
# THE RIGHT FOCUS

## DECEMBER 2023 // TRANSFORMATION

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# SUSTAINABLE TRANSFORMATION DRIVEN BY THE CSRD

JOANNA BARBRICH

Europe is set to become climate neutral by 2025. The transformation that the European Union, its Member States and, by extension, businesses will undergo will be unprecedented.

A year ago, the Directive of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU as regards corporate sustainability reporting (hereinafter "CSRD") was published in the Official Journal of the EU, and is one of the drivers of these changes.

**Indeed, a climate-neutral circular economy without diffuse pollution cannot be achieved without the full mobilisation of all sectors.**

Therefore, new sustainability requirements will be introduced and companies will need to include environmental and social issues as well as human rights and corporate governance in their reporting.

## Demanding requirements for non-financial reporting

The CSRD, which amends Directive 2013/34/EU, primarily introduces much more demanding requirements for non-financial reporting, and is an attempt to establish comparability of sustainability-related data and even to put this type of reporting on an equal footing with financial reporting.

## The rationale for the introduction of the Directive has been that:

- Undertakings subject to the reporting requirements can benefit from high quality reporting
- An increased number of investment products are expected which aim to pursue sustainability objectives, and quality sustainability reporting can improve an undertaking's access to financial capital
- Non-financial reporting can help undertakings to identify and manage their own sustainability risks and opportunities
- Standardised reporting can improve dialogue and communication between parties and even elevate their reputation
- A consistent, standardised basis for reporting is expected to lead to relevant and sufficient information being provided, thus reducing the need to provide information on an ad hoc basis

**It is estimated that the reporting obligation will eventually cover 3,500 Polish companies. At EU level, this will be up to 50,000 companies. The reporting obligation will also apply to undertakings from outside the European Union that operate within its borders.**

The CSRD's predecessor, the NFRD, already applies to more than 11,000 large public-interest entities operating in Europe. The CSRD is designed to phase in reporting requirements between 2024 and 2029.

The timetable is broadly as follows.

**For 2024, entities required to report are those currently subject to the NFRD (public-interest entities operating in the broader financial and insurance market or listed companies meeting 2 of the following 3 criteria:**

- Average number of employees during the financial year – 500
- Average balance sheet total – PLN 85 million
- Net sales revenue – PLN 170 million

**For 2025, the reporting obligation will be extended to remaining large entities and to parent entities of large groups not previously subject to the NFRD and which meet 2 of the following 3 criteria:**

- Average number of employees in the financial year – more than 250
- Balance sheet total – PLN 85 million
- Net revenue – PLN 170 million, or

**Parent undertakings of large groups meeting 2 of the 3 categories on a consolidated basis:**

- Average number of employees in the financial year – 250
- Balance sheet total – PLN 102 million
- Net sales revenue – PLN 204 million

For 2026, small and medium-sized listed companies with more than 10 employees that are not micro-enterprises will need to report.

The CSRD must now be transposed into national law and Member States have 18 months to do so, until 6 July 2024.

## European Sustainability Reporting Standards

The European Commission has also adopted a delegated regulation supplementing Directive 2013/34/EU of the European Parliament and of the Council, which constitutes the first set of ESRS, or European Sustainability Reporting Standards.

The twelve standards provide a roadmap for companies. Two of them define sustainability reporting principles and overarching disclosure requirements with sector-specific ESRS also planned.

**There is no doubt that companies that implement innovative and sustainable solutions can gain a competitive advantage and attract new customers. Today, however, this is not an opportunity but a necessity, driven by the changes introduced by the CSRD.**

# THE ENVIRONMENTAL IMPACT OF AI, OR THE CLIMATE COST OF ARTIFICIAL INTELLIGENCE

NATALIA KOTŁOWSKA -WOCHNA

WOJCIECH ALEKSANDROWICZ

At a time when artificial intelligence is becoming increasingly popular and widespread, it is worth considering its impact on the environment.

