer is an undertaking carrying out residential development projects, i.e. the process leading to the sale of apartments or single-family houses (from acquiring rights to the land, and construction, to transfer of ownership to the buyers). These obligations also apply to developers selling residential units after the completion of construction.

Undertakings other than residential developers, who offer units erected in a residential development project, where the rights to the unit are being transferred to a buyer for the first time, are subject to the obligation to publish and report price data starting from time of public announcement of sales.

It should be stressed that these obligations on the part of residential developers apply only to their residential offerings. Thus if the developer offers within the same project both residential units and commercial units, the duty to publish and report price data applies only to the residential units.

When does the obligation arise, and when does it expire?

The duties discussed here generally begin with the launch of sales, i.e. public announcement of the readiness to conclude contracts with buyers. If reservation agreements are planned, the required information must be posted to the developer's website before signing of the first such agreement. If sales begin after completion of construction (without first signing development contracts), the duties arise starting from the time when sales are publicly announced.

The developer will bear these obligations until ownership of the final apartment or house in the project is transferred to the buyer. This means that the duties don't last only until development contracts have been signed for all units, but also through the signing of the last deed transferring ownership of the units.

For projects where sales were launched prior to 11 July 2025, the law provided for a two-month adjustment period—they had until 11 September 2025 to launch the website, publish price data there, and begin daily reporting to the ministry. In those cases, the price history is required starting from the first date of publication on the website (i.e. from 11 September 2025 at the latest).

The buyer's right to the best price

If the price given on the website differs from the price offered upon conclusion of the contract, the buyer can demand to purchase the unit at the most favourable price for the buyer. In practice, this means that the developer is bound by the price published on the website.

This mechanism is intended to protect buyers from a situation where the developer lures customers by publishing a lower price on the website but then, in the sales office, attempts to negotiate a higher price. This does not include obvious oversights or "pricing errors" (e.g. a grossly understated price), but as a rule, in the event of a discrepancy, the customer can demand the listed price.

It should be pointed out, however, that due to the requirement of the form of a notarial deed for the sale, enforcement of this right may generate disputes. Information on the website is not deemed to be an "offer" for purposes of the Civil Code, which weakens the notion that the law automatically dictates the retail price. In practice, this may give rise to legal disputes over whether and to what extent the customer can force the developer to conclude a sales contract at the price published on the website.

Sanctions for non-compliance

The sanctions for failure to comply with the new regulations can be severe. This is because violation of Art. 19a or 19b of the Residential Developers Act constitutes a practice infringing the collective interests of consumers. Thus if the president of the Office of Competition and Consumer Protection (UOKiK) finds a violation,

the regulator may impose on the undertaking a penalty of up to 10% of its turnover in the year preceding the decision—even for unintentional infringements.

The developer's failure to maintain its own website within the meaning of the act can also be a violation of the act, as can failure to comply with informational obligations, e.g. by failing to disclose price components, or the lack of a price history. Failure to report price data every day, or denying the customer the right to the most favourable price, could also be grounds for imposing fines on the developer.

Developers must therefore comply with their new obligations scrupulously. UOKiK can intervene following receipt of a complaint, or at its own initiative.

Consequences for the market —what has changed in practice

The industry admits that the openness of pricing has increased transparency, which should make it easier for customers to reach a decision. In practice, introduction of the new rules set off a wave of "repricing": during August–September 2025, prices were changed for about 25% of offers. However, the average prices remained stable, as the repricing effectively brought the prices into line with the market realities. During the adjustment period, some units were temporarily withdrawn from the product line to avoid the risk of legal infringement. Concerns that the openness of prices would lead to a collapse of the market proved unwarranted. Developers generally cleaned up their price lists by adjusting them to the actual market conditions, rather than cutting prices across the board.

For buyers, the new regulations first and foremost ensure easier access to information and the ability to consciously compare offers. They can check how prices have changed within a specific project, and compare the offers of different developers in the same region. Most importantly, they can demand to purchase a unit at the best price, although the regulations did not introduce legal mechanisms for forcing an unscrupulous developer to conclude a contract at the lowest price.

Problems and uncertainties in applying the regulations

The regulations have been in force for a few months, but doubts of interpretation and practical issues continue to crop up.

The method and standards for submitting data to the state-run database are defined in general terms. But the industry expects uniform templates, not just guidelines. The portal dane.gov.pl is sometimes judged to be hard to navigate, lacking a clear index to the data.

There are also discrepancies in interpretation of the rules. Some commentators claim that the informational obligations apply only to units currently offered by the developer, while others take the view that prices for units temporarily taken off the market (under a reservation agreement or sales contract) should continue to be posted, with an indication of the status and a price history.

The requirement to report prices daily (even when there have been no changes) is also criticised, as is the lack of precise technical requirements, which is an operational hassle for smaller developers. For big companies with well-developed IT systems, daily reporting poses less of a problem than for small local developers who may be implementing just one project.

Further legislative changes

The regulations continue to evolve. When considering the amendment, the Senate expanded the originally narrow scope of openness (from the "sale" of completed units to "contracts," also including units under construction). There are unofficial reports of further clarifications to come, concerning for example the standards for submitting data. It may thus be anticipated that in the upcoming months or years the obligations, or rather the manner in which they are performed, will be further modified.

Summary

The most important and also the most controversial change is the openness of prices in residential developments. Customers have gained transparency, while developers now have uniform rules for playing the game. The mechanism for enforcing the obligations is harsh, so developers must have coherent compliance processes in place, and solid IT support.

In market terms, the effect has been not so much a decline in average prices, as extensive repricing and greater comparability. This encourages competition and smarter purchasing decisions. For buyers it is clearly an advantageous change. They can more easily compare offers, check the price history, and negotiate from a stronger position. For developers the amendment means additional duties and costs, but also an opportunity to work out a lasting, process-based approach to pricing transparency as a competitive advantage, rather than just a technical requirement.

The new regulations are part of a broader trend of increased protection for consumers on the real estate market. It may be anticipated that in the future more regulations will be enacted with the aim of equalising the bargaining power of the parties. Legal changes inevitably flow from social changes. Residential developers can benefit if they treat pricing transparency not as an irksome duty, but as one element for building the trust of customers.

Selected aspects of CAR/EAR insurance

Construction projects involve numerous risks that may lead to serious financial losses. Every construction project is a complex undertaking with many factors affecting the success of the entire venture. Destruction of stored materials, damage to already completed structural elements, and equipment failure caused by improper use are just some of the risks that participants in a project must face. In response to these challenges, the insurance market has developed a specialised solution: construction and installation risk insurance, known as CAR/EAR (Construction All Risks / Erection All Risks).

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Liability of contractors under the regulations

Polish civil law does not explicitly require parties to a construction contract to hold an insurance policy. Nevertheless, the Civil Code clearly defines the scope of a contractor's liability. Under Art. 652, a contractor is liable for all damage arising on the construction site from the time the contractor formally takes over the construction site until handover of the finished facility.

This liability is broad. It covers injury to third parties, and to the direct participants in the construction project (the investor or subcontractors). It covers injury to health and life, as well as material losses. The basis of a contractor's liability may be either a wrongful act (tort), or non-performance or improper performance of a contractual obligation (contract).

Protection against risk through insurance

In practice, the construction industry uses various types of insurance to protect contractors and investors from the financial consequences of unforeseen events. Construction contractors are usually required to hold civil liability insurance. This protects them against claims from third parties who have suffered harm in connection with the construction work.

Nonetheless, it should be remembered that the greatest risk is borne by the investor and other participants in the project. They are the ones who may suffer the most serious losses if something goes wrong on the construction site. That is why in large construction projects investors as well as general contractors are increasingly turning to specialist CAR/EAR insurance. It offers much broader cover than a standard civil liability insurance policy.

And CAR/EAR insurance may also include a civil liability section. This protects the contractor against the consequences of harm to third parties, i.e. those not directly involved in the construction project.

CAR/EAR insurance and civil liability insurance

Although both types of insurance play an important role in the construction industry, their purposes and scope of cover are fundamentally different. Civil liability insurance focuses on protection against claims from third parties who have suffered personal injury or damage to property because of construction work. It therefore protects against the contractor's legal liability to external parties.

CAR/EAR insurance has a much broader scope. It protects against direct losses related to the construction process itself. It covers damage to work being undertaken, the materials used, construction equipment, and other elements directly related to the project. It may therefore be said that while civil liability insurance protects against the consequences of construction work to third parties, CAR/EAR insurance protects the construction process itself and its participants.

Parties to a CAR/EAR insurance contract

The flexibility of this type of insurance is also reflected in the various ways in which the relationship may be structured. The policy may be purchased by the contractor, who then acts as the policyholder. However, it is equally common for the investor to conclude an insurance contract on behalf of the contractor, who in this situation gains the status of the insured. This model is particularly common in larger projects, where the investor wants to have full control over the scope and conditions of the insurance cover.

Scope and duration of insurance cover

CAR/EAR insurance operates on an "all risks" basis, i.e. offering protection against all the risks of particular work, whether construction or installation, except for risks that the insurance contract lists specifically as exclusions. The period of cover starts at the time specified in the policy and usually ends with the expected completion date of construction work. It can be extended in the event of delay. In certain cases, if provided for in the contract, the cover may be extended for the duration of the guarantee or warranty for the work carried out in the project.

Although the name of the insurance policy suggests that it covers "all risks" associated with a given project, it should be pointed out that in practice insurance contracts contain specific exclusions of the insurer's liability. The most common exclusions include damage arising from errors in the design documentation, defects in the materials used, acts of war, riots and strikes. Therefore, entities taking out CAR/EAR insurance should carefully review the exclusions and assess whether they are able to accept the associated risk.

Munich Re standard and insurance structure

On the international market, CAR/EAR insurance is usually drawn up based on the "Munich Re standard." This means that insurance products offered by different insurers have a similar structure and uniform numbering of clauses extending the scope of cover. This standardisation helps to compare offers and negotiate contractual terms.

The general terms and conditions of CAR/EAR insurance are typically divided into three sections:

SECTION I	SECTION II	SECTION III
Property insurance (mandatory) All construction and installation work, in material/financial terms, **covered by the construction contract**, which was reported for insurance cover and listed in the policy Optional: elements not directly covered by the construction contract	**Civil liability insurance** (optional) Civil liability to third parties (not involved in the construction)	**Insurance against lost profits** (optional) Protects the investor against financial losses resulting from delays in project completion

Additionally, under Section I it is possible to insure elements not directly covered by the construction contract, such as:

- Materials that the investor has loaned to the contractor for carrying out the contract (unless their value has already been included in the value of the contract works)
- Devices and equipment used for construction work
- Construction site facilities
- Construction machinery
- Costs of removing debris from damage arising from an insured event.

A characteristic feature of Section I of CAR/EAR insurance is its "all risks" structure. In practice, this means that the insurer's liability extends to all events that may cause damage, except for risks expressly listed as exclusions in the insurance contract or in the general terms and conditions of the insurance.

This structure is advantageous for insureds, because they do not have to demonstrate that the given risk was covered—it is sufficient that it was not expressly excluded. Thus the burden of proof rests with the insurer, who, to deny compensation, must show that the damage was caused by an excluded event.

The issue of design errors

One of the most common and significant exclusions in CAR/EAR insurance is damage caused by design defects or errors. This is a significant limitation on the scope of cover, especially considering that errors in design documentation occur relatively often and the costs of remedying their effects may be very high.

This exclusion may lead to a situation where a significant part of the damage occurring on the construction site will not be covered by the insurance, if it was caused, even indirectly, by a design error. This poses a serious financial risk for those involved in the construction project.

The response to this challenge may be found in standard clauses extending the scope of cover, in particular clause 115 and the "faulty parts" clause in CAR/EAR insurance. These clauses, which are purchased as riders to a basic policy, may also cover, to a certain extent, damage associated with design errors. Their terms and scope are subject to negotiation between the policyholder and the insurer, and their cost increases the insurance premium.

Clause 115 and the faulty parts clause—scope and limitations

Clause 115 (numbered according to the Munich Re standard) extends the basic scope of CAR/EAR insurance to cover damage caused by a defect or error in the design. A key limitation of this clause is that the insurer is not liable for defectively designed components that cause the damage; the cover applies only to secondary damage to correctly executed components.

EXAMPLE

During the construction of a shopping centre, an incorrectly designed ceiling beam fails to withstand the load and breaks, causing damage to a newly laid floor and walls and earlier installed sanitary facilities.

Under clause 115, the insurance will cover the costs of repairing the floor, walls and installations, while the faulty beam itself will remain outside the scope of the insurer's liability.

It is possible to include a faulty parts clause in a CAR/EAR insurance contract, which will cover damage to incorrectly designed or defective elements. This clause extends clause 115 and eliminates its basic limitation, allowing compensation to be obtained also for the defective elements themselves that were the direct cause of the damage. In the above example, after the addition of a faulty parts clause, the insurance cover would also include the costs of replacing the defective ceiling beam.

Summary

CAR/EAR insurance is a key risk management tool in the construction industry. It offers comprehensive protection against a wide range of risks associated with construction and installation projects. Although it is not mandated by law, its importance in business practice cannot be overestimated, especially in relation to large construction projects.

The flexibility of this solution, the possibility of adapting the scope of cover to the specific nature of each project, and its recognition in international contract standards, have made CAR/EAR insurance an integral part of professional construction project management. Nonetheless, entities deciding to take out such insurance should carefully review the terms and conditions of the policy, paying particular attention to the list of exclusions and the options for extending cover through added riders, including clauses covering damage arising from design errors.

Reform of industrial designs in the European Union

The EU has carried out the most important reform of design law in two decades. For years, the system protecting industrial designs in the EU had failed to keep pace with changes in technology, which was particularly detrimental to holders of exclusive rights. But 2025 changed all that. Since May, regulations have been in force that comprehensively modernise the system and adapt it to the digital reality of doing business.

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The changes to design law were introduced based on:

– **Regulation 2024/2822** (Regulation (EU) of the European Parliament and of the Council of 23 October 2024 amending Council Regulation (EC) No 6/2002 on Community designs and repealing Commission Regulation (EC) No 2246/200)
– **Directive 2024/2823** (Directive (EU) 2024/2823 of the European Parliament and of the Council of 23 October 2024 on the legal protection of designs (recast)).

Most of the provisions of Regulation 2024/2822 have been in force since 1 May 2025. The remaining ones, including those concerning the representation of industrial designs, will apply from 1 July 2026. In addition, member states have until 9 December 2027 to implement Directive 2024/2823. The reform's main objective is to adapt the industrial design protection system to a world dominated by e-commerce. The changes should simplify procedures and make industrial design protection more attractive to designers and businesses (especially SMEs). This may lead to innovative solutions gaining broader protection, and more effective enforcement of rights.

For example abolishing the limit of seven views and allowing new file formats, such as JPEG and MP4 for animated designs

The previous regulations were not suited to the digital environment, which has radically changed the reality of creating, using and commercialising industrial designs.

Online marketplaces and e-commerce shops are now the main channels for distributing goods. But at the same time they enable mass sales of products that infringe intellectual property rights. Existing enforcement procedures have proved insufficient in the face of the scale of infringements in the digital environment. Rights holders often find it difficult to stop counterfeit products from being sold online, while court proceedings are time-consuming and costly.

> **Existing enforcement procedures have proved insufficient in the face of the scale of infringements in the digital environment.**

The changes are important for many sectors, including fashion, automotive and furniture, where the illegal copying of products has become widespread.

The reform introduces a number of changes that modernise and simplify existing procedures. The most important ones are highlighted below.

New terminology and symbol

The previous term "registered Community design" has been replaced with the simpler and more intuitive "**EU design**." In addition, holders of EU designs have been given the option of using the ⓓ symbol, which, like the letter ® for trademarks, is intended to raise awareness among other market participants and show that

the designated product is registered as an EU design and is therefore protected throughout the European Union. Such marking may also help prevent infringements.

New definitions of "design" and "product"

A significant change is the broadened scope of design protection. The definition of "design" now includes movement, transition and animation, which protects dynamic and animated digital designs such as user interfaces and visual effects. Before, industrial designs could only protect a product's static appearance.

The definition of "product" has also been expanded to include intangible items, including digital creations, virtual goods and spatial arrangements (e.g. shop layouts or virtual environments). This change reflects the growing importance of digital assets in modern commerce and allows additional elements to be protected that are important to many companies.

3D printing

Another change is the new exclusive right of the holder of an industrial design to create, download, copy and make available or distribute to others, any media or computer software on which the industrial design has been recorded, to enable the product to be manufactured. This is commonly referred to as the exclusive right to 3D printing.

According to the preamble to Regulation 2024/2822, this right is linked to the growing use of 3D printing technology in various industries, including artificial intelligence. To effectively prevent the illegal copying of protected designs, the regulation provides that the creation, downloading, copying and sharing of any media or computer software that records an industrial design for the purpose of reproducing a product in violation of a protected design constitutes use of the industrial design. Such activities should require the authorisation of the rights holder of the industrial design.

New restrictions on rights

Regulation 2024/2822 broadens the list of permitted uses of designs that do not constitute an infringement.

The first new permitted activity is referential use of a design, if the rights holder is identified at the same time. The second is the use of a design for purposes of comment, critique or parody.

These are two new limitations of the rights connected with an EU design.

Repair clause

The reform includes permanent adoption of a repair clause, which allows the manufacture and sale of spare parts, provided that the replacement is used to repair complex products (e.g. cars) in order to restore them to their original appearance. A similar clause had been in force in EU law for several years, but it was temporary and did not apply in all member states. Making this clause permanent is particularly important in the context of developing a strategy for protecting and commercialising spare parts.

This is one of the controversial aspects of the reform, due to the differing interests of various market players. Vehicle manufacturers argue that they need strong protection for their designs to be able to invest in developing new models. On the other hand, spare parts manufacturers and consumer organisations point out that excessive protection leads to the monopolisation of the parts market and inflated prices of repairs.

The repair clause may be invoked only by a manufacturer or seller that has clearly and visibly marked the origin of the product and the manufacturer's identity on the product or packaging (or in the accompanying documents). This is essential for enabling consumers to make an informed choice between competing products that may be used for repairs.

Existing design rights will enjoy an eight-year transition period (until December 2032), during which registered designs of spare parts will continue to be protected.

Abolition of the "unity of class" requirement for multiple applications

A key change enabling reduced costs of registration is abolition of the "unity of class" requirement for multiple applications. In practice, this means that applicants may now include products belonging to different classes under the Locarno Classification in one multiple application, helping to reduce registration fees. Before, designs in different main classes could not be included in a joint application, but required separate registrations as independent Community designs. This resulted in the need to pay full registration fees separately for each design. At the same time, the maximum number of designs that may be included in one multiple application has been set at 50.

LOCARNO CLASSIFICATION
An international classification of industrial designs based on the Locarno Agreement of 8 October 1968. It has 32 classes and is used to categorise products when registering designs.

Changes in fees

Other significant changes involve a simplified fee structure and a reduction in fees for the first protection period, making registration more affordable for smaller firms. From 1 May 2025, a single fee of EUR 350 is chargeable for an application. A multiple application will be charged a fee of EUR 125 for each subsequent design (starting with the second one).

On the other hand, the fees for renewing protection for subsequent periods have been increased. A fourth renewal of protection sees a particularly significant increase (from EUR 180 to EUR 700).

A further change is the option to pay application fees within one month of filing the application. This is a considerable convenience; before, the European Union Intellectual Property Office would not acknowledge the application's filing date without payment being made.

There is also a change in the rules for deferred publication of a design. In such cases, the fee must be paid at the time of filing the design.

Summary

The reform of the EU's system of protection for industrial designs is a comprehensive response to the challenges of digitalisation of the economy and globalisation of trade. By strengthening online enforcement mechanisms, simplifying registration procedures, reducing costs, and extending protection to digital and animated designs, the reform creates a more effective and user-friendly system for protecting industrial designs in Europe.

