

POLISH DRAFT ACT ON ARTIFICIAL INTELLIGENCE SYSTEMS

The Polish Ministry of Digital Affairs published the Draft Act on Artificial Intelligence Systems of 16 October 2024 (hereinafter referred to as the "**Draft Act**"), which provides for the establishment of specialised bodies for artificial intelligence systems and the introduction of appropriate procedures to ensure the safety of artificial intelligence systems, while not inhibiting technological development.

The Draft Act aims to implement Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 (Artificial Intelligence Act)¹ (hereinafter referred to as the "**Artificial Intelligence Act**"), allowing for the direct application of certain of its provisions. The Draft Act is to apply to a range of entities, including companies and individuals, that use artificial intelligence systems. These include, among others, suppliers, importers, distributors, and authorised representatives of suppliers and manufacturers.

Implementation timelines

The provisions of the Artificial Intelligence Act will be introduced in stages, with the majority coming into force from 2 August 2026. Specific deadlines include:

- general provisions² and provisions on prohibited systems,³ which are to apply from 2 February 2025;
- provisions on notifying authorities⁴, general-purpose AI models⁵, governance⁶ or penalties,⁷ which are to apply from 2 August 2025;⁸

¹ Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act) (Text with EEA relevance) (available at: 12.11.2024, link: <https://eur-lex.europa.eu/eli/reg/2024/1689/oj?eliuri=eli%3Areg%3A2024%3A1689%3Aoj&locale=pl>).

² Chapter I *ibidem*.

³ Article 5 and Chapter II *ibidem*.

⁴ Chapter III, Section IV, *ibidem*.

⁵ Chapter V *ibidem*.

⁶ Chapter VII *ibidem*.

⁷ Chapter XII *ibidem*.

⁸ Article 113 *ibidem*.

- provisions on high-risk systems⁹ and correlated compliance and transparency obligations,¹⁰ which are to apply from 2 August 2027.

Competent national authorities

Market surveillance authority

The Draft Act provides for the establishment of a **Commission for the Development and Safety of Artificial Intelligence** (hereinafter referred to as the "**Commission**") – a market surveillance authority within the meaning of the Artificial Intelligence Act. Its key activity will be to monitor the AI market and support businesses in implementing the provisions of the Artificial Intelligence Act, in particular to ensure the safe use of artificial intelligence systems.

The Commission may carry out inspections of operators' activities to ensure that they comply with the provisions of the Artificial Intelligence Act. Inspections may be carried out remotely, using electronic means of communication and, in justified cases, also in person, which allows the inspectors to have access to documents, IT systems, and other materials related to the subject of the inspection. If violations are found, the Commission may initiate appropriate proceedings, as well as request the assistance of the Police or other authorities, if this is necessary to carry out an inspection.

The Commission is also to act as a **single point of contact**, as referred to in Article 70 of the Artificial Intelligence Act. In constructing its structure, the authors of the Draft Act drafters followed the model of the Polish Financial Supervision Authority, with a view to ensuring the independence of the supervisory authority from the government administration.

In addition, according to the Artificial Intelligence Act, the supervisory authority will be tasked with, among other things: (i) accepting and reviewing applications for authorisations for the marketing or putting into service of high-risk AI systems, or (iii) overseeing the establishment and operation of regulatory sandboxes designed to ensure that innovative AI systems are tested in safe, controlled conditions.

Individual interpretation of the Artificial Intelligence Act and the Polish implementing legislation

The Chairman of the Commission has also been equipped with the power to issue, at the request of the interested party **in an individual case**, an interpretation of the **Artificial Intelligence Act** and the Polish Act on Artificial Intelligence Systems as well as **general interpretations** (Article 15 of the Draft Act). A request for an individual interpretation may, in particular, relate to the existing facts or future events, including with respect to: (i) the qualification of a machine system as an artificial intelligence system; (ii) the determination of the risk of the use of the AI system. Such a request is subject to a fee of PLN 150, which should be paid within 3 days from the date of filing the request for an interpretation.

⁹ Article 6 and Chapter III *ibidem*.

¹⁰ Articles 8-27 *ibidem*.

Social Artificial Intelligence Board as an advisory and consultative body

The Draft Act also provides for the establishment of a **Social Artificial Intelligence Board** – a body whose task is to express opinions and positions on matters referred to it by the Commission. However, the Board's opinions and positions are not binding on the Commission.