**Although we associate AI mainly with the digital dimension, the development of machines is inevitably associated with a huge demand for energy, requires increasingly efficient cooling systems and therefore large amounts of water, and is responsible for significant carbon dioxide emissions.**

The climate cost of artificial intelligence is a fact that fortunately more and more AI leaders are becoming aware of. As a result, they are planning and taking steps to reduce the negative impact of AI on the environment.

## AI on the rise

We are undoubtedly living in a time of rapid development in artificial intelligence. Our daily lives are increasingly being accompanied by new and innovative solutions to make our lives easier. It has never been easier or more accessible to create 'tailor-made' content. In just a few years, AI has become an integral part of our lives and the number of users of solutions such as ChatGPT or Microsoft Bing's Image Wizard is growing exponentially.

As a result, the industry is booming and making record profits. The scale and speed of this phenomenon can be seen in the huge success of ChatGPT, which celebrated its first official anniversary a few days ago.

Not so long ago, few people were interested in the potential of large language models. Today, it could be said that the world has gone mad for the omniscient e-companion. According to the latest figures available, ChatGPT now has around 180.5 million users; OpenAI's chief executive, Sam Altman, estimates that it receives 100 million visitors a week. In October alone, the site had a whopping 1.7 billion page views.[1]

## Development at the expense of the environment

However, the range of opportunities offered by artificial intelligence should not overshadow the cost of implementing the innovation. AI is being developed in huge research and development complexes that use an equally huge amount of electricity.

**A study by the University of California, Riverside, found that training GPT-3, the predecessor of ChatGPT, consumed 1287 MWh and resulted in the emission of the equivalent of more than 550 tonnes of carbon dioxide.[2] This is roughly equal to 550 round trips between New York and San Francisco.[3]**

By comparison, GPT-4, the successor to the current version of Chat, is reported to be trained on about 570 times more parameters than GPT-3. This does not indicate a proportional increase in energy consumption, but it does suggest that Chat's learning process is becoming more energy intensive.

The figures for water consumption for cooling the server rooms are also interesting. GPT-3 training at Microsoft's state-of-the-art data centres in the US can consume a total of 5.4 million litres of water, of which 700,000 litres is used to cool the servers on site.

In addition, the GPT-3 needs to 'drink' about a 500ml bottle of water for about 10-50 generated responses, depending on when and where it is used. These numbers may increase with the newly launched GPT-4 due to the aforementioned greater number of parameters used to train the language model.[4]

**Staying on the subject of Big Tech's water consumption, this issue is addressed in Google's latest Environmental Report, which shows that the tech giant consumed 21.2 billion litres of water in 2022.**

**This represents an increase of almost 5 billion litres compared to 2021 and 8.3 billion litres compared to 2020. The 2022 figure can be compared to the water consumption of London, a city of nine million people, for 10 full days.[5]**

## Carbon-free and Big Tech's green plans

While the figures above are essentially bleak, they should not obscure the changes being made by major players in the technology industry.

To reduce their environmental impact, scientists and engineers are looking at ways to make AI models more energy efficient, develop algorithms that require less computing power, or reduce CO2 emissions by powering data centres with green energy.

In September, Apple unveiled a new range of watches that it claims will be the first carbon-neutral products. To reduce the carbon footprint of these products, Apple has relied on the partial use of recycled materials and reduced air transport. The giant also announced an update to its environmental commitment to reduce greenhouse gas emissions by 90 % by 2050.[6]

**Similar climate action is being taken by Microsoft, which has pledged to become carbon-free by 2030 [7] and to produce more water than it consumes.**

Finally, there is Googles promising investment in geothermal energy. At the end of November, Google announced the launch of a geothermal project in partnership with Fervo, which has resulted in carbon-free electricity (CFE) being supplied to the local grid for the company's data centres in Nevada.

Google, like the rest of the Big Five, has big plans for decarbonisation. By 2030, it aims to operate all of its data centres and office campuses on 24/7 carbon-free energy.[8]

The regulations currently under consideration to reduce the negative impact of AI on the environment should also not be overlooked.