Companies and designers should now review their intellectual property portfolios and adapt their protection strategies to the new opportunities. In particular, it is worth considering:

- Registering previously unprotected digital designs
- Reviewing existing rights in the context of the repair clause
- Optimising costs by taking advantage of the abolition of the "unity of class" requirement in a multiple application.

In anticipation of the second stage of changes, which will come into effect in July 2026, it is essential that firms develop a strategy that maximises the potential benefits of the reform and secures their innovations in a rapidly changing legal environment.

Can Poland become a tax hub?

Competition is constantly underway in the global economy—not just for capital and investments, but also for people who have them. Wealthy entrepreneurs, investors, and top professionals—known as "high-net-worth individuals" or HNWIs—are more mobile today than they have ever been. Countries are racing to create incentives to encourage HNWIs to live, work, and spend money in their jurisdiction. Alongside issuing "golden visas" or making it easier for foreigners to buy property, preferential tax schemes have emerged as a key tool for attracting such residents. Could lump-sum taxation of foreign income bring wealthy residents to Poland?

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For decades, "non-domiciled" (non-dom) schemes, associated mainly with the UK, have led in the fight to attract wealthy residents. But Italy, Greece, Switzerland and Malta have successfully implemented their own competing solutions. Poland also entered this race several years ago by introducing its own scheme of lump-sum taxation of foreign income. Does this represent a realistic opportunity to make Poland into a regional hub for wealthy residents, or is it only a niche solution with limited appeal?

Mechanism for the Polish lump sum

The concept of the Polish lump-sum tax is designed for people who move their tax residence to Poland. In place of the complicated taxation of all their global income according to the Polish regulations, such taxpayers are offered the following proposal:

- **Income from Poland** (e.g. salary for work in a Polish company, or profit from economic activity pursued in Poland) is taxed under the general Polish rules
- **Income from abroad** (e.g. dividends, interest, gains from the sale of shares, rental income from real estate—but not earnings from controlled foreign corporations, as explained below) is exempt from income tax, in exchange for a fixed annual lump-sum fee.

The price of admission: lump-sum fee and mandatory spending

The basic lump-sum fee is **PLN 200,000** per tax year. Crucially, this is a fixed fee, regardless of whether the taxpayer's foreign income is a million zlotys, or a hundred million.

However, the parliament introduced a unique additional requirement. On top of the lump-sum fee, the taxpayer is required to make annual expenditures of at least **PLN 100,000** in the country for purposes promoting economic growth, development of science and education, protection of cultural heritage, or physical fitness. So in practice the combined annual cost for a "Polish non-dom" is PLN 300,000.

Who can apply, and when?

This solution is not available to everybody. The key is that the person has moved their "centre of vital interests" to Poland and become a Polish tax resident. The act also imposes a bright-line rule that the taxpayer must not have been a Polish tax resident for **five of the six tax years** immediately preceding the year in which the person moved to Poland. This condition would naturally be met by foreigners, but, importantly, also by Poles returning to the country after many years living abroad.

The decision on lump-sum taxation must be taken quickly. The taxpayer must file the relevant declaration with the tax office on selection of this form of taxation by the end of January following the year in which the taxpayer moved their tax residence to Poland.

Family package and timeframes

A taxpayer can enjoy lump-sum taxation for a maximum of **10 consecutive years**. Lawmakers also thought about families. A member of the taxpayer's family (spouse or child) who also moves to Poland, and meets the conditions, may take advantage of an analogous solution. In the case of a family member, the lump sum is lower, at **PLN 100,000** per year. Moreover, a family member does not have to make the additional spending of PLN 100,000 required of the principal taxpayer.

Loss of the lump sum

The regulations clearly define when a taxpayer loses the right to lump-sum taxation.

This can occur at the taxpayer's request—all that is required is to submit a declaration giving up this status by the end of January of the tax year.

However, the right to lump-sum taxation is lost automatically (as of the end of the preceding year) if the taxpayer:

- Relocates his place of residence outside of Poland
- Fails to pay the full amount of the lump sum by the deadline, or
- Fails to make the required spending of at least PLN 100,000 in the given year.

Important exclusion: controlled foreign corporations

When analysing the Polish lump-sum taxation, we cannot overlook a key exclusion which for many entrepreneurs could be a cardinal sin of this construction. The Polish lump sum, despite its name, does not cover all foreign income.

The act expressly states that income from a controlled foreign corporation (CFC) is not subject to lump-sum taxation. The CFC rules are a mechanism for preventing tax avoidance via shifting of profits to subsidiaries in countries with low or zero tax. If a Polish tax resident controls such a foreign company (e.g. in Cyprus, Luxembourg, or the British Virgin Islands), the profit from the CFC can be taxed in Poland under general rules even if not distributed in the form of dividends.

For a wealthy entrepreneur considering moving to Poland, whose asset structure is based on foreign holding companies in tax-competitive jurisdictions, the Polish lump sum will lose nearly all of its appeal. The entrepreneur would still have to recognise and pay the standard tax in Poland on unrealised gains from his foreign companies. This is a fundamental difference compared to other lump-sum regimes (as in Italy) or remittance-based systems (as in Ireland), which generally also cover structures of this type.

Poland compared to the rest of Europe —the race for residents

The attractiveness of the Polish offer can be assessed only compared to the competition. And the competition is strong and dynamic. European regimes can be divided into several categories.

CATEGORY 1: Lump sum for new residents (Poland, Italy, Greece). This is the group Poland competes with directly. The tax is fixed, regardless of income.

- **Italy** for years lured new residents with a lump sum of EUR 100,000 per year. But, seeking additional revenue, the Italian government first raised this to EUR 200,000. Now, from 1 January 2026, as a result of a further increase, the annual lump sum is **EUR 300,000**. This drastic increase reduces the feasibility of this solution for rich expats and may encourage them to seek tax-favoured solutions in other countries.
- **Greece** maintains the fee of **EUR 100,000** per year (plus EUR 20,000 per family member), with the possibility of claiming this lump sum for 15 years. A condition for taking advantage of this regime is to invest in the Greek economy (e.g. real estate or securities) in an amount of at least EUR 500,000.

CATEGORY 2: Classic non-dom (Ireland, Cyprus, Malta). These countries apply the remittance basis—only income brought into their territory is taxed.

- **Ireland** offers the "cleanest" form of a non-dom regime, similar to the old British system. Non-domiciled tax residents pay tax only on Irish income and on foreign income which they physically remit to Irish territory. Significantly, this regime is available for an **indefinite period**.
- **Cyprus** applies similar rules, but its regime is limited to **17 years**.
- **Malta's** non-dom regime is unlimited in time, with a minimum annual tax of EUR 5,000.

CATEGORY 3: Incentives for employees (Netherlands, France, Belgium). This group doesn't compete for passive capital, but for highly skilled managers and specialists.

- In the **Netherlands**, the famed **30% ruling** allows employers to pay 30% of gross remuneration tax-free for a period of 5 years.
- **France's** regime for expats offers a tax exemption for additional compensation for work (e.g. bonuses), as well as exclusion of a portion of foreign revenue, for **8 years**.
- In **Belgium** the new regime for expats also offers an exemption for up to 35% of gross compensation for a period of 5 years, with the possibility of a three-year extension.

SEPARATE CATEGORY (Switzerland). The Swiss system of lump-sum taxation (*Pauschalbesteuerung*) is a special regime for wealthy foreigners which replaces the standard taxation of global income and assets, with a tax pursuant to an individually negotiated tax basis. However, this tax basis, treated like income, cannot be lower than the highest of several values: estimated global annual cost of living; at least seven times the annual rent; or absolute minimum statutory thresholds (federal and in each canton). The key strategic advantage is the guarantee of privacy, because taxpayers need not declare to the Swiss authorities their actual global income or assets.

CHANGING OF THE GUARD (United Kingdom). The UK, which was synonymous with the non-dom regime for decades, has radically changed its rules. From 6 April 2025, the traditional system relying on domicile and the remittance basis was eliminated. It was replaced with a new, much simpler but less advantageous scheme: new tax residents are entitled to a total tax exemption on foreign income, but only for the first four years of residence. This revolutionary change opened the playing field for other countries.

A hub or a precisely targeted instrument?

When we compare the Polish offer with the competition, an ambiguous picture emerges. At first glance, the Polish proposal seems highly competitive in terms of price. The total cost of PLN 300,000 (about EUR 70,000) is much more advantageous than the Greek

figure of EUR 100,000 (plus the cost of investment), or in particular the new Italian lump sum of EUR 300,000. The 10-year period is reasonable—much longer than the new four-year British system, although shorter than the 15-year offers from southern Europe.

But the devil is in the details. The Polish regime has two features that precisely define its target group.

First, the exclusion from the scheme of CFC income, mentioned above. For an entrepreneur with an international holding structure who would like to move to Poland and manage his global business from there, the Polish lump-sum taxation may not be optimal. For that person, the Irish or Cypriot scheme, for example, will be much more advantageous. The Polish offer is thus *de facto* directed mainly to individuals generating simple passive income (dividends from the stock market, or interest) or to returning Poles who have already closed down their foreign structures.

Second, the issue of perceived legislative stability poses a more abstract challenge. Asset planning is a process covering many years, during which the predictability of the law is a key value. When choosing a jurisdiction, wealthy families and their advisers consider not only the headline rates, but also the history of legal changes and the regulatory risk. In this context, countries with a longer and more deeply rooted tradition of applying similar regimes (such as Switzerland or Ireland) may be perceived as offering a more conservative and predictable choice.

Consequently, the Polish lump-sum taxation of foreign income is an interesting but narrowly targeted instrument. It is more of an attempt to join the European league than a universal offer befitting of a "tax hub." For Poland to compete realistically for global human capital, it needs not just to offer individual incentives, but also to build a reputation as a stable and predictable partner for long-term asset planning.

Problems recovering lost artworks

It is estimated that half of all cultural goods in Poland—512,000 items—were removed from the country during the Second World War. This looting was conducted institutionally as well as through individual thefts. In 1944, when the war was still underway, Karol Estreicher published the catalogue *Losses to Polish Culture under the German Occupation 1939–1944 with Original Documentation of Plunder*, which helped the country to prepare as best as it could for restitution of stolen artworks immediately after the war. Nonetheless, many works have still not been recovered.

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The legal framework for restitution

The recovery of artworks is regulated in both international law and national law.

A fundamental document at the international level is the **Washington Principles on Nazi-Confiscated Art** from December 1998. It has been signed by 44 countries and 12 non-governmental organisations, who declared their willingness to seek a "just and fair solution" of disputes over artworks looted by the Nazis.

These same values guided the signatories to the **Terezin Declaration on Holocaust-Era Assets** from June 2009, which expanded on the Washington Principles to push forward the idea of prompt redress of losses. Poland has acceded to both of these documents.

The Washington Principles and the Terezin Declaration are both in the nature of non-binding recommendations, which the signatories have undertaken to apply in good faith. The recommendations concern such issues as:

- Conducting research on provenance (the origin and ownership history of items)
- Allocating appropriate funds for research
- Creating a central register of information about lost artworks
- Developing **just and fair procedures** for amicable resolution of compensation claims, to avoid prolonged litigation.

The Washington Principles primarily apply to looted artworks currently found in public collections. In practice, applying these rules to items in private hands has been questioned.

Apart from the Washington Principles, **Directive 2014/60/EU of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State** is in force in the European Union. It was designed to achieve rapid and effective recovery of lost cultural goods, but it has not proved very effective and its implementation in national legal systems is proceeding slowly.

In Poland the directive is implemented by the Act on Restitution of National Cultural Objects of 25 May 2017 (**Restitution Act**).

In January 2019 the European Parliament adopted the **Resolution on cross-border restitution claims of works of art and cultural goods looted in armed conflicts and wars** (2017/2023(INI)), in which it expressed its disappointment at the inadequate results of the directive, such as:

- The still large number of lost works included in registers such as the Art Loss Register or the Lost Art Database
- The legal problems resulting in particular from national limitations periods on claims or acquisition of title through prescription
- The nature of provisions of international law not implemented into national legal systems
- Legal uncertainty in cross-border restitution proceedings.

The register lists about 650,000 items.

Specific cases are most often resolved under national regulations. In Poland these are the **Civil Code** and the **Restitution Act**.

The Restitution Act provides for two-step proceedings. In the first stage, the Ministry of Culture and National Heritage (MKiDN) makes efforts to bring cultural objects back into Poland. Entry across the border is conducted under the customs regulations, and launches the second stage of the proceedings. Pursuant to an administrative decision, the cultural asset is seized until ownership is established or the court rules that it is forfeited to the State Treasury. It should be borne in mind that even if the heirs of the pre-war owners obtain a positive court ruling, extracting cultural objects from the depository of a cultural institution will require an administrative decision from the ministry deleting the item from the museum inventory, because museum items are exempt from judicial and administrative execution (Museums Act Art. 30).

It follows that the process whereby private individuals regain identified artworks is lengthy and does not reflect the guidelines in the Washington Principles, i.e.:

- Avoiding litigation and shortening the path to restitution (preference for mediation and other amicable solutions)
- Facilitating the assertion of claims by the owners' heirs
- Just and fair resolution of claims, with due attention to the moral context.

The path to restitution in Germany through 30 November 2025

Many looted and lost artworks are located in Germany, both in private hands and in public collections. While Germany has not passed a restitution act, it has nonetheless opened the way to out-of-court resolution of such disputes. After signing the Washington Principles, Germany established the **Limbach Commission**, which operated from 2003 until the end of November 2025.

LIMBACH COMMISSION (from the name of its chair, Jutta Limbach) Advisory Commission on the return of cultural property seized as a result of Nazi persecution, especially Jewish property

This was a special body set up to cooperate with states and organisations. It was supposed to assist in resolving difficult restitution issues and to serve as a mediation centre ensuring a "just and fair solution" in the spirit of the Washington Principles. But the activity of the Limbach Commission over more than 20 years did not achieve a breakthrough. The commission conducted only 23 proceedings, 12 of which ended in a restitution recommendation, three in a conditional restitution recommendation, and in the other cases it was resolved that compensation should be paid to the former owners. It was broadly viewed as a weakness of the Limbach Commission that it was an advisory body, not a court. The commission issued opinions and recommendations which were not binding on the parties. The rulings by the Limbach Commission did have moral and political significance, but for enforcement they depended on the good will of cultural institutions.

New German arbitration court

Due to the poor assessment of the work of the Limbach Commission, from 1 December 2025 it was replaced by the **Court of Arbitration for Nazi-Looted Cultural Property** (*Schiedsgerichtsbarkeit NSRaubgut*). The procedure before the new arbitration court should be faster, more transparent, and free of charge for the parties, who in the past had to pay high court filing fees.

It is worth discussing in more detail two major changes providing hope for increased effectiveness of restitution efforts in Germany.

First, awards by the arbitration court will be binding on the parties, which will fundamentally improve the situation of parties seeking the return of artworks. The court will function in a panel of five arbitrators selected from a list of 36 people, which in addition to lawyers also includes historians and art historians. Each panel must include at least three lawyers, and each party has a right to select two arbitrators.

Second, the proceedings will be initiated upon application by the injured parties, without the need to obtain the consent of the institution holding the disputed object. The court's rules of procedure state that the only prerequisite for initiating proceedings is to first apply to the institution for restitution, without achieving a result. Previously, both parties had to consent to submission of the matter to the Limbach Commission, which in many instances posed an obvious barrier to restitution.

The panel will conduct its investigation and reach its decision solely on the basis of the arbitration court's Assessment Framework, which recognises the Washington Principles, the Terezin Declaration, and the Best Practices for the Washington Principles published in 2024. Consequently, the provisions of civil law in force in Germany will not apply. All decisions are to be taking in the spirit of seeking a just and fair solution.

The arbitration procedure also modifies hard evidence rules, based on the assumption that the passage of time and the wartime conditions could have deprived the parties of direct evidence and obliterated many facts. For this reason as well, it will be sufficient to uphold a claim that the claimant demonstrates a "high level of probability" that during the Nazi era their predecessors owned the

object, and that the object was lost as a result of military operations or persecution.

It should also be pointed out that only public institutions will be required to submit to arbitration—not private individuals or auction houses. For this group, arbitration remains voluntary and requires their consent. If such parties refuse to submit to arbitration, the claimant can instead pursue return of the artwork before the civil courts in Germany, with all of the restrictions arising from the application of substantive provisions of civil law and civil procedure regulations.

Restitution in practice

The diptych of *Mater Dolorosa* and *Ecce Homo* by Dirk Bouts returned to Poland in 2023. It had been part of the Czartoryski family collection and was exhibited at Gołuchów Castle until September 1939. The Czartoryskis brought the work to Warsaw and hid it there, but it was discovered by the Germans and placed in the National Museum. From there, it was stolen during the Warsaw Uprising, and subsequently lost for decades. Fortunately, an MKiDN staffer spotted the diptych at the Museo Ponteverda in Spain, which had purchased it in 1981. The ministry then brought the diptych back to Poland and returned it to Gołuchów Castle, as part of the branch collection of the National Museum in Poznań. There are grounds for concluding that in doing so, the ministry was acting on the basis of Directive 2014/60/EU and the Restitution Act. However, the story does not end there. According to press reports, the heirs of the pre-war owners are challenging the actions taken by MKiDN, but first and foremost the State Treasury's title to the diptych. The fate of the diptych may ultimately be decided through litigation, which might be brought by MKiDN or by the Czartoryski heirs, seeking a determination of title to the work or delivery of possession.

The restitution from Austria of a dozen or more portraits of Polish magnates, which before the war belonged to Count Alfred Potocki, occurred without the involvement of the State Treasury. In 1944 the owner turned over the works to the shipping company Gebrüder Weiss, which at that time had a warehouse at the Hohenems Palace. The portraits remained there throughout the post-war

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Restitution of artworks may involve a wide range of scenarios where the pursuit of historical truth can be even more important than applying rigid legal rules.

period. Because the Potockis had not collected the paintings after the war or paid the storage costs, the Waldburg-Zeil family acquired title to the works by prescription. Recovery of the paintings was achieved through negotiations by Alfred Potocki's heirs directly with the Waldburg-Zeils. The paintings were brought back to Poland and now are on loan to the palaces of Łańcut and Nieborów. Unfortunately, we are not aware of the legal grounds under which the restitution occurred. We can only assume that a civil contract was signed, under which the rights to the portraits were acquired.

An example of a restituted cultural object with exceptional artistic value taken from public collections is the painting *The Orange Vendor* (aka *Jewess with Oranges*) by Aleksander Gierymski, which returned to Poland in 2011. Until 1944 the painting was part of the collection of the National Museum in Warsaw, but it was stolen during the Warsaw Uprising. It remained in the possession of a German family from 1948 onwards, which under German law allowed them to rely on acquisition of title by prescription after 30 years had passed. According to press reports, the Polish state decided not to file suit, as the proceedings would have to take place in Germany, but instead chose to reach an amicable resolution. The conditions under which the restitution occurred were not publicised, but according to the press the painting was repurchased.

Summary

Restitution of artworks may involve a wide range of scenarios where the pursuit of historical truth can be even more important than applying rigid legal rules. As the examples show, these are complex, difficult cases with uncertain results.

To come to terms with the looting of artworks which Europe has experienced requires a change of attitude on the part of states, cultural institutions and auction houses. The direction of these changes is set by the Washington Principles, whose drafting and adoption were a success on the path to redressing losses in this area. They establish a framework for uniform treatment of restitution requests and, crucially, for replacing or supplementing legal regulations in different jurisdictions with considerations of fairness. An alternative path for resolution of disputes is an integral element

of restitution efforts. For this reason, the establishment of the new Court of Arbitration for Nazi-Looted Cultural Property in Berlin is a positive sign. It provides hope for recognition of legitimate claims by injured parties.