Notifying authority

In accordance with the provisions of the Draft Act, it is within the competence of the minister competent for digital technology to notify the conformity assessment body upon its request and on the terms set out in Article 29 and Article 30 of the Artificial Intelligence Act and in the Act of 13 April 2016 on Conformity Assessment and Market Surveillance Systems.

Violations of the provisions of the Artificial Intelligence Act and the implementing legislation

• Infringement procedure

The legislator has designated **the Commission for the Development and Security of Artificial Intelligence** as the competent authority for reviewing complaints. As a rule, a complaint is to be submitted in electronic form.

Upon receipt of the complaint, the Commission may, inter alia, issue a decision ordering the cessation of infringements or ordering the operator to take remedial action (Articles 54 and 55 of the Draft Act), against which the addressee appeal to the District Court in Warsaw – the Court of Competition and Consumer Protection.

• Serious incident reporting procedure

Providers of artificial intelligence systems are obliged to notify the Commission about the occurrence of any serious incident occurring in connection with the use of artificial intelligence systems. Article 61 of the Draft Act sets out the requirements to be met by the notification, including contain the notifying entity's data, a description of the impact of a serious incident on information systems or the provision of services, information on the preventive actions taken, and information on the remedial actions taken.

• Administrative penalties

The Draft Act provides for the possibility for the supervisory authority to impose administrative fines in the amounts specified in the Artificial Intelligence Act. In particular, in the event of violation of the provisions on prohibited practices, the following penalties may be imposed:

- up to EUR 35,000,000; or
- up to 7% of the total annual global turnover - if the infringement was committed by an entrepreneur (whichever amount is higher).

However, in the event of a violation of other regulations, the following penalties may be imposed:

- up to EUR 15 000 000; or
- up to 3% of the total annual global turnover - if the infringement was committed by the entrepreneur (whichever amount is higher).

Pursuant to Article 73 of the Draft Act, the financial penalties are subject to enforcement under the provisions on administrative enforcement proceedings, with respect to the enforcement of financial obligations, and should be paid within 14 days from the date of expiry of the deadline for filing an appeal, i.e. from the date of expiry of the deadline for filing an appeal or from the date on which the court's decision becomes final.

A decision on the imposition of a penalty may be appealed to the Regional Court in Warsaw - Court of Competition and Consumer Protection.

Summary

Work on the Draft Act is still in progress, and the selected entities approached by the Ministry as part of the consultations have until 15 November 2024 to submit their comments on the Draft Act. According to the Ministry's announcements, the Draft Act is to be adopted by the end of 2024, but already at this stage it is worth taking a look at what shape the Polish legislator envisages for the bodies and mechanisms implementing the EU regulations, and what rules will soon apply to entities marketing as well as those using artificial intelligence systems.

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com

Clifford Chance, 10 Upper Bank Street,
London, E14 5JJ

© Clifford Chance 2024

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street,
London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

If you do not wish to receive further information from Clifford Chance about events or legal developments which we believe may be of interest to you, please either send an email to nomorecontact@cliffordchance.com or by post at Clifford Chance LLP, 10 Upper Bank Street, Canary Wharf, London E14 5JJ

Abu Dhabi • Amsterdam • Barcelona • Beijing • Brussels • Bucharest • Casablanca • Delhi • Dubai • Düsseldorf • Frankfurt • Hong Kong • Houston • Istanbul • London • Luxembourg • Madrid • Milan • Munich • Newcastle • New York • Paris • Perth • Prague • Riyadh* • Rome • São Paulo • Shanghai • Singapore • Sydney • Tokyo • Warsaw • Washington, D.C.

*AS&H Clifford Chance, a joint venture entered into by Clifford Chance LLP.

Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.

CONTACT

Agnieszka Janicka
Partner

T +48 22627 11 77
E agnieszka.janicka@cliffordchance.com

Krzysztof Hajdamowicz
Counsel

T +48 22627 11 77
E krzysztof.hajdamowicz@cliffordchance.com

Martyna Sieczka
Advocate Trainee

T +48 22627 11 77
E martyna.sieczka@cliffordchance.com

Agata Wężyk
Intern

T +48 22627 11 77
E agata.wezyk@cliffordchance.com