For data-driven companies, concern for the environment is already part of the activities regulated under ESG requirements. This includes, for example, energy efficiency or the use of renewable energy sources in data centres.

**With the number of AI models growing every day at a rate unmatched by any other technology developed to date, there is no denying that the climate costs associated with AI will become increasingly important.**

When weighing the opportunities and benefits of AI against the potential risks that are so often discussed, for example in relation to jobs, the environmental costs cannot be overlooked.

As artificial intelligence becomes an integral part of our lives, it is important that its development is accompanied by a commitment to sustainability and minimising any associated impact on the environment.

The leading companies responsible for AI-based solutions are showing awareness and initiative in this area. This gives us hope for a future where we can enjoy the benefits of technological progress without further damaging our planet.

[1] https://explodingtopics.com/blog/chatgpt-users.
[2] P. Li et al., Making AI Less "Thirsty": Uncovering and Addressing the Secret Water Footprint of AI Models, p. 7.
[3] https://www.theguardian.com/technology/2023/aug/01/techscape-environment-cost-ai-artificial-intelligence.
[4] P. Li et al., Making AI Less "Thirsty": Uncovering and Addressing the Secret Water Footprint of AI Models, s. 3.
[5] https://www.eco-business.com/news/what-are-the-environmental-costs-of-ai/.
[6] https://newclimate.org/news/reaction-apple-unveils-its-first-carbon-neutral-products.
[7] https://www.microsoft.com/en-us/corporate-responsibility/sustainability.
[8] https://spidersweb.pl/2023/11/google-energia-geotermalna.html.

# 2023 ENERGY SUMMARY

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**The beginning of a new year is the perfect time to summarise the past twelve months, taking stock of our successes and challenges. So, within the pages of this article we check, which of the legal regulations introduced in 2023 support the Polish energy transition energy and create new investment opportunities, and we highlight the challenges facing the energy market in 2024.**

**The most significant legal changes introduced in the last year for the Polish energy market include:**

## Liberalisation of direct line legal regulations

- Enabling the direct connection of an electricity generating unit with an energy company, other than the generator of the installation, selling energy, for the direct supply of electricity to facilities, devices or installations of that entity, instead of, as before, the ability to connect between the generating unit and the installations of the energy company concerned.
- Replacement of the obligation to obtain approval from the President of the ERO for the construction of a direct line before issuing a construction permit in favour of the obligation to notify the President of the ERO of the construction or further use of a direct line.
- Exemption from the obligation to prepare an expert report on the impact of a given direct line or of devices, installations or grids connected to it on the power system containing generating units with an installed capacity of up to 2MW.
- However end-users of energy supplied by a direct line will be charged with a solidarity fee and a fee to cover the costs of maintaining system quality standards and reliability of the current electricity supply. >> [Art. 7aa (4) of Energy Law Act of 10 April 1997 (Polish Journal of Laws of 2022 r. item 1385 as amended)]

## Extention of cable pooling

- Removal of the obligation to connect installations sharing a connection (hybrid RES installation) to the same grid, as well as the limitation of the voltage rating of this grid to 110 kV.
- Removal of the restriction of the location of a hybrid RES installation to the area of one poviat (local entity) or five bordering municipalities.
- Introduction of an obligation to install energy storage within a hybrid RES installation.
- Introduction of regulations concerning exceeding the connection power specified for a given connection point – in this case, the grid operator will charge a fee for exceeding the connection power by the generator, in the amount corresponding to the fee for illegal electricity off-take in relation to the excess electricity that was injected into the grid by the generator as a result of the exceeding, and the operator may also introduce appropriate restrictions.
  >> [Art. 2 (11a) of Renewable Energy Sources Act of 20 February 2015 (Polish Journal of Laws of 2023 item. 1436 as amended)]