The example from Germany should encourage the creation of similar bodies in other countries which have lost cultural goods as a result of the turmoil of war. If that happens, restitution cases can be expected to take off.

FOUNDATIONS · GIFTS · IMPACT INVESTING

Modern philanthropy

As philanthropy evolves, good intentions are no longer enough. With the passage of time, we are moving at least partially from charity responding to urgent needs, towards strategic philanthropy aimed at eliminating the root causes of social problems. This modern approach requires tactics, tools and knowledge, not just for effectiveness but also for tax security. How can we effectively and tax-efficiently promote social goals through foundations, gifts, and impact investing?

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Business today is more and more boldly overstepping the bounds of purely commercial activity. Leaders and companies, aware of their influence on the world around them, are seeking methods for achieving social aims. Corporate social responsibility initiatives are no longer just an issue of image or obligation. They are a key element for building corporate value, attracting talent, and creating a positive and lasting legacy.

In Poland, professional philanthropy stretches back to the 19th century, but it has boomed only in the last decade. Companies increasingly treat philanthropy as part of their ESG strategy, not a marketing cost. Wealthy families and companies are establishing their own foundations, scholarship programmes, and funds investing in social initiatives. The common denominator of these efforts? Capital isn't just a set of numbers on a spreadsheet, but can be used to achieve real change.

What paths are open today to those who want to make the world a better place?

Path 1: wise giving

Giving remains the simplest and most widespread form of support. This is a classic tool that still exerts great power, if applied in a carefully thought-out manner. Individuals and businesses can deduct charitable gifts from their income, reducing their tax basis, subject to the limit of 6% of income for payers of personal income tax and 10% for corporate income tax.

Support must be earmarked for activities benefitting the public (e.g. healthcare, culture, education, ecology) or religion. It is not necessary for the beneficiary organisation to have the formal status

of a public benefit organisation (OPP) for the donor to claim tax relief. It is sufficient that the organisation's chartered purposes fall within the statutory definition of public benefit activity.

To claim a tax deduction, a cash gift must be documented by evidence of payment to the recipient's bank account. In the case of gifts in kind, their market value must be documented.

In this respect we must distinguish gifts from the mechanism of assigning 1.5% of one's income tax. A donation means an active transfer of funds by the taxpayer—this comes out of the taxpayer's own pocket but also allows the taxpayer to reduce their taxable income. Assigning 1.5% of their income tax is financially neutral for the taxpayer, who merely decides whether a portion of the income tax they already owe should go to the state budget or to a selected public benefit organisation. Both of these mechanisms can and should be combined.

But wise giving requires more than just making a bank transfer. It's worth conducting at least a mini-audit of the organisation we're considering supporting: check their status in the National Court Register, their financial reports, and online opinions. This helps avoid situations where the funds go to inactive or opaque entities. Increasingly, businesses also sign donation agreements, specifying how the funds should be used, for example for a particular educational project, research grant, or artistic residency.

It should be borne in mind that philanthropy isn't just about money. In-kind gifts (e.g. donating the company's own products, office equipment or software) are equally valuable and can also reduce the donor's taxable income. In turn, employee volunteering, which is increasingly popular among big companies, engages the team and builds a corporate culture grounded in shared values.

A good example in Poland is the initiatives of tech firms donating their skills to social startups—creating websites, apps, and management systems. This makes charity an extension of the donor's core business.

Gifts are a great starting point, but they have their limitations. The donor has little influence on how the funds will actually be used, and the support itself is often ad hoc. For those who think about a long-range legacy, establishing your own foundation could be a better solution.

Path 2: your own foundation

Establishing a foundation is a step for visionaries—individuals and companies wanting to create a lasting mechanism for pursuing a specific social mission. A foundation offers what donations do not: control, continuity, and identity. The founder decides on the statutory purposes and the method of administering the assets, and has a real influence on the directions for growth of the organisation, which can continue operating for decades to come.

A foundation as a legal person is exempt from CIT on income dedicated to the foundation's statutory purposes consistent with the aim of public benefit. The foundation does not pay income tax on profits from investments or gifts which it devotes to its statutory activity. This means it can more efficiently grow its assets, and thus earmark more money for pursuit of the foundation's mission.

But the biggest operational and tax challenge for a foundation arises in the last mile, when funds are paid to the beneficiary, for example to cover a patient's treatment costs. It is vital for the foundation to structure the aid so that it is tax-efficient for the recipient. The problem is that if the transfer of funds is treated like a typical gift—which a literal interpretation of the regulations might suggest—then the assistance carries negative tax consequences for the beneficiary. For unrelated persons (in the 3rd tax group), gift tax kicks in once the very low exempt amount of PLN 5,733 within five years has been crossed. In practice, this means that if a patient receives PLN 50,000 in support from a foundation, the patient himself would have to pay gift tax on a large portion of the support, defeating the purpose of the assistance.

This is why it is a fundamental challenge for the management of the foundation to establish a legal mechanism ensuring that the aid provided is not treated as a gift to the recipient and does not generate a tax obligation on the beneficiary's part. In practice, organisations deal with this risk by classifying the support not as a "gift" but as a "social assistance benefit," which enjoys a PIT exemption. It must be stressed, however, that this requires absolute precision and careful drafting of the internal documentation—rules for award of aid, agreements with beneficiaries, and accounting rules. Otherwise, a minor technical error or inconsistency may lead to a dispute with the tax office and denial of the right to a tax exemption.

It is not that easy to establish a foundation. It entails costs, reporting obligations, and the need to maintain accounting books. So before registering a new entity, it is worth considering cooperation with an existing foundation, e.g. by creating a special-purpose fund or a scholarship programme under the donor's own name.

In many Western countries it is foundations that shape the ecosystem for contemporary philanthropy. In Poland this process is just taking off, but the first effects are already visible: foundations are arising with the mission not just of providing assistance, but also of supporting culture, education, and ecological urbanism.

Path 3: business-integrated model

Many entrepreneurs are beginning to treat business and philanthropy as one. This attitude has given rise to models applying the logic of capital markets to solving social problems.

Venture philanthropy is an approach applying the principles of a venture capital fund to supporting social organisations. Instead of making a one-off grant, a social investor enters into a long-term partnership, typically for three to seven years down the road, offering financing but also strategic support, mentoring, and a network of contacts. The aim is not to generate profit, but to build a strong, self-sufficient organisation capable of scaling its positive impact. This model is growing in popularity also in Poland. Corporate foundations work in this direction, investing in social startups, entrepreneurship incubators, and educational initiatives, rather than just distributing grants.

Impact investing is another form of investing with the intention of generating a positive and measurable social impact, but also a financial return. The market for such investments is rapidly growing around the world, already absorbing hundreds of billions of dollars. In Poland this segment is still maturing, but the first venture capital funds and alternative investment companies based on this concept have begun to appear. The most easily accessible form for a broad group of investors is ESG funds, which invest capital in companies that are actively involved in sustainable growth. With this approach, an individual investor's portfolio can not only earn a profit, but also contribute to positive social changes.

PHILANTHROPIC ACTIVITY—PROS AND CONS

Gifts

- ⊕ Simplicity
- ⊖ The donor has little influence over how the funds are used
- ⊖ Ad hoc

Foundation

- ⊕ Control over spending
- ⊕ Continuity of operation
- ⊕ Building a legacy
- ⊖ Costs
- ⊖ Reporting and accounting obligations
- ⊖ Risk of tax errors

Venture philantropy / impact investing

- ⊕ Scalable and self-financing
- ⊖ Lower or slower return on investment than in a traditional business model

The advantages of impact investing include self-sufficiency and scalability. A prospering company pursuing pro-social aims doesn't need a constant influx of grants, but generates its own revenue stream, allowing it to grow and reinforce its impact. Here, capital works doubly, generating profit and social change.

But this path also poses challenges. It is hard to measure social impact, and requires the appropriate metrics and reporting. Returns on investment can be lower, or take longer, than in a typical industry. This takes patience and faith in the long-term value of the project.

Nonetheless, impact investing is becoming a more and more important element in the strategy of wealthy families, corporate foundations, and financial institutions. For many investors this is a way to combine economic rationality with a sense of purpose—investing in a better world without abandoning financial discipline.

Philanthropy of the future—from a duty to a partnership

Modern philanthropy is more than just doing good deeds. It is a deliberate strategy, requiring an informed choice of tools and skillfully combining them into a coherent whole.

Giving offers simplicity and immediate effect, but limited influence. Your own foundation provides control and allows you to build a legacy, although it carries responsibility and the risk of tax errors. Meanwhile, impact investing combines social goals with market thinking. Such projects can be scalable and self-financed.

There is no one perfect solution. The best strategies combine these approaches: some cash donations, some social investments, and some effort to build the permanent structure of a foundation. All effective measures combine awareness and transparency. Contemporary philanthropy isn't a single gesture, but a process—action flowing from the convergence of heart and mind. This also means investing in the future, in a society of greater fairness and solidarity. And investing in yourself, because by helping wisely, we can build something more long-lasting than a company or assets: trust, and an awareness that our capital—financial and human—really does count.

Payment of advance dividends, and trading in shares

The right to participate in the profit is a fundamental entitlement of a shareholder in a limited-liability company, as we discussed in the 2025 *Yearbook*. The main way this right is realised is through annual distribution of the company's profit in the form of a dividend based on the financial report for the past financial year. But in practice companies often distribute an advance against the anticipated dividend. How does this affect the future distribution of the main dividend? Particularly when there has been a change of shareholders between distribution of the advance and the allocation of profit by the annual shareholders' meeting?

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Early distribution of dividends

As a rule, distribution of the profit in a limited-liability company (sp. z o.o.) occurs once a year, based on the allocation at the ordinary (annual) meeting of shareholders of the profit stated in the financial report for the previous financial year. But sometimes a need arises for the company to pay out these funds prior to the annual meeting, or even before the financial report is prepared. For this purpose, the Commercial Companies Code provides for the institution of an advance against the anticipated dividend. This provides greater flexibility in distribution of the company's profit, thus making it more attractive to operate in the form of a limited-liability company.

Requirements for distribution of an advance dividend

The code allows for the distribution of an advance dividend if:

Commercial Companies Code Art. 194

- This possibility is expressly provided for in the articles of association
- The company has sufficient funds to make the distribution

Commercial Companies Code Art. 195

- The shareholders' meeting has approved the financial report for the previous financial year
- The approved financial report for the preceding year shows a profit, and
- The management board anticipates approval of a resolution to distribute a dividend for the year in an amount no less than the advance to be distributed.

The code also sets an upper limit for the amount of the advance to be distributed, which is partially correlated with the amount of the maximum dividend. The advance cannot exceed the result of the following calculation:

When distributing an advance, it is not permissible to use funds allocated to supplementary capital (*kapitał zapasowy*), specifically out of profit which was allocated there in the past. Moreover, it is necessary to reduce the sum available for distribution by amounts which according to the code or the articles of association should be allocated from the profit for the preceding financial year to supplementary or reserve capital.

← Commercial Companies Code Art. 192

The articles of association cannot provide for additional sources for financing payment of the advance which would raise the upper limit set by the code. However, the shareholders may introduce more restrictive solutions than those provided in the code. For example, the articles of association might provide that:

- No more than 30% of the profit generated since the start of the financial year can be distributed as an advance
- The advance cannot exceed a specific amount, such as PLN 50 per share
- The advance cannot exceed the sum of the profit earned in the entire preceding financial year
- Distribution of the advance must not result in the funds remaining in the company falling below a certain level.

Exclusive power of the management board

The decision on distribution of an advance dividend is taken by the management board. It is the management board that verifies whether all of the statutory and contractual conditions for distribution of an advance have been met, and in particular whether

the company's financial condition and balance sheet allow for the distribution.

In practice, an additional requirement is often imposed that even upon fulfilment of the statutory conditions, distribution of an advance dividend requires the approval of the supervisory board (if the company has one) or the shareholders' meeting. Such a requirement for corporate approvals must be expressly stated in the articles of association.

In a joint-stock company, any distribution of an advance dividend requires the approval of the supervisory board, unless otherwise provided in the articles of association (Commercial Companies Code Art. 349 §1, second sentence).

However, consent to distribute an advance dividend, even when the relevant resolution has been adopted, cannot be interpreted as imposing an obligation on the management board to distribute the advance. While it is the shareholders' meeting that decides on distribution of the profit shown in the financial report for the closed-out financial year, an advance is distributed only against the "anticipated dividend," on the basis of non-final interim results. The ultimate decision on distribution of an advance rests with the management board, which has the best knowledge of the company's financial condition and is in a position to assess the company's financial projections going forward and its capacity to pay the advance.

Set of persons entitled to receive an advance dividend

This is all the more justified considering that the institution of the date for an advance against dividends is expressly provided for in the case of a joint-stock company. (Commercial Companies Code Art. 349 §4).

The Commercial Companies Code does not provide any specific guidance on who is entitled to receive an advance dividend. In particular, the code does not introduce a date for determination of eligibility (as is expressly provided for the dividend itself—the dividend date), along with the authority of the shareholders' meeting to separate that date from the date of adoption of the resolution on distribution of the profit. This may suggest that the code intentionally does not vest the management board with this power, and there is no ability to indicate a separate date as of which those eligible to receive an advance dividend are determined.

Consequently, it is recognised that the persons entitled to receive an advance dividend are determined under rules analogous to those provided by the code under the basic model for the dividend as such. Thus, the shareholders entitled to an advance dividend will be those who held the shares on the date of the management

Commercial Companies Code Art. 193 §1

board's adoption of the resolution on distribution of the advance. In the case of acquisition of the shares by transfer, to meet this condition notification of the company of acquisition of the shares under Art. 187 will also be required, as the passage of the shares is effective against the company only from the date of notification. (We discussed this in more detail in the 2025 *Yearbook*.)

The source from which the payment is made is irrelevant for determination of the persons entitled to the advance. It is also irrelevant whether the profit being distributed was earned during the time when a given person was a shareholder, nor the shareholder structure at the time when the resolution was adopted to retain the profit in the company and postpone distribution of the profit.

EXAMPLE NO. 1

Facts

Starting from 1 January 2025, the shareholders of the company were Shareholders A, B and C. On 15 September 2025 a conditional agreement was concluded to sell all of Shareholder A's shares to Shareholder B. The conditions precedent were fulfilled, and thus all of the shares sold passed to Shareholder B, on 15 October 2025, which the company was notified of under Art. 187 on the same day. Meanwhile, on 1 October 2025 the management board adopted a resolution to pay an advance dividend, and made the payment. The advance was financed entirely out of the profit earned by the company since the end of the preceding financial year.

Answer

Shareholders A, B and C will be entitled to the advance dividend in proportion to the shares they held in the company as of 1 October 2025. The existence on that date of an obligation on the part of Shareholder A toward Shareholder B under the conditional share sale agreement is irrelevant for payment of the advance. What is decisive is that on the date of the management board's adoption of the resolution on payment of the advance, because the conditions precedent had not yet occurred, the shares covered by the conditional sale agreement still belonged to Shareholder A.

Practical risk for share trading

The inability for the management board to specify an eligibility date, defining the set of persons entitled to receive the advance dividend, generates a practical risk for trading in shares. The company does not receive any offsetting consideration in exchange for payment of the advance, and thus the distributed advance will naturally have an impact on the value of the shares. The fact of distribution of the advance should thus be reflected in the price of the shares agreed between the seller and the buyer, reducing it appropriately due to the reduction in the level of the company's equity.

But unlike in the case of the dividend as such, an advance may be approved without the knowledge of the shareholder who is selling his shares at that time. While under the statutory model distribution of a dividend requires adoption of a resolution by the shareholders' meeting (of which the shareholder must at least be notified), in the case of an advance the payment may be made based on a decision of the management board alone. The potential need for consent of the shareholders or the supervisory board would require the appropriate decision to be made by the shareholders, and would have to be expressly provided for in the articles of association. This risk is particularly grave given the lack of a requirement to publicly announce the payment of advance dividends—unless this is set forth in the articles of association, which is rarely done in limited-liability companies.

This is another difference from a joint-stock company, where announcement of the payment of an advance dividend is a mandatory stage in the procedure and must be done at least four weeks before payment begins (Commercial Companies Code Art. 349 §4).

Consequently, the risk connected with the impact of possible payment of an advance dividend on the purchase price for the shares should be addressed in the transaction documentation. In one-step transactions, where the shares pass to the buyer upon conclusion of the contract or upon payment of the price, most often the seller will address this in the representations and warranties concerning payments to date between the company and the shareholder, including advances against anticipated dividends.

In the case of contracts providing for an interim period, the seller will typically warrant that until the shares pass to the buyer, no cash flows will occur between the company and the shareholder other than those expressly agreed between the parties. If nonetheless such flows do occur, a claim will arise on the part of the buyer against the seller to pay over the amount in question. In both types

of transactions, security for any distributions which the buyer is unaware of at the time the contract is concluded should be reflected in the provisions of the share sale agreement.

Payment of dividends and disposal of the shares after payment of an advance

Approval of an advance dividend does not affect the shareholders' ability to dispose of their shares. Therefore, the shareholders of the company as of the date of determining the right to a dividend may be different than on the date of payment of the advance. A shareholder who has received an advance against the anticipated dividend might transfer all or part of his shares to a new shareholder before the shareholders' meeting adopts a resolution on distribution of the profit shown in the financial report for the preceding financial year. In that situation, the question arises whom the dividend should be paid to, and in what amount.

If the approved dividend is higher than the advance paid out earlier, the amount payable for the dividend should be reduced by the value of the advances. If, however, the approved dividend turns out to be lower than the advances already distributed, the difference must be refunded to the company.

If the shares were disposed of during the period between payment of the advance dividend and the date for determination of the right to a dividend, the new shareholder should receive the dividend, reduced by the amount of the advance paid to the former shareholder.

Eligibility to receive an advance dividend is a standalone right, independent of the right to receive the dividend as such. Consequently, a shareholder who received an advance and then sold his shares will generally have the right to keep the advance.

EXAMPLE NO. 2

Facts

On 5 October 2024 the management board of the company decided to pay an advance against anticipated dividends, in the amount of PLN 30 per share. The advance was paid to Shareholders A, B and C. Then, on 30 June 2025 the shareholders' meeting adopted a resolution on division of the profit and distribution of a dividend of PLN 100 per share, while specifying that the date of adoption of the resolution is the dividend date. On that date, the shareholders were Shareholder B, Shareholder C and Shareholder D, who on 13 May 2025 acquired all of the shares that had belonged to Shareholder A on the date of payment of the advance; the sale was notified to the company the same day under Commercial Companies Code Art. 187.

Answer

The management board should distribute the dividend to Shareholders B, C and D, i.e. the persons who were shareholders on the dividend date. The dividend should be paid out in the amount of PLN 70 per share, i.e. after deducting the previous advance of PLN 30 per share. The same amount should be paid to Shareholder B and Shareholder C, who previously received the advance dividend, and also to Shareholder D, who did not receive the advance. Shareholder D will not be entitled to seek an additional payment from the company to make up the full amount of the dividend—nor from Shareholder A, unless otherwise provided between the parties in their share sale agreement.

Obligation to return the advance

The view is also expressed in the legal literature that an advance dividend paid prior to disposal of the shares should be treated in every case as an undeserved benefit, which would result in an obligation by the former shareholder to refund the amount received to the company. But this view is dubious. It follows from the nature of an advance dividend that it is distributed prior to the dividend date, that is, before the set of persons entitled to receive the final dividend is determined. Consequently, the shareholders in the company on the date of payment of the advance have a right to receive it, and later disposal of the shares does not wipe out that right or cause that right to pass to the buyer.

Thus it cannot be recognised that a mere change in the company's shareholders should automatically result in treating the payment of the advance as made unlawfully. That view would cause great practical difficulties in the trading of shares. Moreover, if such a payment were regarded as unauthorised, the members of the management board responsible for making the payment would be jointly and severally liable for repayment of the advance, in certain circumstances also along with the other shareholders. But it does not seem justified to charge the board members with liability to refund the advance as a result of a disposal of shares between the date of payment of the advance and the dividend date, when, in practice, the disposal was beyond their control.

← Commercial Companies Code Art. 198

Regarding the payment of an advance dividend as unauthorised within the meaning of Art. 198 of the code should essentially be limited to situations where the payment was made in violation of law or the articles of association.

An example of such an unauthorised payment would be paying advances in an amount exceeding the limit specified in the code, or financing it out of capital reserves which the management board has no right to dispose of.

EXAMPLE NO. 3

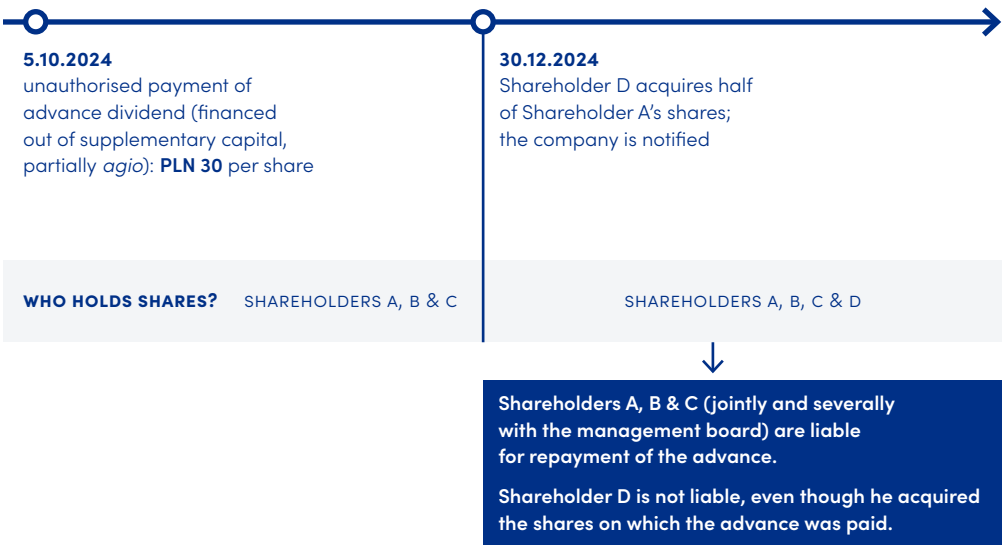
Facts

On 5 October 2024 the management board of the company decided to pay an advance against anticipated dividends, in the amount of PLN 30 per share. The advance was paid to Shareholders A, B and C and was financed out of supplementary capital, partially constituting *agio* (i.e. excess paid in to cover the shares beyond the nominal value of the shares). Then, on 30 December 2024 Shareholder A sold half of his shares to Shareholder D, which the company was notified of under Art. 187 on the same day.

Answer

The advance dividend was paid in violation of law, because it was financed from supplementary capital, which the management board cannot use for the purpose of advance dividends. Consequently, the advance is subject to refund under Commercial Companies Code Art. 198. Those obligated to refund the advance are Shareholders A, B and C, as the recipients of the benefit, jointly and severally with the management board, which was responsible for making the unauthorised payment.

Shareholder D is not individually or jointly and severally liable for refund of the advance dividend taken by Shareholder A, even though the advance was paid on shares which were later acquired by D. In particular, in this case there is no basis for liability under Art. 186, which according to the dominant view does not cover payments made contrary to law or the articles of association.



Summary

Distribution of an advance dividend undoubtedly affects the amount of the final dividend. The nature of this influence depends on the relationship between the amount of the advance paid and the approved dividend, as well as any disposal of the shares during the course of the financial year. The Commercial Companies Code does not contain clear provisions in this respect, however, while the legal literature presents views that are often divergent and competing.

Some commentators indicate that a shareholder who received an advance dividend and then disposed of the shares before the dividend date should in each case refund the amount taken. Others take the view that the advance dividend is strictly tied to the shares, and disposal of the shares during the period between payment of the advance and the dividend date does not constitute a standalone basis for a claim to make up the difference. Under that conception, there is also a risk that the new shareholder may be obliged to refund advances allocated to the shares it holds, even though the advance was actually paid to the previous shareholder, who disposed of the shares before the repayment obligation arose. Consequently, the new shareholder's liability could exceed the price paid for the acquired shares.

Given the lack of unambiguous statutory provisions, and the divergent views in the legal literature, issues related to the payment of advances against dividends should always be reflected in the documentation which is the basis for disposal of the shares. This is particularly relevant in situations where the articles of association do not require consent from the shareholders' meeting to pay an advance dividend, because in practice the parties to the share sale agreement might not know that the advance has been paid.

Well-drafted transaction documentation should plainly state the rules for settlement of payments between the parties, including the impact of any advances or dividends on the price paid by the buyer. Such provisions will limit the risk of post-transaction disputes and introduce clear rules for the payments between the parties, including in situations where the company's balance sheet worsens and a statutory obligation arises to refund previously paid advances.

Behaviour on the labour market can infringe competition law

From the perspective of competition law, businesses can compete with each other also as employers, vying for the services of employees. This means that they can infringe competition law by taking actions in relation to employees or by making arrangements with other businesses involving their dealings with employees.

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Competition on the labour market

Poland's Competition and Consumer Protection Act bans any agreements between undertakings with the object or effect of eliminating, limiting or otherwise infringing competition. The notion of "competition" is understood broadly—it is not limited to competing for customers, but also applies for example to dealings with suppliers. And, after all, employees are hired by an undertaking to supply services of a certain type. An employer thus competes with other undertakings for specific employees, primarily through the salary they offer but also through other conditions of work and pay.

Importantly, to be competitors on the labour market, undertakings do not also have to be competitors in the more basic sense, i.e. by competing with each other for customers. Manufacturers of entirely different products need some of the same employees, e.g. warehouse workers, drivers, and qualified specialists not directly tied to the specific industry, such as IT workers.

It should be borne in mind in this respect that competition law regards as "employees" not just people hired under an employment contract. Agreements on the labour market may thus also involve persons cooperating with an undertaking on the basis of civil-law contracts (such as, in the Polish context, a contract of mandate [*umowa zlecenia*], a contract to perform a specific work [*umowa o dzieło*], or a B2B contract).

Illegal agreements

The regulations also define very broadly the notion of "agreement" (*porozumienie*). The most obvious example of an agreement would be when two or more undertakings stipulate plans for how they will behave. Significantly, such an agreement does not necessarily

have to be complied with. Even if an undertaking merely declares that it will act in a certain way (for example, that it will not raise employees' salaries this year), but in reality behaves differently, the declaration itself may be determined by the Office of Competition and Consumer Protection (UOKiK) to be an infringement of competition law.

Another form of agreement could be decisions by associations of businesses (e.g. guidelines issued by industry groups), or even the mere exchange of information. For example, at a meeting with a competitor a businessperson might state on their own that their company does not plan any salary raises this year, without asking the competitor what its plans are in this area.

The regulations refer to agreements between "undertakings" (*przedsiębiorcy*), but illegal agreements do not have to be reached between persons formally empowered to act for an undertaking, such as the management board or directors of a company. In practice, an agreement might be reached by any employee of the undertaking (or a person working with the undertaking under a civil-law contract). In this context, staff of HR departments may be particularly exposed to the risk of entering into such agreements.

Moreover, an agreement does not have to be made in writing. An ordinary conversation could suffice, or an exchange of emails, SMSs, or instant messages via a messaging app.

Wage-fixing

The main metric when competing for employees is the compensation paid for their services. Consequently, a wage-fixing agreement —an agreement or exchange of information between undertakings on the salaries they plan to pay their staff—poses a huge risk of an infringement. Because salary is the price paid for employees' services, from the perspective of competition law such measures will constitute a price-fixing agreement.

Setting the salaries for particular positions may also constitute an anticompetitive agreement—for example, stipulating that the salary of persons hired to handle goods in the warehouse will not exceed a certain amount per hour or per month. Such an agreement might take a more general form, such as the plan not to offer any salary increases in the given year.

Agreements concerning not just the overall salary, but also specific components (e.g. bonuses, prizes or task-based supplements), can run afoul of competition law. Merely agreeing on the method for setting wages (e.g. that salespeople will receive, on top of their base salary, a commission of a certain percentage on the products they sell) could also be an infringement.

No poaching

Another example of a serious infringement involves a promise not to entice away each other's staff—a "no-poaching agreement." Such arrangements might involve specific employees or entire categories of workers. Currently UOKiK is conducting proceedings involving alleged agreements between transport companies that they will not hire each other's employees for a certain period after they stop working for their previous employer.

A restriction on competition could be an agreement concerning active recruitment of the competitor's employees—a promise by a business that when looking for employees, it will not contact current or former employees of the competitor (directly or through intermediaries). It could also be an infringement to agree not to hire the competitor's employees when the employees themselves apply for a job with the other company.

Both wage-fixing agreements and no-poaching agreements are treated by the Polish competition authority as restrictions of competition due to the very object of such agreements. This means that the regulator does not have to prove that such agreement actually had a negative impact on competition, or had any effects at all on the given labour market. Simply making such agreements is prohibited.

Exchange of information

The exchange of confidential information between undertakings can constitute an anticompetitive agreement. This is because obtaining information on a competitor's plans can influence the company's business decisions. For example, if a company learns that a competitor plans to lay off a large portion of its staff, it may hold off

on awarding planned pay raises to its own staff, because it knows that the staff will have less opportunity to change employers. If it didn't have access to that information, it might take a different decision. This is why the very exchange of information—or even unilateral sharing of certain information by one undertaking with its competitors—may constitute a restriction on competition.

Non-compete clauses

A ban on competition during employment or after the employment ends is a separate topic. Non-compete clauses are sometimes included in the employment contract or cooperation agreement, or set forth in a separate non-competition agreement. As a rule, such a ban will not constitute an infringement of competition law, so long as it results from the employer's own decision, i.e. was not consulted with other undertakings. This is because only anticompetitive agreements between undertakings are banned—not arrangements between an undertaking and its own employee. And because for the purposes of competition law "self-employed" persons are treated like employees, such a prohibition in civil-law contracts (contract of mandate, contract to perform a specific work, or B2B contract) will also generally be permitted.

However, an agreement in this area between competitors, e.g. concerning the duration of non-compete clauses or the compensation payable to the employee for accepting a non-compete clause, will not be permitted.

UOKiK proceedings to date

The Polish competition authority may conduct proceedings against entities suspected of infringing the Competition and Consumer Protection Act, which may lead to imposition of a fine as high as 10% of the undertaking's turnover in the preceding year. Individual management personnel of the undertaking (management board, directors of specific divisions, and other managers) can also be fined up to PLN 2 million.

To date the president of UOKiK has issued two decisions concerning agreements on the labour market. One of them involved an agreement among **professional basketball teams** playing in the top division that they would stop paying salaries to players from the moment that games were suspended due to the Covid-19 pandemic. The regulator found that setting salaries at zero from a certain moment can also be considered wage-fixing, and thus a form of price-fixing, and is an anticompetitive agreement by its very object. The decision also fined the Polish Basketball League, organiser of the games, which supported the teams in reaching their wage-fixing arrangement.

The other decision also involved sports, this time professional **motorcycle speedway racing**. The rules for speedway events included a provision setting a maximum fee which teams could offer riders within the specific division. The president of UOKiK found that this agreement restricted competition for riders between the teams. In this case, the fine was imposed on the Polish Automobile and Motorcycle Federation (PZMot) and the Speedway Ekstraliga division—the organisers whose rules included the restrictions on riders' pay.

Proceedings are also currently underway before UOKiK concerning alleged no-poaching agreements among **transport companies**. In one of the cases, allegations were filed against 33 companies and 8 individuals. The regulator found that the companies may have limited the opportunity for drivers to change employers between transport companies serving the distribution centres of the grocery chain Biedronka, by agreeing not to hire their competitors' former employees. Allegations were also filed against the owner of Biedronka, Jeronimo Martins Polska, which may have helped its shippers enforce their arrangement.

Examples from other countries

The European Commission imposed a fine of over EUR 320 million on **food delivery** companies. Delivery Hero and Glovo agreed, among other things, that they would not hire each other's employees. Initially this agreement applied only to certain categories of workers, but then was extended to all employees.

The competition authority in the UK found an infringement and fined companies involved in **transmission of sporting events**. The violations concerned the exchange of information by senior management on the rates the companies would pay to certain types of freelancers (such as camera operators, makeup artists, and sound technicians).

In France and Portugal the regulators fined **consulting firms** specialising in engineering and technology for agreeing not to poach each other's staff.

Risk for employers

As these examples show, there is a risk of infringement of competition regulations in various sectors, and the banned practices may involve both skilled and unskilled workers. Therefore, companies need to be particularly careful when raising the topic of employment with other undertakings. Proper training is essential, as well as raising the awareness of employees, particularly in HR departments, of the existing dangers of running afoul of competition law.

The risk of reclassification of a B2B contract as an employment contract: Existing practice and upcoming changes

For years, the business-to-business model for cooperation with personnel has been one of the most common alternatives to traditional employment in Poland. It is popular among businesses due to its flexibility, and is also used by persons practising the free professions, experts, and IT specialists. Previously, this form of cooperation was not the subject of particular interest on the part of regulators, but in 2026 this situation could change significantly.

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The Polish government plans to vest the State Labour Inspectorate (PIP) with the authority to determine the existence of an employment relationship through administrative channels. This means that labour inspectors could determine on their own—without filing suit in court—that a civil-law (non-employment) contract is in reality an employment contract. This would be a fundamental change, in practice increasing the risk of reclassification of contracts, and could force companies to make sweeping adjustments to their HR policies.

To properly grasp this risk, it is worth examining the existing rules for distinguishing an employment relationship from a civil-law relationship, alongside the case law from the courts.

Employment relationship: the intent of the parties, or statutory compulsion?

Under Art. 22 of the Labour Code, an employment relationship exists when an individual performs work for an employer, and the employer pays wages for the work. This construction means that neither the title given to the contract, nor the intention declared by the parties, excludes the application of labour law if the actual conditions under which the work is performed meet the definition of employment.

Two sections of this provision are of key importance in this context. The first expressly states that working under the conditions described in Labour Code Art. 22 §1 is working on the basis of an employment relationship, regardless of the name given to the contract. The second prohibits the use of a civil-law contract in place of an employment contract if the conditions for performance of the work are actually employment conditions.

This is why in disputes over the classification of a contract, the court will always examine whether the work is performed in a subordinated manner, continuously and for pay. This practice has become firmly established in the case law over the decades.

ELEMENT	EMPLOYMENT CONTRACT	B2B (CIVIL-LAW) CONTRACT
Subordination	Yes, the employee is subordinated to the employer	No employment subordination
Economic risk	Borne by the employer	Borne by the worker
Worker's liability	Limited (under the Labour Code)	Contractual, often unlimited
Annual leave, protection, benefits	Guaranteed by law	No statutory guarantees
Remuneration	Protected, paid monthly	Invoices, no protection
Working time	Governed by regulations	Discretionary, depending on the contract
Personal performance of work	Generally mandatory	Substitution possible

Actual relations between the parties —the core assessment

The Polish courts have repeatedly held that in the event of a dispute over the nature of a legal relationship, what is of chief relevance is the parties' real relationship, not how the documents are framed. Even the best-drafted B2B contract will not protect the parties if in practice the person performing the work functions like an employee: working fixed hours, carrying out instructions from superiors, organisationally subordinated, and without the discretion to decide on the manner of executing the assigned tasks.

Interestingly, the courts have also stressed many times that the same activities may be performed under an employment relationship and in civil-law cooperation. Thus it is not the type of tasks performed by the worker that is decisive, but rather **the manner of performance of the tasks**.

Criteria applied by the courts in assessing the nature of a contract

From the perspective of judicial practice, several groups of criteria may be identified that will determine whether an existing B2B contract is actually an employment contract.

In practice, often the courts will also examine such subtle issues as whether the worker has realistic freedom to refuse to perform a task; the manner of reporting the results of the work; whether the worker can substitute another person; whether the worker has other clients. Oftentimes a single element will not be dispositive, but the sum total of minor signals may determine the ultimate classification.

LEGAL CRITERIA

- **Existence of employment subordination**—performing work under the employer's direction
- **Duty to perform work personally**—no ability to freely designate a substitute
- **Duty to carry out superiors' orders**—the need to comply with instructions from management concerning current matters
- **Economic risk borne by the employer**—the worker must be paid regardless of the economic result

ORGANISATIONAL CRITERIA

- **Defined working time**—fixed working hours, work schedule, shift system
- **Designated place to perform work**—the obligation to perform work at the employer's headquarters or other designated location
- **Records of working time and attendance list**—duty to register the worker's presence and time worked
- **Application of company's internal policies**—the worker must comply with work rules and other internal procedures
- **System of leave and time off**—the right to annual leave and the duty to justify absences
- **Use of the employer's tools and equipment**—the worker does not use their own means of production

ECONOMIC CRITERIA

- **Remuneration for working time**—fixed hourly wage or monthly salary, rather than payment based on the results
- **Minimum pay guarantees**—the right to the legal minimum wage and statutory supplements
- **Additional benefits**—monetary equivalent for annual leave, extra pay for overtime, other employee benefits

FACTUAL CRITERIA

- **Actual manner of contract performance**—actual execution of elements characteristic of an employment relationship
- **Ongoing oversight of work performance**—supervision of the work process and not just the result

HIERARCHY OF CRITERIA IN RULINGS FROM THE POLISH COURTS (RISK FACTORS)

FACTOR	WEIGHT IN THE COURT'S ASSESSMENT	RISK OF RECLASSIFICATION
Employment subordination	100% (decisive)	Highest
Time and place designated by the company	90% (key)	High
Duty to perform work personally	90% (key)	High
Shifting to the company of the risk of the work performed, and the duty to comply with the company's internal policies	85% (very important)	High
Actual treatment like other employees	75% (important)	Medium
Intent of the parties and title of the contract	10% (secondary)	Low

How is an employment relationship determined now?

Currently, a determination that a specific person is an employee is primarily made through the courts. An application for determination of an employment relationship may be filed by the person performing the work, the labour inspector, or (in a lawsuit joining the insured and the employer) the Social Insurance Institution (ZUS).