## Creating a market for renewable hydrogen

- Introduce into legislation of a definition of renewable hydrogen meaning hydrogen produced from RES or by electrolysis.
- Extension of the guarantee of the origin system to renewable hydrogen.
- Legislative work has been conducted on enabling hydrogen to be transported through gas grids by proposing solutions for the introduction of hydrogen operators and the operation of hydrogen – the project has not yet been the subject of parliamentary work.
  >> [Art. 2 (36a) and Art. 120 of Renewable Energy Sources Act of 20 February 2015 (Polish Journal of Laws of 2023 item. 1436 as amended), project nr UD382]

## Creating a market for biomethane

- Introduction into the legal system of a definition of biomethane, meaning purified gas extracted from biogas, agricultural biogas or renewable hydrogen, fed into a gas grid or transported in compressed or liquefied form or used for fuelling motor vehicles.
- Extension of the guarantee of the origin system to biomethane.
- The gas distribution system operator is obliged to indicate an alternative nearest location for the installation of biomethane in case connection conditions are refused.
- Increasing the range of permissible differences between the average combustion heat value of gaseous fuels for a given day and the combustion heat value of gaseous fuels determined at any point in a given area from 3 per cent to 4 per cent in the case of injection of biomethane into gas networks.
- Introducing a support system for biomethane installations with an installed capacity of 1 MW or less – whereby large-scale potential for biomethane development is estimated in Poland.
  >> [Art. 2 (3c) in relations to Art. 120 and Art. 83l Renewable Energy Sources Act of 20 February 2015 (Polish Journal of Laws of 2023 item. 1436 as amended), Art. 7 (1e) of Energy Law Act of 10 April 1997 r. (Polish Journal of Laws of 2022 r. item 1385 as amended), project nr 1090]

## Development of dispersed and citizen energy

- Introducing the obligation of participation in an energy cluster agreement of at least a local government unit (LGU) or a capital company established by an LGU with its seat in the territory of the energy cluster or a capital company whose share in the capital of the above-mentioned company is greater than 50% or exceeds 50% of the number of shares or stocks.

- Enabling the creation of citizen energy communities entitled to operate in the following areas: generation, distribution, sale, trading, aggregation, storage of energy, development of energy efficiency projects, provision of other energy services (including flexibility services) or production, consumption, storage or sale of biogas, agricultural biogas, biomass and biomass of agricultural origin – the purpose of the community is to provide environmental, economic or social benefits for its members, shareholders or partners or the local areas in which it operates. >> [Art. 2 (15a) of Renewable Energy Sources Act of 20 February 2015 (Polish Journal of Laws of 2023 item. 1436 as amended) and Art. 3 (13f) of Energy Law Act of 10 April 1997 r. (Polish Journal of Laws of 2022 r. item 1385 as amended)]

## Challenges in the Polish energy market for 2024

The above legal regulations introduced to the Polish energy system are only part of the legislative changes adopted in the past year. The effectiveness of the new solutions will be tested in the coming year.

However, the legislative works started in 2023 have not been completed in many areas.

**The challenge still remains to return to market principles for the operation of the energy, gas and heat market. The adopted amendment to the specific acts for the above-mentioned markets, extending the maximum energy prices until 30 June 2024, should be a transitional solution, in particular not stopping the development of renewable energy in Poland.**

**Meanwhile, the wind sector is looking forward to the liberalisation of the Wind Power Investment Act.**

The draft amendment was proposed in November, but was ultimately not adopted and is likely to be subject of a separate legislative process.

A positive effect of the draft is that it restarts the debate on socially acceptable rules for the location of onshore wind farms. The adoption of a minimum acceptable distance of 300 m for the lowest noise wind turbine proposed in the above-mentioned draft will be subject to further consultation.