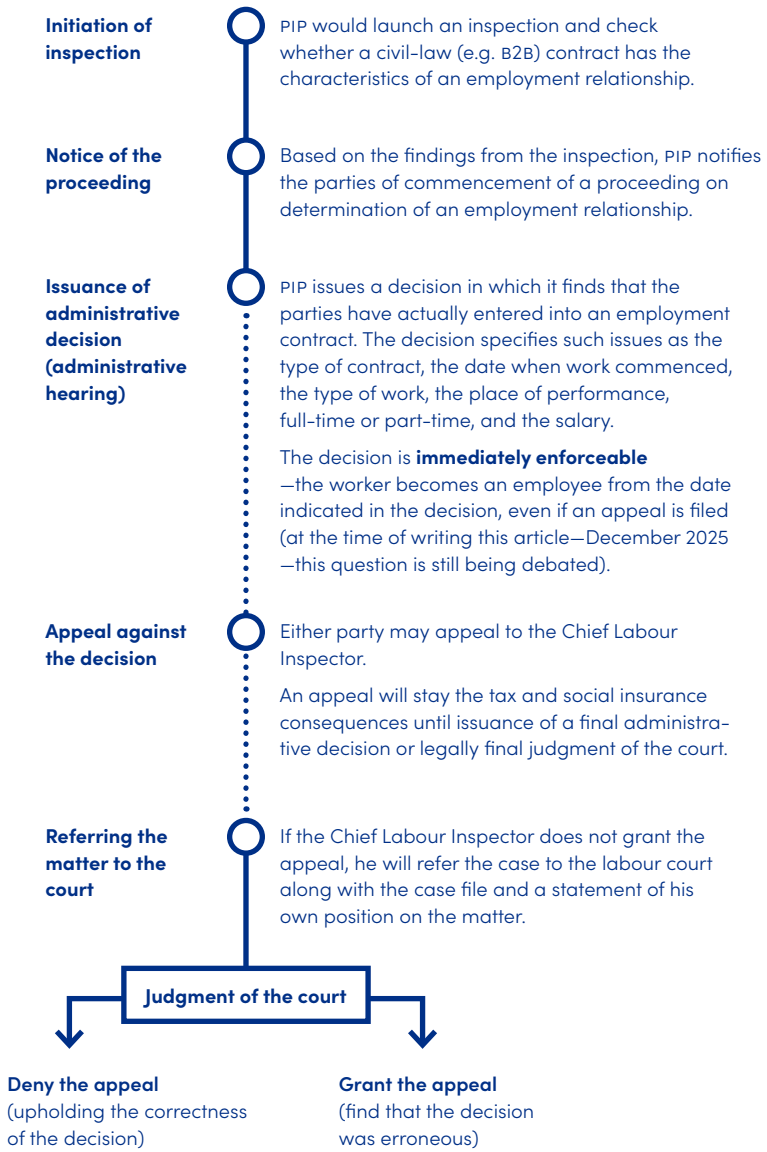
The court proceedings are based mainly on an analysis of the evidence: correspondence, witness testimony, HR documentation, procedures, policies, and the actual manner of performance of the work. Very often, the court will also examine the organisational context: the worker's role within the company, their involvement in decision-making processes, and whether the worker has true discretion in operating their own business.

This model is time-consuming, but has ensured a relative balance. The decision on recognising a disputed relationship as an employment relationship is taken by a court, not an administrative body.

Revolution in classification of contracts—proposed new authority of the State Labour Inspectorate

The proposed changes could greatly alter this balance. The bill calls for introduction of an administrative procedure in which the PIP inspector would be vested with the authority to establish an employment relationship via an administrative decision.

HOW WOULD THE PROPOSED PROCEDURE WORK?



Effects of a decision by the labour inspector

The consequences of an inspector's issuance of a decision recognising a B2B (or other civil-law) contract as an employment contract are extensive and multilayered. They include immediate impacts as well as effects that may stretch back many years.

From the time the PIP decision is delivered, the person cooperating with the company must be treated as an employee. The duty applies to the period both before and after issuance of the decision—although it ultimately may turn out that the decision exerts effects only for the future, and only from the time when the decision becomes legally final.

LABOUR LAW CONSEQUENCES

From the time the decision is delivered, the employer must:

- Confirm the terms of employment
- Maintain employment documentation and records of working time
- Calculate the worker's wages in accordance with the Labour Code
- Grant annual leave
- Apply the rules for protection of employees (e.g. parental protections).

TAX AND SOCIAL INSURANCE CONSEQUENCES

From the date of the decision:

- A duty arises to make social insurance and personal income tax payments under the rules for employees
- The employer must register the worker with the Social Insurance Institution
- Current ZUS contributions must be calculated and paid.

Until the decision becomes legally final, the tax and social insurance obligations will not be revised for the period prior to issuance of the decision.

RETROACTIVE CONSEQUENCES

Upon completion of the appellate proceedings:

- Retroactive tax obligations (**for up to 5 years**) will return
- The employer may be charged with paying in additional ZUS contributions going back several years
- The employer may be required to pay monetary equivalents (e.g. for annual leave).

FINANCIAL PENALTIES

- Administrative fines of up to PLN 5,000
- Judicial fines of up to PLN 30,000 (or PLN 60,000 following the proposed changes)

”

Under the proposed new regulations, it would be vital to document the actual lack of employment-type subordination, and to develop systemic solutions mitigating the risk of reclassification of B2B relationships as employment.

What does this mean for businesses?

If the proposal were adopted, companies would need to review their models for cooperation with individuals operating their own businesses. Until now, many organisations have relied on the wording of contracts and the declarations by the parties. Under the proposed new regulations, it would be vital to document the actual lack of employment-type subordination, and to develop systemic solutions mitigating the risk of reclassification of B2B relationships as employment.

It may also prove necessary to conduct regular audits, verify the scope of duties carried out by independent contractors, and apply professional procedures for separating B2B work from work typical for employment.

In many industries—particularly where cooperation with contractors is closely integrated with the employer's own team—it may be necessary to reorganise processes or limit B2B cooperation strictly to persons who actually work independently.

The “uberisation” of temporary work

Although the Act on Hiring of Temporary Employees has been on the books in Poland for over 20 years, and its provisions don’t seem to be keeping pace with the market trends, the temporary work model itself remains a useful tool for managing fluctuating demands for labour, particularly in the manufacturing or logistics sector. Temporary work allows employers to fill an intermittent need for workers without burdening the employer with numerous obligations. Could this process be further improved by hiring temporary workers via an app?

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Temporary work allows employers to quickly find additional staff, for example when there is a growing demand for services, when production needs to be ramped up, or during the holiday season. Other important advantages include the lower costs, at least for recruitment. But what if all of this could also be arranged with just a few clicks on an app?

In this article we consider whether managing the hiring of temporary workers via an app is possible and what it would entail. Or perhaps such a solution already exists, and its growing popularity will lead to a renaissance of temporary work?

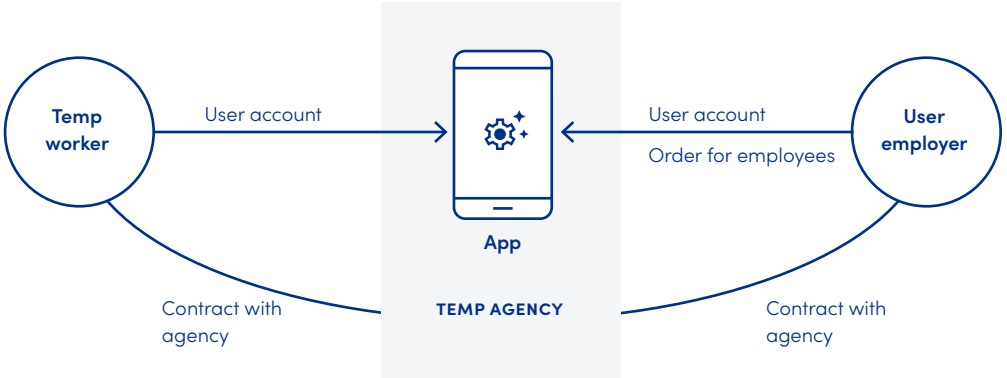
Temp work via app

In the classic model of temporary work, the employee is hired by a temporary work agency (under an employment contract for a definite period or a civil-law contract), while the work is performed for and under the direction of the "user employer" to whom the worker is assigned (under a separate contract) by the agency.

In the model we consider, we assume the use in this process of an application offered by the temp agency to both the temporary employee and the user employer.

In such an app, the user employers (who could have their own profiles or accounts in the app) would submit "orders" for temporary workers with specified qualifications and skills. If the order matched the availability of a temporary worker offered by the agency under the specified terms, then, upon fulfilment of all the obligations (including informational obligations), a contract would be concluded between the client (user employer) and the agency—and, correspondingly, also a contract between the agency and the temporary worker.

→ from the Act on Hiring of Temporary Employees of 9 July 2003



The app might function with an algorithm setting prices dynamically (with the statutory minimum wages taken into account)—in other words, the agency's margin on the temp worker's remuneration would depend for example on the fundamental market mechanism of the interplay between supply and demand, the time of year, and a range of other factors. For example, the cost of hiring a qualified house painter or aquatics instructor as a temporary employee would be noticeably higher during the construction season or the summer, and lower at other times.

The app would also facilitate:

- Settlement of fees between the parties
- Fulfilment of all documentation requirements
- Submission of other statements (e.g. notice of termination of the contract with the agency by the user employer and/or termination of the contract with the employee by the agency)
- Submission of evaluations of the work of particular temps, which could have certain consequences for them (both positive and negative).

It should be mentioned that if the functions of the app were driven by artificial intelligence, it would be necessary to ensure their compliance with the EU's AI Act, in particular preceded by an analysis of whether such functions qualify as a "high-risk AI system" under Annex III to the AI Act. But given the scope of that issue, it is a topic for a separate article.

Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence (Artificial Intelligence Act)

Would such an app meet the statutory requirements for temporary work?

In our practical assessment, as long as the app described fits within the framework defined by the current regulations, the answer to this question would basically be affirmative. First and foremost, the work offered through such an app would have to fall within at least one of the following categories:

Art. 2(3) of the Act on Hiring of Temporary Employees

- Seasonal, periodic or occasional work
- Work which cannot be completed on a timely basis by the regular employees of the user employer
- Work whose performance is one of the duties of an absent employee hired by the user employer.

Thus, the app could, for example, help ensure sufficient staffing of an e-commerce warehouse during the peak pre-Christmas sales season. But it should not be used, for example, for regular staffing of accounting positions, or for the types of work referred to in Art. 8 of the Act on Hiring of Temporary Employees (e.g. work requiring security guards to be equipped with firearms). Unless the app were to offer not so much workers, but rather services performed under the supervision of the service provider—but this would fall outside the regime of the Act on Hiring of Temporary Employees, and *de facto* would constitute outsourcing, which is an entirely different issue.

The app should also meet the documentation and informational requirements of the Act on Hiring of Temporary Employees. The regulations include a set of informational and consultation duties between the temp agency and the user employer. This concerns such issues as:

Art. 9, 9a, 11c and 18(2) of the Act on Hiring of Temporary Employees

- The type of work entrusted to the temporary employee
- The pay for the work done by the temporary employee
- Notification of resignation by the temporary employee before the end of the period for performance of temporary work agreed with the agency.

Art. 13(4) of the Act on Hiring of Temporary Employees

The Act on Hiring of Temporary Employees also requires the temporary worker's employment contract to be made in writing. To meet this requirement using an app, the temp employee and the

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The app could help ensure sufficient staffing of an e-commerce warehouse during the peak pre-Christmas sales season.

Civil Code Art. 78[1] §§1–2

temp agency could use a qualified electronic signature. So far, such signatures have mainly been used by employers (due to the fees involved), while employees mainly provide traditional handwritten signatures. But considering the recently introduced functionality of the government app for citizens mObywatel, allowing free electronic signing of up to five documents per month, it may no longer be so problematic to meet the requirement of written form for an employment contract using an app, and might help popularise this form of signing documents.

Art. 11b of the Act on Hiring of Temporary Employees

To ensure the full exchange of information, the app could facilitate temp workers' submission to temp agencies of employment certificates and other documents confirming the periods of performance of temporary work for a specific user employer, making it much easier to carry out these obligations.

Modern temporary employment, or platform work?

The app described above could be regarded as a sort of hybrid solution somewhere between the traditional notion of temporary employment and platform work. Thus, when considering this solution, it should be envisaged whether this framing of the relationship of the temp agency with the temp worker and the user employer would cause the temp agency to be regarded as a "digital labour platform" within the meaning of the EU's Platform Work Directive, which essentially would carry with it the presumption of an employment relationship, certain informational obligations, and a requirement for human oversight of algorithms monitoring employees and taking decisions affecting them. The reverse situation might also be considered, i.e. treating work performed via a platform as temporary work. After all, there are already on the market not only temp agencies launching platforms and apps supporting their operations, but also platforms adopting the business models and operating rules of temp agencies. In practice, the distinction between digital labour platforms and temporary work agencies may gradually be erased.

Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions in platform work

Although Poland has not yet implemented this directive (not even a draft of the relevant provisions has been released yet), in other countries rulings have already been issued under similar

facts. For example, the Dutch Supreme Court considered the case of a person performing housecleaning services via the Helpling platform. The app facilitated the arrangements for the working schedule, setting the expected hourly rate, and acceptance of assignments. Helpling also matched the parties' offers, developed general conditions, and arranged for payments via an external payment service provider. The court held that such work, despite being targeted to a private recipient, could be regarded as temporary work, and the Helpling platform itself could be regarded as a temporary work agency.

Helpling Netherlands B. V. v Federatie Nederlandse Vakbeweging (Supreme Court of the Netherlands, judgment of 11 April 2025), tinyurl.com/26dyupt9

Summary

Temporary work continues to account for a significant portion of the HR services market in Poland. In the context of the ongoing legislative work on controversial powers of the State Labour Inspectorate, we may even witness an increased interest in this model on the part of businesses who currently hire "employees" on the basis of civil-law contracts. Apps of this sort would also fall within the trend of increasingly widespread digitalisation of the HR sector.

See the article "The risk of reclassification of a B2B contract as an employment contract" at p. 131

But when deciding on use of an app offered by a temporary work agency (or designing such solutions), a top priority should be to ensure that they comply with the regulations, including the requirements of the Act on Hiring of Temporary Employees.

In light of the increasingly fluid boundary between platform work and temporary employment, it is also essential to consider the risk that such an app could be deemed to be a digital labour platform. Thus, the functions of such an app must be carefully designed, with special attention to the roles played by the intermediary and the service recipient in the entire process.

Most interesting, there are already solutions out there implementing the notions we discuss in this article, and no doubt they will soon be joined by even more—also in Poland.

Matrix organisation of employment: What is it, and what are the legal risks?

Ongoing globalisation and the growth of large corporate structures have led to organisational schemes at companies where employees are required to report to various people, some of them outside the employer's structure. This model is referred to as a "matrix organisation." What legal risks may arise from applying such structures in employment in Poland?

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What is a matrix organisation?

A classic employer organisation has a linear structure, where the relationship between superiors and subordinates is based on issuing top-down orders along the vertical plane. A matrix organisation, by contrast, is one where subordinated employees are simultaneously functional superiors and managers overseeing specific projects or processes.

A corporate employee may thus often be subject to a dual form of subordination:

- **Formal subordination** arising out of the employee's placement within the direct employer's organisational structure
- **Substantive subordination** arising out of the employee's function within the structure of the corporate group (typically based abroad, although this model is also found within Polish-based groups).

This can raise serious doubts within employment relationships governed by Polish regulations.

Reporting chains in matrix organisations

EMPLOYER
An entity with which there exists a formal employment relationship (most often pursuant to an employment contract, Labour Code Art. 3)

The Polish Labour Code recognises solely the employer as the entity authorised to direct the work of employees. Consequently, it is only the entity concluding the employment contract that is authorised to direct the work of employees, which primarily means the right to issue binding instructions concerning work.

Labour Code Art. 22 §1 in connection with Art. 100 §1

It follows that only superiors located within the employer's structure can authoritatively organise the current work of the staff. They are also authorised to take decisions that are binding for the employees. Granting holiday leave, assigning overtime work, and

sending staff on business travel also lie within their discretion. They are the ones holding employees accountable for the results of their work and their attitude in the workplace, as manifest in the application of disciplinary measures and decisions on termination of employees.

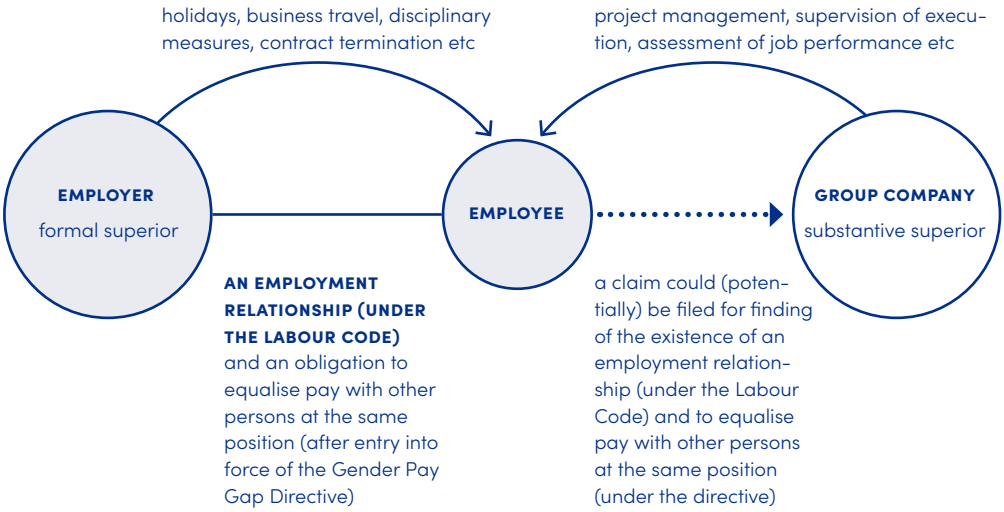
In matrix organisations, however, the ongoing performance of employees' duties is often controlled by persons employed by another entity (typically the parent company). It is these substantive superiors who allocate tasks and oversee their execution, and they are also responsible for assessment of employees' work (such as annual performance reviews).

But the Labour Code does not allow the employer's powers to be shifted to another entity. This would distort the essence of the employment relationship. This means that substantive superiors from outside the employer's structure have no formal authority to direct the work of employees hired by a Polish employer.

Labour-law actions by persons not formally authorised to take them are ineffective

Labour-law actions by persons not formally authorised to take them are ineffective. This is important to bear in mind. While a defective grant of holiday leave or instruction to take a business trip may not carry serious consequences, if disciplinary measures are taken against an employee in an ineffective manner (e.g. imposing a penalty on the employee or terminating their employment contract) by an unauthorised person, this generates a tangible risk—particularly in the form of a ruling against the employer by the labour court.

Assigning competencies to persons outside the employer's organisational structure (in the form of a power of attorney) to issue instructions to employees also generates a serious risk for the companies involved. Such authorisation will essentially confirm that fundamental rights of the employer have been transferred to a third party, which could justify an allegation that the employee is merely formally (contractually) hired by the entity that is a party to the employment contract.



Determination of the existence of an employment relationship with the parent company

If substantive superiors perform a managerial function (confirmed by the power of attorney or based on corporate classification), there is a risk that employees of affiliated companies will assert a claim for a determination that they actually have an employment relationship with the parent company. If the court upholds such a claim, this will confirm employment by another entity (typically from another country). The issue of official subordination of employees is treated in the decisions by Polish courts as the main criterion for ascribing the role of employer to a specific entity. Thus a finding that employees' work is directed on an ongoing basis to persons who do not formally act for the employer, and they are held accountable for the results of their work by those persons, will be a key argument for determining that an employment relationship exists with a different entity.

More and more cases are reaching the docket of the labour courts in Poland where employees of Polish companies seek a determination that they have an employment relationship with other entities within the corporate group, including foreign parent companies.

Piercing the corporate veil in connection with abuse of the employer's legal personality

If the function of employer is carried out by a different entity, employees may also pursue claims in individual cases alleging abuse of legal personality within the corporate group.

This theory is based on the notion that the parent company has framed the organisational structure so that an employee only formally, as a façade, maintains a contractual relationship with the subsidiary. If this is the reality, it results in infringement of the employees' rights, particularly in the area of equal treatment. In that situation, employees working under less favourable conditions (particularly financial terms) than persons formally employed by the parent company might persuade the court that the parent company has misused the separate legal personality of the subsidiary (the employer) to unjustifiably subject the subsidiary's employees to disparate treatment. In that case, piercing the corporate veil would result in a finding that the employer and affiliated companies are really just one entity—in this instance, a single employer.

In such a dispute, the use of a matrix structure for substantive superiors to direct the work of employees would be important evidence to show that legal personality has been misused.

It must be remembered, however, that the instrument of piercing the corporate veil, which is based on the construction of abuse of law, could only ever be an exceptional solution. Effectively piercing the corporate veil would come into play only in the case of gross violation of employee rights due to being hired by the subsidiary. Nonetheless, there are more and more cases where courts uphold the allegation of abuse of legal personality. This allegation has been the basis for rulings in proceedings involving domestic holding-company structures. So far there have been no reports of cases involving cross-border corporate holding structures (where a Polish labour court has addressed the alleged abuse of legal personality by a foreign-based parent company). Nonetheless, allegations involving piercing of the corporate veil against foreign companies seem to be only a question of time.

← Supreme Court of Poland judgment of 18 September 2014 (case no. III PK 136/13)

Elimination of jobs in a matrix organisation

The matrix structure is also relevant in the case of organisational changes, particularly involving elimination of a position or reallocation of the job duties within the corporate structure (either directly to headquarters or to another subsidiary).

Given the nature of matrix organisations, it may turn out that the eliminated position will no longer appear within the Polish employer's organisational scheme. Moreover, in that situation the organisational change will most often result from a decision by a different entity. But it is the formal employer that must take the steps to terminate the employment contract, and if the employee challenges the termination the dispute will be decided by the Polish labour court.

In this context, it is essential for the contract termination notice to include the actual name of the eliminated position (which is also the case in linear organisational structures). As stated in the case law, if the notice of termination of an employment contract due to elimination of the position does not identify the position beyond all doubt, this essentially prevents a determination of the correctness of the grounds for termination based on the presentation of evidence. Thus, in the event of elimination of a position within a matrix structure, such formal questions must be dealt with scrupulously.

Supreme Court of Poland judgment of 13 December 2005 (case no. II PK 103/05)

Equal pay in matrix organisations

GENDER PAY GAP DIRECTIVE
Directive (EU) 2023/970 of the European Parliament and of the Council of 10 May 2023 to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms

Implementation of the Gender Pay Gap Directive may drive an increased focus on employment relationships within matrix organisations. The aim of the directive is to provide employees with transparent information on salaries for specific positions. Armed with that knowledge, employees will be able to seek a levelling-up of their salaries in the case of noticeable differences. Moreover, larger employers will have to publish regular reports on the pay gap between men and women in their organisation (starting from 2027 for employers with a headcount of over 150 people, and from 2031, over 100).

The directive imposes obligations directly on the employer (i.e. the party to the employment relationship indicated in the employment contract), but introduction of these new obligations may

nonetheless impact the overall corporate group. This is because under the directive, assessment of the pay gap between female and male workers will not be limited to situations where men and women work for the same employer, but will also be extended to a "single source establishing the pay conditions." And for employers belonging to a corporate group, the salary policies are often based on rules adopted by the parent company. This opens the way to applying the directive more broadly.

Art. 19 of the Gender Pay Gap Directive

In the case of strongly integrated corporate groups—particularly when they use matrix structures—employees of different companies holding the same positions and collaborating in national and international teams across the group may be especially interested to learn about their colleagues' salaries. If there are glaring disproportions in salary levels (or pay gaps), claims to equalise their pay will likely be raised directly with the entities where the employees' substantive superiors work within the matrix structure.

Poland has not yet implemented some key aspects of the Gender Pay Gap Directive, but has until June 2026 to do so (to date only employers' duties at the recruitment stage have been implemented, but a government bill to enact the directive comprehensively was published on the website of the Government Legislation Centre on 16 December 2025). Only after the regulations enter into force will it be possible to analyse the ways employees exercise their rights and how corporate groups handle inquiries into salary levels, and potential equalisation claims.

Summary

When employees report to superiors outside their employer's organisation, it can carry consequences, particularly a risk of claims of *de facto* employment by another entity. Moreover, businesses using a matrix organisational structure within a corporate group (domestically or internationally) must also recognise the risk of claims for infringement of the right to equal pay for equal work, and entry into force of the regulations implementing the Gender Pay Gap Directive will no doubt inspire the filing of such claims. Elimination of positions within a corporate matrix structure is a separate issue requiring attention to the nature of matrix organisations.

Share ownership plans for employees of joint-stock companies

Offering shares to staff continues to be a popular method for building employee engagement in the growth of the company. But how to ensure that such incentive programmes are legally compliant?

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The nature of ESOPs

An employee stock ownership plan (ESOP) is an offering of shares of stock addressed to a company's employees and managers. The main aim of the scheme is to motivate employees and raise their commitment to the company's growth. Such offerings are run by companies established and operating in Poland, and by foreign companies inviting participation by staff of their Polish subsidiaries.

To be eligible for participation in the plan, the employee and/or the company must meet the conditions specified in the plan.

Incentive schemes are not limited to awarding shares to employees. It is also possible to offer "phantom shares," which provide a right to receive a monetary equivalent equal to the value of the shares.

The terms of the plan must specify the addressees of the plan, the deadline and manner for exercising the rights, as well as the grounds for loss of the right to participate in the plan.

Offering of shares within the plan

Regardless of whether the incentive scheme is offered to employees by a company operating in Poland, or by a foreign company offering its shares to employees of its subsidiary in Poland, it is essential to verify whether the offer will constitute a "public offering," because that would mean a need to comply with certain regulatory requirements.

A public offering (or "offer of securities to the public") is defined under EU law as "a communication to persons in any form and by any means, presenting sufficient information on the terms of the offer and the securities to be offered, so as to enable an investor to decide to purchase or subscribe for those securities." Directing

such a communication to **two or more persons** is deemed to be a public offering.

Under Polish law, a public offering must be conducted in compliance with the requirements set forth in:

- The Act on Public Offerings and Conditions for Introducing Financial Instruments into an Organised Trading System and on Public Companies
- The Act on Trading in Financial Instruments.

Essentially, a public offering of securities entails the obligation to prepare a **prospectus** containing detailed information about the company and the securities. The prospectus is intended to provide investors with the key data they need to make an informed investment decision.

However, an ESOP **may be exempted from the obligation to prepare a prospectus** if the conditions set forth in Art. 1(4) of the Prospectus Regulation are met.

The sections relevant to ESOPs are Art. 1(4)(b) and (i). They provide that it is not necessary to publish a prospectus (a document with basic information about the offered shares will suffice) if the public offering:

- Is addressed to fewer than 150 natural or legal persons per member state (other than qualified investors), or
- Involves securities offered or allotted to existing or former directors or employees by their employer or by an affiliated undertaking, provided that a document is made available containing information on the number and nature of the securities and the reasons for and details of the offer or allotment.

Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC

Required notifications to KNF

Exemption of ESOPs from the prospectus obligation does not exclude the duty to record the shares offered in the scheme in the share register operated by the Polish Financial Supervision Authority (KNF).

Shares taken up by employees are subject to notification of KNF. The notification obligation rests with the company offering

Who can be the addressee?	Current or former directors (including board members), employees or associates of the issuer or an affiliated company
Can the shares be obtained only by full-time employees?	No. Shares can also be received by employees hired as substitutes, or by part-time employees, or by persons combining employment by the issuer or an affiliate with employment by third parties.
Is it necessary to prepare a prospectus?	No, but the addressees must be provided with a document containing information on the number and nature of the securities and the reasons for and details of the offer or allotment.
Is it necessary to enter the company and the shares in the KNF share register?	Yes, if the offering is addressed to two or more persons. The offering must be registered within 14 days after delivery of the shares.
Does KNF have to be notified of the intention to conduct the offering?	No

the shares. However, share options included in the scheme are not subject to notification to the share register.

To comply with the obligation to notify the shares offered to and taken up by employees under the scheme, the company must first sign up for the share register maintained by KNF. The application to enter the company in the register is available on the KNF website. Entry of shares in the register is done electronically on the website rejestracjaakcji.knf.gov.pl.

The offering of shares must be entered in the register within 14 days after allotment of the shares or transfer of the shares to the participants in the scheme.

If the public offering of shares is conducted on a rolling basis, entries in the register may be made within 14 days after the date of allotment or transfer of the shares, i.e. the last day of the period specified by the issuer, but no later than within 6 months. For example, if acquisition or allotment of the shares under the scheme occurs more often than once per year, the notifications may be made twice per year, and in that case each notification will cover all of the allotments made within the past 6 months.

Incentive programmes: An attractive instrument for recruiting talent

Incentive programmes have become an important tool in Poland for attracting and retaining talented people. For startups and tech firms, this is often an effective method for engaging key employees or associates in the growth of the company. Alongside the business advantages, motivational schemes can also offer preferential taxation of income from participation in the plan.

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Taxation of incentive programmes for employees

The regulations provide special rules for taxation of incentive schemes offered to employees, contractors, and board members. It is possible to defer tax on income from participation in an incentive programme until the participant sells the shares acquired under the scheme. To take advantage of this preferential taxation, the plan must meet a few basic conditions.

CONDITIONS FOR PREFERENTIAL TAXATION OF INCENTIVE PROGRAMMES

1	**The scheme must be adopted by a resolution of the general meeting of a joint-stock company (SA)**	In the case of plans organised by foreign companies, in some tax rulings the Polish tax authorities accept the application of the tax preferences if the plan was adopted in accordance with the requirements of local law by a body other than the general meeting. But sometimes differing tax rulings are encountered requiring foreign companies to implement the incentive scheme based on a resolution of the general meeting, even if not required by the company's local law. The rulings from the administrative courts in Poland are also not uniform on this point.
2	**The scheme must be created by a joint-stock company which:** • **Employs the given person (e.g. as an employee, contractor, or board member), or** • **Is a dominant company in relation to the company employing the given person.**	The organiser can also be a foreign entity, as long as it comes from a member state of the European Union or the European Economic Area, or a country with which Poland has concluded an agreement on avoidance of double taxation. Even though this condition does not raise significant doubts in interpretation, it often poses a barrier to recognising a scheme as meeting the statutory conditions for deferral of taxation. This is because in the case of international groups, the organiser of the incentive scheme is often a group company selected at the central level which is placed within the group structure in such a way that it does not constitute a dominant company in relation to the Polish company for purposes of the Polish regulations.

3	**The scheme must lead to acquisition of shares by the participants**	The shares may be acquired directly or indirectly, through exercise of derivative financial instruments, rights to certain securities, or other property rights. In the past, there were doubts in interpretation concerning the possibility of enjoying the tax preference for schemes based on subscription warrants, entitling the holder to purchase newly issued shares at a discount. This is because subscription warrants were not expressly mentioned in the regulation indicating the group of securities. However, in recent years the dominant view has taken shape recognising that such schemes are also eligible for the preference. Incentive programmes are most often based on stock options or "restricted stock units" (RSUs).

If these conditions are fulfilled, **the participants do not recognise income until they sell the shares,** and even then the income is taxed as capital gains, at 19% (and potentially another 4% in the solidarity levy for income in excess of PLN 1 million). No income is recognised at the time of receipt of the instrument, nor at the time of taking up the shares, even if this occurs entirely free of charge.

What if the scheme doesn't meet these requirements?

An incentive scheme that doesn't meet the conditions for preferential taxation is subject to the general tax rules set forth in the Personal Income Tax Act. But those rules are not entirely clear.

According to the position expressed in the newest tax rulings, income from participation in an incentive scheme may arise as soon as the time of "vesting," i.e. acquiring the right to the shares. The tax authorities classify this as income from the employment relationship (if the scheme is organised by the taxpayer's employer) or "other sources" (if the organiser is not the employer), taxed according to the tax scale (12% on income of up to PLN 120,000 per year, and 32% on the excess, while applying the tax-free allowance of PLN 30,000 per year).

Subsequent sale of the shares generates capital gains, taxed at 19%, and if the participant's combined income from certain sources

exceeds PLN 1 million, an additional 4% solidarity levy. In that case, the value of the revenue recognised on acquisition of the shares free of charge, or partially free of charge, may be treated as a revenue-earning cost upon later sale of the shares, effectively reducing the tax basis on the sale.

The administrative courts sometimes adopt a more advantageous position, holding that revenue from participation in the scheme does not arise until the shares are sold, not at the time of vesting. However, the position of the courts is not uniform on this point.

Shares for B2B contractors: uncertain now, and less advantageous after the changes

The regulations do not contain clear criteria identifying the time when revenue from participation in an incentive scheme is recognised by individuals cooperating with the company as a contractor on a B2B basis. With respect to such participants in incentive schemes, the parliament did not adopt any special provision defining the taxation of income related to participation in the scheme.

According to the prevailing position of the tax authorities, acquisition of shares wholly or partially free of charge due to exercise of instruments received in an incentive scheme constitutes business income for B2B contractors. The rate of taxation on this benefit may differ according to the contractor's selected method of taxation; for example, in the case of flat-rate taxation it would be 19%, or in the case of the so-called lump sum (*ryczałt*) 3% (according to the position presented in tax rulings).

Subsequent sale of the shares by such contractors will generate capital gains, taxed at 19% PIT (plus the 4% solidarity levy if the person's annual income from certain sources exceeds PLN 1 million).

The value of revenue recognised for acquisition of the shares wholly or partially free of charge, as well as other potential costs, would constitute a revenue-earning cost upon sale of the shares.

Although in the case of persons operating their own business the time when revenue from participation in the incentive scheme is recognised occurs earlier than in the case of employees

or contractors under a contract of mandate (*zleceniobiorcy*), in some situations they may ultimately pay less tax. This applies to persons electing taxation of their revenue under the lump-sum system, who first pay 3% tax on the value of the shares taken up upon vesting, and then will be able to deduct the taxed value of the shares from the revenue they receive from sale of the shares. This means that a portion of the value of the sold shares will effectively be taxed at the rate of 3%.

For persons taxed under the lump-sum system, it may be particularly advantageous to frame the scheme so that participants operating their own business receive compensation for renouncing exercise of the instrument entitling them to acquire shares, for example by selling the instrument back to the organiser of the scheme. The remuneration received in this manner may—according to tax rulings—be taxed as business income at the rate applicable for other revenue from the business (a maximum of 17%, and in many cases 12% or 15%).

What is going to change?

Currently an amendment to the PIT Act is being processed which would clarify and tighten the rules for taxation of benefits from incentive schemes. The changes would on one hand limit the tax advantages achieved by persons conducting business activity (probably contrary to the original legislative intent), and on the other hand would clean up the definition of an "incentive scheme" in order to eliminate the numerous doubts in interpretation.

First, the draft amendment would **change the rules for taxation of revenue from "other sources."** The current regulations call for the revenue from exercise of derivative instruments to be allocated to the source under which the instruments were received (e.g. employment or business income), which prevents such revenue from being taxed as capital gains. But this provision does not apply, for example, to the sale of such instruments. This is why some employers have decided to frame the conditions of the scheme so that ultimately the participants obtain income from selling these instruments (e.g. options) back to them, taxed at the 19% rate as

capital gains, not as income from the employment relationship taxed under the tax scale and subject to social insurance.

Following the changes, these manoeuvres would not be possible. The bill expressly states that the revenue from sale of instruments and rights received as an employment benefit would be assigned to the same source from which the participant originally received them—that is, typically, the employment relationship or activity performed personally. In other words, it would no longer be possible to shift such revenue to capital gains. The proposal does contain an exception, however: if the benefit (e.g. the instrument or right received) originally constituted revenue from business activity, then the revenue from its later sale would be allocated to the basket of "capital gains." This is designed to cut off the practice of shifting capital gains to business income taxed at the "lump sum" rate.

Second, the **rules for determining tax costs** would be clarified. The amendment provides that if the taxpayer had to recognise revenue at the time of receipt of derivative instruments or other property rights free of charge or partially free of charge, then the value of this revenue would increase the tax costs on the later sale of such instruments or payment for renouncing the exercise of the rights under those instruments, insofar as such revenue was assigned to the revenue source from which the free-of-charge benefit was received. This is intended to prevent double taxation—once at the time of receipt of the instrument, and the second time upon sale of the instrument or renunciation of exercise of the rights arising from the instrument. On the other hand, this seems to mean that in the case of incentive schemes that don't qualify for application of the preferable tax regime (deferring taxation until sale of the shares), taxation would occur at the time of vesting.

Third, the statutory **definition of an incentive programme benefiting from deferred taxation** would be clarified. Under the amended regulations, shares acquired as a result of exercise of subscription warrants would also be covered by the preferential tax regime, so long as the programme was adopted by a resolution of the general meeting and meets the other statutory requirements. Before, the lack of a clear reference to warrants in the definition resulted in divergent interpretations. The amendment would eliminate these doubts.

The changes were originally planned to apply to instruments taken up or acquired after 31 December 2025, but at the time of writing (December 2025) the bill was still undergoing public consultations, and thus the proposed changes are not expected to enter into force before 2027 at the earliest.

Indemnification of management board members in corporate groups

In groups of companies conflicts of interest sometimes arise between the parent company and the subsidiaries. The consequences can be particularly severe for the members of the management board of the subsidiaries: if they don't bow to the interests of the group they may lose their job, but if they do submit they can be charged with acting to the detriment of their own company. One method for protecting the management board members against the consequences of such acts or omissions is an indemnification agreement.

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The Polish parliament attempted to address the issuance of binding instructions and liability of management board members within a corporate group in the "Holding Law" (a 2022 amendment to the Commercial Companies Code), but the solutions adopted there have not been widely applied and have no practical relevance in this context.

Given the lack of effective legal solutions, concerned parties increasingly regulate these issues individually by taking out D&O coverage and by concluding indemnification agreements to protect management board members in the event of liability for past and future occurrences.

D&O
directors and officers insurance

Indemnification under Polish law

The essence of indemnification is to effectively release a management board member from an obligation, to protect them from the economic impacts of an act or omission detrimental to the company. This release often takes the form of performance by a third party (insofar as allowed by the law). Where this is not possible, indemnification boils down to making up losses or covering costs incurred by the management board member resulting from the events secured against by the indemnification agreement.

It must be stressed that on the corporate side, the company cannot release a management board member from liability to the company for potential future actions. However, the management board members can prepare for such a risk. The regulations provide that management board members may be relieved of liability by showing that they have complied with the duty of due care arising out of the professional nature of their activity; that is, they have proceeded in a manner loyal to the company and acted within the bounds of reasonable commercial risk, including on the basis of

Commercial Companies Code Art. 293 §3

the information, analyses and opinions which should be considered under the circumstances when making an objective assessment.

But this rule does not apply directly to measures taken solely in the interest of the parent company. Likewise, granting of a release for performance of their duties (*absolutorium*, in the context of the annual shareholder approvals), or reliance on a resolution or recommendation by the parent company (issued outside of a "corporate group" within the meaning of the Holding Law), will not relieve a management board member of liability.

Therefore, the possibility of the company itself releasing a management board member from liability—under either corporate law or civil law, and even more so with respect to future events—appears to be severely limited and often even ruled out completely. Also for practical reasons, because the person granting such a release from liability on behalf of the company, for acting to the detriment of the company, could at the same time be exposing themselves to the charge of acting to the detriment of the company, for example due to the company's waiver of legitimate claims.

It should be pointed out that a form of *ex post* indemnification of management board members has been used for many years in M&A transactions, where the buyers of shares in a company often undertake to relieve from liability (indemnify and hold harmless) the outgoing members of the management board. But the scope of this undertaking toward the outgoing board members is different from the indemnification discussed in this article, as it refers to a closed period in the past, which the buyer typically had an opportunity to examine in conducting its due diligence. In that case the buyer has a basis for assessing the potential risk, which it then decides to cover with the indemnification.

The legal construction of an indemnification agreement

To protect a management board member against the negative economic consequences of future acts or omissions, it seems most apt for the board member to conclude an indemnification agreement with the company's shareholder or other controlling company from the group, under the principle of freedom of contract set forth in Civil Code Art. 353^1. In such an agreement, the

shareholder or controlling company promises the board member to cover the costs of certain events defined in the agreement, as a guarantor, i.e. regardless of fault or a causal connection between the guarantor's acts or omissions and the event causing the costs to arise.

Subject matter of indemnification

The subject matter and scope of the indemnification will essentially depend on the business arrangements between the parties. In practice, indemnification often extends to:

- Financial obligations or damages imposed on the management board member, arising from carrying out the group's recommendations
- Costs of public-law obligations
- Costs of settlements or other amicable resolutions
- Costs associated with liability to the company's creditors for the company's debts
- Claims by the company against the management board member for damage caused to the company due to the board member's compliance with the group's recommendations
- Attorney's fees incurred by the management board member for representation in civil, administrative or criminal proceedings
- Costs of internal investigations.