**There are many more challenges facing the Polish energy sector.**

**The update of the PEP2040, in accordance with the legislative direction of the EU, is expected to, among other things: increase the ambition of the share of particular RES in the energy mix, accelerate the development of offshore wind and nuclear energy, define a plan for phasing out or converting high-emission power plants, and accelerate the modernisation of electricity grids to increase their capacity. If we see the Polish energy transition as a necessity for protecting the planet and boosting the economy, the above goals should not be just mere wishes, but should be solid plans, solidified into energy milestones for the coming 2024.**

# A REVOLUTION IN THE EXISTING RULES FOR ALTERNATIVE INVESTMENT COMPANIES (AICS)

KAMIL SZCZYGIEŁ

We have already written about the law commonly referred to as 'Warzywniak' and discussed in detail some of its most interesting solutions. However, due to dynamic developments, we have not touched on the regulations already in force, which seem to be having a negative impact on the functioning of alternative investment companies. Let us therefore examine how AICs are operating under the new law.

## What are alternative investment companies

Alternative investment companies (AICs) are entities that carry on business in the form of:

- A partnership (i.e. a limited partnership or a partnership limited by shares where the sole general partner is a capital company, including a European company); or
- A capital company (i.e. a limited liability company, a joint stock company, including a European company)

The essence of an AIC is to raise funds from at least several investors who recognise that they will get a better return on their investment than they would on their own. The AIC charges the investors a fee for managing the funds they have entrusted and, if it makes a profit, a commission (carried interest).

From a legal point of view, AICs are still professional investment funds, but with slightly less stringent obligations under law, which allows for more flexibility in the conduct of investment business in this form.

## Warzywniak – the unfortunate consequences of the amendment for alternative investment companies

With the adoption of the Warzywniak act, the lawmakers introduced both minor and significant changes to the regulations governing investment funds and the management of alternative investment funds, which had unfortunate consequences for the operation of AICs, the Polish capital market and the very institutions that create this market.

At the same time, it is worth recalling that investor confidence in the domestic capital market was already damaged before these changes were adopted, and the new regulations have not improved the situation at all.

## Warzywniak – key changes to the operation of AICs

The most significant change is the amended Article 70k of the Act, which defines the minimum contribution of a professional client to an alternative investment company. From 29 September this year, this amount should be at least the equivalent of EUR 60,000, calculated on the basis of the average euro exchange rate announced by the National Bank of Poland on the date of the contribution to the company.

The problem is that the legislator has created a situation in which the rules governing AICs conflict with the Rules of the Stock Exchange (i.e. of the main market of the Warsaw Stock Exchange) and the Rules of the Alternative Trading System (i.e. the NewConnect market), which require that there be no trading restrictions on a company's shares in order for them to be listed. With nine AICs registered on the two trading floors, the WSE had to carry out a detailed analysis of the new rules and take appropriate action in accordance with generally applicable law.

## The problem with AICs and the Stock Exchange's reaction

Immediately prior to the entry into force of the amendments to the Investment Funds Act, the WSE had to intervene and consider three solutions:

- Suspend trading in AIC shares until the current rules in this respect are 're-liberalised'
- Fully exclude AIC shares from both the WSE Main Market and NewConnect
- Continue to process transactions that may be invalidated by common court judgments under the current provisions of the Investment Funds Act

Ultimately, the WSE Management Board opted for the first of these options, acting contrary to the adopted rules.

## Reaction from JR Holding AIC S.A.

It did not take long for those affected by the unfavourable amendments to the Investment Funds Act to react. The very next day, JR Holding AIC S.A. published an announcement that January Ciszewski, the company's main shareholder and President of the Management Board, had taken steps to restore the possibility of further trading in the company's shares on NewConnect. Details were not released until two weeks later.

## JRH's idea for resuming trading in its shares on NewConnect

January Ciszewski contributed the 23,450,000 JRH shares he holds to Onvestor AIC (of which he is the sole shareholder) as a contribution in kind to cover the newly issued shares in Onvestor's share capital.

As a result of this transaction, Onvestor holds more than 53% of JRH's share capital and voting rights at JRH's general meeting and, consequently, Article 70k(3) to (6) of the Act (i.e. the provisions introducing restrictions on stock exchange trading that are problematic for AIC, as added by the amendment) will not apply to it.