In the case of public-law obligations, particular attention should be paid to the permissibility of coverage of a given obligation by a third party. For example, this is not possible with respect to fines imposed under the Criminal Code, so when it comes to potential judicial or administrative monetary penalties and similar sanctions, the guarantor should be required to cover them only in instances where it would not conflict with applicable law.

The parties may also provide that the indemnification will not cover events resulting from the board member's intentional action or gross negligence, unrelated to the recommendations issued within the corporate group. Criminal acts are also excluded.

Quite often, the aim of indemnification is to protect the management board members from liability to the company's creditors, particularly resulting from actions benefitting the parent company.

Conditions for claiming indemnification

The indemnification agreement should clearly define:
- The event resulting in liability on the part of the guarantor for each indemnification claim
- The conditions and deadline for payment by the guarantor.

In the case of an obligation to cover attorney's fees, this might be the time when the costs are assessed in the given proceeding, issuance of an invoice, or even the moment when an attorney is hired and paid an advance on their fees.

In the case of claims that depend on the results of a judicial or arbitral proceeding, the parties should establish the rules for conducting such litigation, as well as the potential involvement of the guarantor in taking decisions concerning strategy and the course of the case.

In each case, it is vital to establish the rules for coverage of costs incurred by the management board member. It will be in the board member's interest for the guarantor to pay all obligations in advance, while it will be in the guarantor's interest to pay such costs in arrears, by reimbursing the board member.

Indemnification and D&O insurance

Indemnification and D&O insurance offer mutually complementary protection of management board members against claims connected with performance of their duties.

A policy from an insurer (an external entity) has the advantage that it does not depend on the financial condition of the entity providing the indemnification, i.e. the guarantor. After all, it sometimes happens in practice that the financial problems of the subsidiary derive from the problems of the parent company. In that case, indemnification from the parent company may not provide adequate security for the management board members.

However, an advantage of contractual indemnification is that it can cover a broader range of potential claims that those covered by D&O insurance, and need not be limited to a stated sum insured. Typically indemnification agreements also include a provision

stating that the amounts paid by the insurer to the insured management board members will reduce the amount which the guarantor must pay as indemnification.

Thus both of these methods of protecting the management board members can be used jointly.

Practical problems and controversies

A fundamental practical issue in indemnification agreements is the willingness on the part of the parent company to provide such security to the members of the subsidiary's management board. Indemnification will most often be offered in instances where the parent company wishes to retain the professional management team in the subsidiary needed to operate the subsidiary's business.

Indemnification carries a financial risk for the entity granting this security (the guarantor), and thus it is essential for the agreement to precisely define the scope of the security, indicating situations triggering the guarantor's liability and the potential related costs. In deciding to conclude an indemnification agreement, the guarantor will need to obtain its own necessary corporate approvals.

The scope of indemnification must be appropriately regulated on the legal side so that the agreement is valid and does not infringe regulations of mandatory applicability. Among other things, the indemnification agreement should indicate solutions in instances where the law excludes the possibility of modifying the management board member's liability to external entities, particularly under public law (for example, when it is not possible to release the board member from a debt or assume the debt, or for a third party to perform an obligation in place of the board member).

It may also happen that the reason for concluding the indemnification agreement is a uniform policy for managing companies within a group, which in practice means that instructions for managing the subsidiary are being handed down to the members of the subsidiary's management board. Then the issue arises of the permissibility of such instructions (if a formal corporate group has not been established) and fulfilment of the other legal requirements for binding instructions.

Compliance with such instructions requires weighing the interests of the group against the interests of the company, its minority shareholders and creditors which might be infringed by the following the instructions. A typical example is an instruction to the subsidiary to guarantee a loan taken out by the parent company. Formally, the members of the subsidiary's management board have no duty to comply with such instructions if they conflict with the interests of their company, but refusal to comply may have negative consequences for them within the organisation. Indemnification agreements are often used to govern the rules of cooperation between the board members and the parent company, while recognising the board members' right to refuse to carry out instructions in certain situations.

Controversies arise around contractual provisions of this type because Polish law provides for the possibility of the controlling company issuing binding instructions only when the formal requirements set forth in the regulations are met. But indemnification agreements concern informal recommendations issued to subsidiaries by parent companies—an aspect overlooked by lawmakers.

Whether freedom of contract is a sufficient basis for these solutions remains an open question. Nonetheless, the problem of the lack of relevant legal solutions in this area cannot be ignored.

Summary

Given the lack of practical statutory solutions, an indemnification agreement is the only available solution for the problem of management board members' liability for decisions taken within the corporate group, under the direction of controlling companies.

It is key for such an agreement to:

- Reflect the nature of the business operations within the specific group
- Clearly define the rules for liability, and
- Not violate restrictions arising from applicable law or court decisions.

For this reason as well, drafting of effective provisions in such agreements requires a thorough legal analysis in each instance, tailored to suit the specific case.

Squeeze-out of minority shareholders of a Polish limited-liability company participating in a “corporate group”

An amendment to the Commercial Companies Code effective as of 13 October 2022, dubbed the “Holding Law,” introduced a new legal instrument allowing for a forced buyout of minority shareholders in a Polish limited-liability company (sp. z o.o.) by its majority shareholder. Previously, this mechanism, commonly referred to as a “squeeze-out,” was regulated in Poland only in respect of joint-stock companies (SA). What must be done, and what conditions must be met, for the majority shareholder of a limited-liability company to forcibly buy out the minority shareholders?

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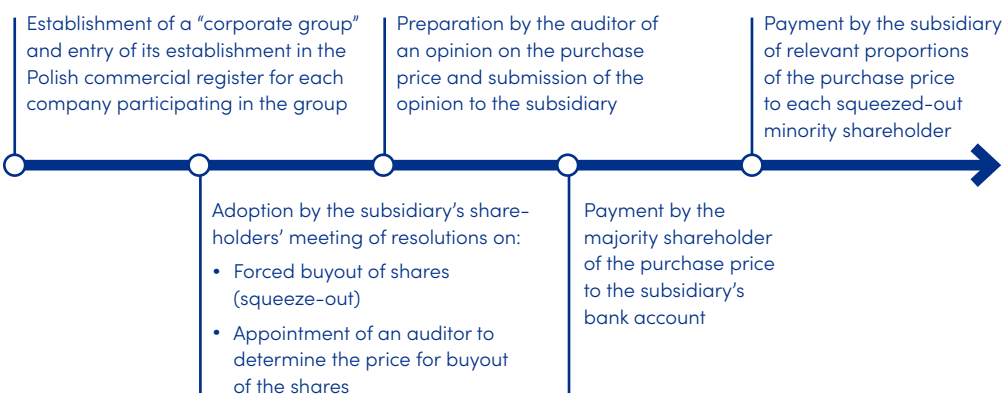
In commercial practice, sometimes shares in a company are divided between a majority shareholder (with a significant stake of shares and control over the company) and numerous minority shareholders.

The majority shareholder may wish to simplify the capital structure of the company by buying out all of the shares belonging to the company's minority shareholders.

An instrument that can be used for this purpose is the forced buyout of shares under Art. 21^{11} of the Polish Commercial Companies Code. Importantly, such a buyout is effective even if the minority shareholders do not consent to the sale of their shares.

KEY STEPS OF THE SQUEEZE-OUT PROCEDURE



Squeeze-out reserved only for a "corporate group"

The procedure for forced buyout of shares held by minority shareholders in a limited-liability company applies only to a "corporate group" (*grupa spółek*) established under Art. 21^1 §1 of the Commercial Companies Code.

A corporate group is composed of a parent company and any number of its subsidiaries. It pursues the common interest of the corporate group under the uniform direction of the parent company.

Corporate group establishment procedure

As participation in a corporate group is necessary for performing the squeeze-out, below is an overview of the procedure for establishing a corporate group. For this purpose, we assume participation in the corporate group by only two companies. These are:

- The **subsidiary**, whose share capital is divided into shares held by the majority shareholder and shares held by numerous minority shareholders
- The **parent company**, i.e. the majority shareholder of the subsidiary.

NOTE!
This article does not constitute legal advice, nor do we delve into the potential consequences of establishing a corporate group solely for the purpose of performing a squeeze-out, or the potential consequences if establishment of the corporate group is found to constitute circumvention of the law.

To establish a corporate group, the shareholders' meeting of the subsidiary must adopt a resolution on this matter by a three-fourths majority of votes. As to the parent company, it is sufficient that its management board adopts a simple resolution confirming the parent company's participation in the corporate group along with the subsidiary. The key points of the resolution on establishment of a corporate group are:

- Statement on participation in the corporate group under Art. 21^1 §2 of the Commercial Companies Code
- Precise identification of the parent company.

Establishment of a corporate group is subject to entry in the Polish commercial register for each of the companies participating in the corporate group. However, this obligation does not apply to a parent company with its registered office outside of Poland.

The corporate group is established upon adoption of the relevant resolution of the subsidiary's shareholders' meeting. However, to effectively initiate the squeeze-out procedure under Art. 21^{11} of the Commercial Companies Code, establishment of the corporate group must first be entered in the commercial register.

Regulation of the squeeze-out procedure

Under Art. 21^{11} of the Commercial Companies Code, the shareholders' meeting of a subsidiary participating in a corporate group may adopt a resolution on the forced buyout by the majority shareholder of the shares held in the subsidiary by minority shareholders. To make use of this regulation:

- The parent company must independently and directly represent at least 90% of the subsidiary's share capital, and
- The minority shareholders must represent 10% or less of the subsidiary's share capital.

However, the law allows for the subsidiary's articles of association to provide for:

- Reduction of the required stake held by the parent company in the subsidiary's share capital to no less than 75%, and
- The right of the parent company to perform a squeeze-out even when the parent company is only an indirect (rather than a direct) shareholder of the subsidiary, holding the required stake in the subsidiary's share capital.

The companies can effectively perform the squeeze-out procedure if:

- The subsidiary and the parent jointly participate in a corporate group
- Participation in the corporate group by the subsidiary and the parent company has been entered in the Polish commercial register, and
- The parent company and the minority shareholders represent the appropriate required stakes in the subsidiary's share capital.

If all these prerequisites are met, then:
- The subsidiary's shareholders' meeting adopts a resolution on the forced buyout of shares and appointment of an auditor to determine the purchase price for the buyout
- The auditor prepares an opinion and determines the purchase price for the buyout
- The parent company pays the full amount of the buyout purchase price to the subsidiary's bank account.

Adoption of resolutions by the subsidiary's shareholders' meeting

First, the authorised entity (e.g. the company's management board) convenes an extraordinary meeting of the subsidiary's shareholders. The agenda for the shareholders' meeting should include adoption of resolutions on:
- The parent company's forced buyout of the shares in the subsidiary held by minority shareholders, under Art. 21^{11} of the Commercial Companies Code
- Appointment of an auditor to determine the purchase price for the minority shareholders' shares which will undergo forced buyout by the parent company.

The extraordinary shareholders' meeting should be held in accordance with the date and agenda specified in the notification convening the meeting.

The resolution on forced buyout of the shares of the subsidiary's minority shareholders must specify:
- The list of minority shareholders undergoing the forced buyout
- The majority shareholder performing the forced buyout
- Information on allocation of the squeezed-out shares to each acquirer (i.e. the majority shareholder).

According to the legal literature, a resolution on forced buyout of shares under the corporate group regime may be adopted by a simple majority of votes, unless the subsidiary's articles of association provide otherwise.

Auditor's opinion

The auditor appointed by the resolution of the shareholders' meeting will prepare a detailed opinion and determine the price for purchase of the shares undergoing the forced buyout, and then submit the opinion and information on the determined purchase price to the subsidiary.

After the opinion is submitted, the subsidiary's management board notifies all of the shareholders of:

- The determination by the auditor and amount of the purchase price for the buyout
- The deadline by which the parent company must transfer the full amount of the purchase price to the subsidiary's bank account.

After receiving the notification, the minority shareholders may challenge the amount of the purchase price determined by the auditor. However, initiation of such a dispute does not halt nor suspend the squeeze-out procedure.

Art. 417 §1 in connection with Art. 312 §8 of the Commercial Companies Code

For practical reasons, the notice served by the management board to the shareholders should include a request to the minority shareholders to indicate their bank accounts to which the subsidiary shall transfer the relevant portion of the buyout purchase price.

Payment of the buyout purchase price

In the next step, the parent company pays the full amount of the buyout purchase price, as determined by the auditor, to the subsidiary's bank account.

The deadline for this payment is three weeks after the management board notifies the shareholders of determination of the buyout purchase price. This is a strict deadline, meaning that if it is not met by the majority shareholder, the squeeze-out procedure expires and cannot be completed unless its initiated again.

Upon the parent company's payment of the full amount of the buyout purchase price to the subsidiary's bank account, ownership of the minority shareholders' shares is transferred to the parent company.

After the buyout is completed, the subsidiary's management board will, in particular:

- Notify all of the subsidiary's shareholders of submission of the full buyout purchase price by the parent company (i.e. the majority shareholder) and the parent company's acquisition of all shares held by the minority shareholders
- See that the relevant proportions of the buyout purchase price are transferred to each squeezed-out minority shareholder
- Update the subsidiary's share ledger and list of shareholders, and
- File a motion to enter the majority shareholder's acquisition of the minority shareholders' shares in the commercial register.

Regulatory protection of medicines under the Pharma Package and the EU's strategy for life sciences

In July 2025, the European Commission presented its "Choose Europe for life sciences" strategy, which aims to make the EU the best location for the development of the life sciences sector by 2030. This ambitious goal is to be met by a reform of EU pharmaceutical law—the most significant overhaul in over 20 years of the rules governing medicines. One of the main areas of focus is the regulatory protection of medicines. At stake are both the profitability of investments in research and the speed at which patients can gain access to new treatments.

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and in our report "Pharmaceutical Package: Compromise following the Polish Presidency of the EU Council"

life sciences

pharmaceutical package

What is regulatory protection of medicines?

Before a new medicine may be launched on the market, it must undergo a long and costly process—from laboratory tests, through clinical trials on humans, to regulatory procedures before the European Medicines Agency or national authorities. This involves more than a decade of work and costs running into millions of euros before the first sale of a medicine can ever be made.

To make this investment of time and money feasible, innovations are protected by law. The first pillar consists of patents and supplementary protection certificates, which give exclusive rights to benefit from specific measures for a limited time. The second pillar involves regulatory protection.

Regulatory protection constitutes a separate legal regime, alongside patent protection, consisting of two elements:

– **Regulatory data protection**, a period during which a company seeking registration of a generic or biosimilar medicine may not rely on the data of the innovator's clinical trials (reference medicinal product documentation) without their consent
– **Regulatory market protection**, a period during which a medicinal product registered using the simplified procedure (i.e. based on data and tests relating to another product, the reference medicine) may not be placed on the market.

The second pillar—market protection—is particularly important for the sector, because it starts from the time of the medicine's first marketing authorisation, rather than from the date of the patent application. The period of protection is independent of the duration of the research and registration procedures for the given medicine. The length of periods of protection sometimes becomes the subject of disputes, which are resolved in Poland by regulators and the administrative courts.

The current "8+2+1" rule

The regulatory protection model currently in force in the European Union is usually described as "8+2+1." In practice, this means:

- **8 years** of regulatory data protection
- **2 years** of market protection
- **1 additional year** of market protection, if the innovator obtains a new therapeutic indication that brings significant clinical benefits over existing therapies.

However, as the EU pharmaceutical sector's competitiveness has weakened significantly compared to the United States, and is losing ground to China, the current model has been the subject of intense debate. In particular, it has been pointed out that the current system of incentives lacks sufficient differentiation: it grants a similar level of protection to breakthrough medicines and to those providing less added value.

What does the Pharma Package change?

The Pharma Package was presented by the European Commission in 2023. It consists of a draft new directive on the EU code relating to medicinal products for human use and a new regulation establishing EU procedures for the marketing authorisation and monitoring of medicinal products. In subsequent years, the European Parliament and the Council of the European Union (during the Polish Presidency) developed their positions and reached an agreement on the new rules in mid-December 2025, following so-called trilogues.

Although the detailed wording of the provisions may still see further clarifications, the political agreement reached by the EP and the Council reveals a coherent direction for reform. Agreement was reached to move away from the rigid "8+2+1" rule in favour of a system providing a basic period of regulatory protection (data and market protection), the length of which may be extended if certain conditions are met.

This accepted general approach means specifically:

– Maintaining the current **8-year** period of regulatory data protection for new medicines
– A reduction in basic market protection from 2 years to **1 year**
– The possibility of extending the total duration of regulatory protection for products that meet additional criteria.

In practice, there are several main ways of obtaining additional protection. First, longer market protection is to be provided for products that:

– Address **unmet medical needs**, i.e. diseases that are life-threatening or seriously impair bodily functions, for which there is no registered therapy, or the product offers a clear improvement in efficacy or safety compared to existing treatments, or
– Contain a **new active substance** and their clinical trial programme meets certain conditions (e.g. trials are conducted in several EU member states, using an appropriate comparator medicine, and an application for EU marketing authorisation has been submitted in good time).

Second, additional market protection time is to be given to those products for which **new therapeutic indications** can be established during the data protection period, considered to offer a significant clinical benefit compared to existing therapies. In other words, longer market protection is to be reserved for situations where a new use of a medicine offers patients a clear advantage over what is already available, for example through greater efficacy or safer use.

Under the new system, the minimum total duration of regulatory protection will be 9 years (8 years of data protection and 1 year of market protection), and may be extended if additional criteria are met, provided that the total duration of data and market protection does not exceed 11 years.

Vouchers for new antibiotics—an added incentive

A special element of the Pharma Package is the agreed introduction of a data exclusivity voucher for developing a new antibiotic (referred to as a "priority antimicrobial medicine"). In this case, the incentive will be the possibility of extending the period of regulatory data protection of the selected medicinal product by one year. The voucher is to be transferrable, to another medicine or even to another company. Thus, for example, success in a difficult business area could be converted into additional protection for a therapy that sells on a larger scale.

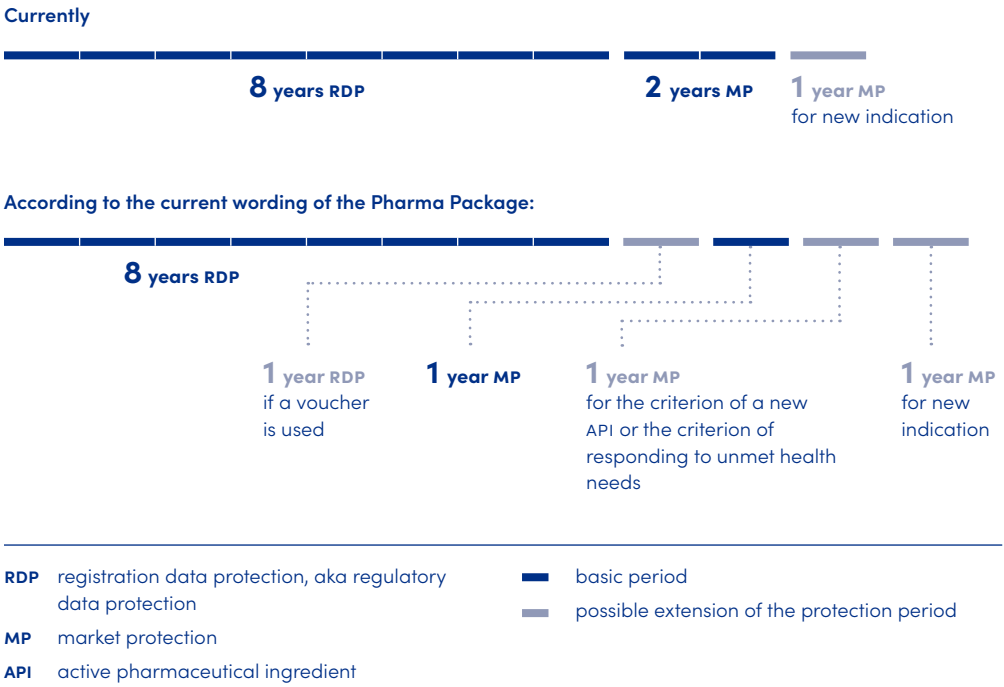
At the same time, the proposed new regulations include many restrictions concerning when a voucher may be used, the maximum total duration of protection, and sales value thresholds above which no additional protection may apply. This is an attempt to balance two conflicting objectives: to provide real incentives for companies to invest in new antibiotics, and to protect public budgets against excessive costs connected with the extended protection of a completely different product.

What about orphan medicines?

Orphan medicines, used to treat rare diseases, are an important part of the reform. This is an area in which the EU has been offering special incentives for years—primarily longer market exclusivity—to encourage companies to invest in therapies for small patient populations. The current standard is 10 years of market exclusivity for each orphan medicinal product, with the possibility of a further 2 years, if carrying out a paediatric investigation plan. During this period, the authorities cannot register generic orphan medicines or even accept applications for their registration.

The Commission's original proposal considered shortening this basic period, but offering a greater variety of incentives. During work on the package, this approach was modified: the basic period of market exclusivity for orphan medicines is to be **9 years**, while "breakthrough orphan medicinal products," i.e. cutting-edge medicines used in rare diseases with no available current treatment, will be eligible for an extended **11-year exclusivity**.

DURATION OF GENERAL REGULATORY PROTECTION



The Pharma Package is intended to introduce solutions that will facilitate faster competition after the end of the period of market exclusivity for orphan medicines. If the same company holds several marketing authorisations for a medicinal product with the same active substance, it will no longer benefit from separate periods of exclusivity for each. This is intended to limit the "multiplication" of pharma companies' monopolies in narrow therapeutic indications. At the same time, the new rules will allow registration authorities to accept and even issue authorisations for similar medicines, including generics and biosimilars, during the last two years of market exclusivity. In practice, this means that competing products could enter the market almost immediately after the end of protection, instead of waiting to complete the full registration procedure after the protection expires, as is currently the case.

The EU's strategy for the life sciences sector

The changes to the regulatory protection of medicines included in the Pharma Package are only one element of the EU's broader approach to the life sciences sector. In July 2025, the Commission presented "Choose Europe for life sciences: A strategy to position the EU as the world's most attractive place for life sciences by 2030." The strategy includes the coordinated deployment of various EU programmes to deliver over EUR 10 billion of EU budgetary support per year, including for research, clinical and digital infrastructure, and measures to ease faster market entry for innovations.

The Pharma Package is part of this vector of change, as a reform that focuses on the regulatory environment for medicines, including regulatory protection, registration procedures, and oversight of safety. But it is also complemented by other legislative initiatives:

- **Critical Medicines Act**, intended to strengthen the security of supply of critical medicines and reduce dependence on single suppliers
- **Biotech Act**, intended to simplify and harmonise biotechnology regulations (Section 1 of the proposal focuses primarily on biotechnology in the area of health, but also applies to biotechnology used in food and feed production)
- **European Innovation Act**, intended to remove barriers in the commercialisation of innovations, including in medicine, and facilitate the transformation of research results into market-ready products and services.

Together, their aim is to improve not only Europe's investment attractiveness, but also the resilience of supply chains and drug safety.

In this broader context, regulatory protection remains a classic incentive mechanism—a signal that investments in research into new therapies may rely on a specific, predictable period of exclusivity. But it will also be one of several interrelated instruments of industrial and health policy.

The EU's ultimate attractiveness for innovations will also be determined by other factors, such as the speed of authorisation of clinical trials, the efficiency of medicine registration procedures, and the predictability of decisions in member states on coverage of the costs of medicines by their national health service. The extent

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The “Choose Europe for life sciences” strategy aims to make the EU the best location for development of the biopharmaceutical sector by 2030.

to which the strategies and legislation for achieving the EU's objectives in life sciences (including the Pharma Package) actually translate into real investment decisions by companies and availability of treatments for patients will be one of the key tests of the effectiveness of the EU's health policy in the coming decade.

New product liability rules and their impact on medical devices

The Product Liability Directive will make it easier for consumers to claim compensation when they have been injured by defective products. It is also intended to adapt EU member states' regulations to the digital age and the circular economy. Poland should implement its provisions by December 2026. The solutions which EU legislators propose may significantly affect the business of firms in the medical devices sector, as well as other regulated industries.

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life sciences

Admissibility of claims for defective software

Directive (EU) 2024/2853 of the European Parliament and of the Council of 23 October 2024 on liability for defective products and repealing Council Directive 85/374/EEC

The Product Liability Directive (PLD) brings a new definition of "product." Under the earlier Directive 85/374/EEC (incorporated into the Polish Civil Code), "product" means any movable item (except for agricultural raw materials and hunted game), even if it is an element of another item, and also electricity.

The PLD's new definition acknowledges changes due to technological progress, including the development of artificial intelligence. The notion of "product" will therefore also include, in particular, software and "digital manufacturing files," meaning digital versions of movable items that contain the information necessary to manufacture them using automated machines or tools.

Consequently, the provisions implementing the PLD will also allow compensation to be claimed for IT systems classified as medical devices ("software as a medical device") and software embedded in such devices.

Evidentiary relief for the claimant

The current regulations on liability for dangerous products already provide far-reaching evidentiary relief for claimants seeking compensation. The claimant does not have to prove that the defendant was at fault for the damage caused by the product's malfunction. However, they must prove the product's defectiveness, the damage suffered, and the causal link between the damage and the product's defectiveness.

The new PLD goes a step further. To lessen the burden of proof on claimants, it introduces a **presumption of product defectiveness** in situations where:

– The product **does not comply with EU or national regulations** on product safety (such as the Medical Device Regulation) designed to protect against the risk that led to the damage in the given case
– The defendant fails to disclose relevant evidence in its possession at the claimant's request, or
– The claimant demonstrates that the damage was caused by an obvious malfunction of the product during reasonably anticipated use or under normal circumstances.

In addition, the PLD allows a national court to presume that a product is defective or that there is a causal link between its defectiveness and the damage if, despite the evidence presented by the defendant, the claimant is facing excessive evidentiary difficulties, in particular due to the product's technical or scientific complexity.

The presumption of product defectiveness may prove particularly relevant in disputes concerning products that are subject to specific legal regulations, for which legislators have laid down specific safety requirements and obligations of registration or notification. The court's option of admitting a presumption of product defectiveness in cases of excessive evidentiary difficulty may have far-reaching consequences for manufacturers of innovative products, particularly innovative medical devices, such as ones with built-in software, including those operating based on AI algorithms.

Extension of manufacturer's liability

Under the current legal framework, a manufacturer is only liable for product defects that existed at the time of placing the product on the market. However, EU legislators have recognised that some businesses, such as manufacturers of digital products, can exercise control over their product even after it has been placed on the market or put into service.

Therefore, the PLD establishes liability for undertakings in cases where a defect in a product has arisen after the product was placed

> **The PLD establishes liability for undertakings in cases where a defect in a product has arisen after the product was placed on the market, put into service or made available on the market.**

on the market, put into service or made available on the market, if the manufacturer still exercises control over it.

A manufacturer of medical device software will, therefore, also be liable for damage caused by a cybersecurity vulnerability, a faulty update, or problems with AI or machine learning that have arisen after the digital product was placed on the market.

Broader range of damage subject to compensation

Under Directive 85/374/EEC and the implementing provisions of the Civil Code, compensation may be claimed for damage caused by a dangerous product involving:

- Death or bodily injury, or
- Damage to or destruction of an item, other than the defective product, of value exceeding EUR 500, on condition that the item is normally intended for private use or consumption and was mainly used in this way by the injured party.

The PLD broadens the definition of damage. In its amended form, it will include, in particular, **medically certified damage to mental health**, as well as destruction of or damage to data that are not used for professional purposes. The new directive also abolishes the previous threshold value for damage to property.

A consequence of these changes is a broader scope of damage for which injured parties will be able to claim compensation from medical device manufacturers for dangerous product liability. Practice will show whether the stress or anxiety that a defective product causes will be sufficient grounds to successfully pursue claims under the provisions implementing the PLD. However, it is conceivable that with the removal of the minimum value thresholds for property damage, claims will be brought in relatively trivial matters such as cybersecurity incidents or errors in updates of software used in medical devices.

Extension of the limitation period for claims

The PLD modifies the existing limitation periods for claims for damage caused by a defective product. Currently, such claims expire three years after the date on which the injured party became aware (or, exercising due care, could have gained awareness) of the damage and the person liable for its repair, but in any case they expire 10 years after the product was placed on the market.

The PLD establishes an exception where, in cases where bodily damage is **undetectable**, the injured party will have **25 years** to bring a lawsuit. The change will therefore apply particularly to cases in which, according to medical evidence, the damage to health arises over a long period. One may assume that the regulations in this area will have particular importance for companies in the medical devices sector and pharmaceutical companies. Businesses should, therefore, review the extent of their insurance cover under existing policies.

EXAMPLE

Margaret underwent surgery that fitted her with a smart knee implant which contained:

- Sensors monitoring movement and load
- An AI system that adjusts the joint's stiffness to the patient's activity
- Software updated remotely by the manufacturer, and
- A mobile app monitoring the condition of the implant.

After several months, **an update to the AI algorithm incorrectly adjusted the parameters of the implant**. As a result, Margaret injured the surrounding tissues, had to be operated on again, required long-term physiotherapy, and developed depression diagnosed by her doctor.

NOW

In the current legal framework, Margaret could only claim compensation for the malfunction of the physical implant, but not for the software. Furthermore, as to the software updates which the manufacturer issued after the software was placed on the market, it would remain a matter of dispute whether they could be covered by liability under Directive 85/374/EEC. The patient would also not be able to seek compensation for medically diagnosed damage to her mental health.

SOON

However, if the damage occurred after implementation of the PLD, Margaret could claim compensation for damage caused not only by the physical implant but also by the software, which the new directive classifies as a product.

The software manufacturer could not be exempt from liability on grounds that the updates were made after the product was placed on the market. The extent of damage for which the patient could claim compensation would also be broader: it could include, for example, the mental harm she suffered.

In addition, Margaret would benefit from the eased evidentiary requirements under the PLD, in particular the presumption of product defectiveness, if the device is found not to comply with national or EU regulations.

Incorporation of the Product Liability Directive into the Polish Civil Code

Poland has until 9 December 2026 to adopt new regulations on liability for dangerous products. As the PLD may significantly affect business in the medical devices sector, companies should take advantage of the 24-month transition period to review the impact that the new directive will have on their business.

However, under the PLD's transitional provisions, the existing implementation of Directive 85/374/EEC will continue to apply to products that were placed on the market or made available for use before 9 December 2026.

Applying the new AML Regulation to corporate groups

In 2024, the European Union adopted a comprehensive package of regulations on anti-money laundering and countering the financing of terrorism (AML/CFT). The package consists of several legal acts, including the AML Regulation. Although it will not come into force until July 2027, obliged entities should take an early look at the forthcoming changes, particularly the provisions on corporate groups, which greatly expand the existing requirements.

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For the first time at the level of an EU regulation (which applies directly in all member states), lawmakers have expressly identified who is responsible in a corporate group for ensuring compliance with AML/CFT requirements throughout the group, and their specific obligations. The aim is to ensure that AML/CFT risks within a group are managed effectively and in a coordinated way. To this end, AML/CFT compliance must operate at the level of the whole group, not just within individual companies. This article looks at the changes the AML Regulation brings to this area.

What is the current situation?

The existing provisions of the EU's AML Directive (2015/849, as amended) already place a requirement on obliged entities that are part of a group to implement group-wide strategies and procedures, including mechanisms for exchanging information. The intention was clear: to ensure that information gets exchanged between all entities in EU member states (and their branches and subsidiaries in third countries).

The problem is that member states have implemented these requirements in varying degrees. For example, the Polish Act on Countering Money Laundering and the Financing of Terrorism of 1 March 2018 refers in this context only to "obliged institutions that are part of a group and their branches and subsidiaries in third countries," and thus entities that in principle have their registered office in Poland.

In practice, these doubts in interpretation mean that group procedures often end up a dead letter rather than an effective mechanism for exchanging information. The absence of harmonised regulations, with no clear guidelines, causes many groups to focus on just meeting the formal requirements. But this often fails to

exploit the full potential of group procedures as a tool for effective exchange of information and coordination of AML/CFT measures. The AML Regulation should end this uncertainty by establishing uniform requirements that apply directly throughout the EU.

New requirements for corporate groups

The AML Regulation establishes three main categories of obligations which may be described as a requirement to implement a coordinated AML/CFT compliance system at the group level:

- An obligation to carry out a **group AML/CFT risk assessment** (and an assessment of the risks associated with non-compliance with targeted financial sanctions and their evasion) and to introduce **group strategies and procedures** in this area
- An obligation to ensure **effective exchange of AML/CFT information** within the group
- An obligation to introduce a **compliance function** at the group level.

Regulation (EU) 2024/1624 of the European Parliament and of the Council of 31 May 2024 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing

The **group risk assessment** should take into account the risk assessments carried out by subsidiaries and branches of the group and information published by the authorities of all member states or third countries where the group's establishments (branches or subsidiaries) are located. On this basis, **group-wide strategies, procedures and control measures** are to be established and implemented, including in the areas of data protection and exchange of information within the group for AML/CFT purposes and to ensure that employees within the group are aware of the requirements of the AML Regulation.

The **information exchange strategy** should be structured so that it is possible to demand exchanges of information from obliged entities within the group, if such exchanges are relevant for due diligence with respect to clients and for managing the risks of money laundering and financing of terrorism.

Significantly, the strategy must not prevent entities within the group that are not obliged entities from providing information to

Group assessment of AML/CFT risk (and risk of non-compliance or evasion of targeted financial sanctions), and **introduction of group strategies and procedures** in this area

Effective exchange of AML/CFT information within the group

Compliance function established at the group level

obliged entities within the same group, if such exchange is relevant for those obliged entities in fulfilling the requirements set out in the AML Regulation.

Exchanges of information with entities that do not have obliged-entity status will be particularly important for compliance with the new KYC (know your client) requirements. These require obliged entities to take into account information about a client's business relationships with other entities in their group (regardless of the status of those other entities under the AML Regulation) for purposes of ongoing monitoring of business relationships with that client.

Furthermore, establishment of a **compliance function** at the group level means the appointment of:

– A compliance manager at the group level (responsible for implementing group-wide strategies, procedures and control measures, and submitting reports to the parent company's management body)
– A compliance officer (if justified by the activities carried out at the group level).

Who is responsible for implementing group obligations?

A corporate group's obligations under the AML Regulation generally rest with the "parent undertaking." It must carry out a risk assessment for the whole group, establish group procedures, and ensure their implementation in all branches and subsidiaries. The key question is which entity in the corporate group should perform this role.

Intuitively, one could assume that the parent undertaking, in the meaning of the AML Regulation, is simply the parent company at the top of the group's structure. However, the reality is more complicated. The regulation introduces one fundamental condition: the parent undertaking must be an obliged entity. For groups whose management is based in the EU, this will be the obliged entity at the top of the hierarchy in the EU (provided that at least one subsidiary is an obliged entity). For groups outside the EU, the parent undertaking will be the highest-ranking EU-based obliged entity in the group's structure that meets certain criteria.

However, before corporate group officers breathe a sigh of relief, convinced that these requirements do not apply to their structure (because the holding company at the top of the group has no operations that are subject to AML/CFT regulations), it is worth noting an important new development. The AML Regulation adds two additional categories to the list of obliged entities:

- Financial mixed activity holding companies (with at least one credit institution or financial institution among their subsidiaries)
- Non-financial mixed activity holding companies (with at least one other type of obliged entity among their subsidiaries).

The apparent aim of adding these categories is to close a potential regulatory loophole. Due to this change, it will always be possible to find an entity responsible for coordinating AML/CFT compliance at the level of the entire structure for groups in which obliged entities are operating. Even if the operations of the holding company itself at the top of the group do not predestine it to be subject to AML/CFT obligations, it may now gain obliged-entity status as a financial or non-financial mixed activity holding company.

Whom do the group requirements apply to? The problem with interpreting Art. 16

The new AML Regulation poses a considerable interpretive challenge for corporate groups. The fundamental question concerns which entities within a group must actually apply the requirements of the AML Regulation.

At first glance, the answer seems simple. Art. 16 of the regulation states that the parent undertaking must ensure that the requirements concerning internal procedures, risk assessment and staff "apply in all branches and subsidiaries of the group." The problem is that the provision does not refer to "all branches and obliged entities," but only to "all branches and subsidiaries of the group." This seemingly minor distinction raises a fundamental question: should the regulation's requirements apply to all companies in the group, or only those with formal obliged-entity status?

In practice, there are three possible interpretations, each with far-reaching consequences.

The first scenario—let's call it radical—assumes that all subsidiaries in the group (regardless of what they do and whether they are subject to AML rules) must implement the full range of requirements regarding procedures, risk assessment and staff which arise from the AML Regulation. However, such an interpretation would be difficult to reconcile with the logical foundations of the system. The AML Regulation has a precise definition of "obliged entities": credit institutions, financial institutions, and a number of other entities expressly listed in Art. 3 of the AML Regulation. It is difficult to accept that lawmakers wanted to apply all of the AML requirements to all companies in a group by the "back door," simply because they are part of the group.

The second scenario—a liberal one—takes the opposite direction. It assumes that the phrase "all branches and subsidiaries of the group" should simply be read as "all obliged entities of the group." The problem is that if the drafters had actually intended that, they would have used that wording. Since they did not, it is difficult to ignore the provision's literal wording.

This leaves the third scenario—a compromise that seems closest to a functional interpretation of the regulation. In this approach,

group entities that are not obliged entities do not become obliged entities simply by virtue of operating within a group to which the AML Regulation applies, but at the same time, they should not be completely overlooked in the AML/CFT compliance system in place within the group. Why? In particular, because their involvement may prove necessary for proper management of AML/CFT and sanctions risks by the group, and to ensure compliance with the AML Regulation by those entities in the group that actually are obliged entities (for example, in terms of information exchange for AML/CFT purposes).

Adopting the compromise interpretation of Art. 16 of the AML Regulation means:

- Obliged entities within the group should implement the full range of requirements—risk assessments, procedures, strategies and control measures, in accordance with the AML Regulation.
- Members of the group that are not obliged entities are included in group procedures at least in selected areas where their involvement seems particularly important or even essential. This applies in particular to exchanges of information with other entities in the group (key for ensuring that obliged entities follow KYC rules), but also, potentially, as needed to comply with sanctions, and even conducting their own risk assessments to support the whole group's compliance.

Hopefully these uncertainties will finally be resolved by the newly established regulator at the EU level known as the AMLA (Authority for Anti-Money Laundering and Countering the Financing of Terrorism). The AMLA is to draw up regulatory technical standards by July 2026 which will set out the minimum requirements for group-wide strategies, procedures and controls.

Summary

The AML Regulation's new requirements for corporate groups impose significantly broader obligations than before on groups and parent undertakings. The key challenge is to determine the extent to which AML requirements must be applied by entities within the group which do not themselves have obliged-entity status.

The AMLA has already been set up and has begun working on key guidelines and draft regulatory technical standards that will bring more precision to the requirements under the AML Regulation, including the requirements relating to group procedures. Therefore, parent companies should already be actively monitoring the AMLA's work in this area. This will allow them to keep track of the regulatory framework as it develops and prepare for the upcoming changes in good time.

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