As a result of meeting the statutory requirements, on 21 November 2023 JHR and the WSE entered into a bilateral agreement to restore trading of JHR shares on NewConnect as of 6 December 2023. It is therefore highly likely that other AICs will have entered into similar agreements by the time legislative changes favourable to the operation of AICs are enacted.

## Legislative stalemate on AICs

Due to the end of the ninth term of the Sejm and Senate and the principle of the discontinuation of parliamentary work, the legislature has not had sufficient time to adopt the changes in law necessary for the correct functioning of AICs. The issue of correcting the above-mentioned regulations will be dealt with by the Parliament of the current term.

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# ONLINE COURTS: ALREADY IN USE AROUND THE WORLD, BUT WHEN WILL THEY BE FULLY AVAILABLE IN POLAND

MATEUSZ OSTROWSKI

JAN JANUKOWICZ

**The world around us is evolving and modern technologies are the main driver of change, with these changes even reaching the judiciary. More and more countries are now taking advantage of the innovative solutions available by successfully transforming their administration.**

## China wants to strengthen its citizens' sense of justice: are online courts a good example

Imagine that in cases of widespread online piracy and e-commerce, the entire litigation process, from filing of a lawsuit through service of pleadings and mediation up to exchange of evidence, pre-trial preparation, trial and judgment, all take place online.

This is not an fanciful idea dreamed up by lawyers – it comes from a translated article of the first Decision of the Supreme People's Court of China dated 3 September 2018, which deals with several aspects of the judicial process in online courts.

In August 2017, the world's first online court was set up in Hangzhou, China. Two more were set up a year later in Beijing and Guangzhou. The above Decision was to regulate the activities of online courts in detail.

What kind of cases do online courts deal with? These are primarily disputes:

- Arising from the signing or execution of online shopping agreements via an e-commerce platform.

- Concerning financial loan agreements (Polish: umowy pożyczek finansowych) and small credit agreements (Polish: małe umowy kredytowe) signed and executed online.
- Resulting from the publication or distribution of copyright or related rights to works on the Internet.
- Arising from infringement of personal interests and the interests of others, such as personal and property rights.

This was only the beginning.

In practice, China has undertaken a comprehensive modernisation of technological processes in both traditional and online courts.

The revolution is called the 'smart courthouse' (jianshe zhihui fayuan, 建设智慧法院), and its aim is to strengthen Chinese citizens' sense of justice.

## Is Poland keeping up with China in the technological development of the judiciary

In this context, it is worth noting the Act of 7 July 2023 (amending the Civil Procedure Code, the Common Court System Law, the Criminal Procedure Code and certain other acts), which introduced the new wording of Article 151 §2 of the Civil Procedure Code.

Under the new legislation, presiding judges may order a remote public hearing, using appropriate technology. Such changes contribute to technological developments in court proceedings. The introduction of e-Service could be another manifestation of the technological revolution. This is an indirect but positive effect of the COVID-19 pandemic law, in particular the part concerning the service of pleadings via an information portal.

Once the e-mail address had become an indispensable part of any pleading, the lawmakers decided to go one step further and introduce e-Service. This met with the approval of the self-governing bodies of advocates and attorneys at law, who are already demanding two-way electronic communication. Unfortunately, the mandatory e-Service for courts, tribunals or public prosecutors will not be fully implemented until 1 October 2029.

These are only examples of the changes introduced by the Polish lawmakers.

Although we are still a long way from the Chinese judicial system, applying the Chinese reform to the Polish reality could bring a number of benefits, including:

- Improved efficiency of proceedings
- Easier archiving
- Control over the flow of correspondence
- Easier monitoring of deadlines
- Improved access to justice
- Automate selected activities

We already have examples of good practice – all we need is the courage to implement them. Sooner or later, we'll be forced to.

# MAJOR CROSS-BORDER CONVERSION AND REORGANISATION CHANGES TO THE COMPANIES & PARTNERSHIPS CODE

PATRYCJA WAKULUK

KAMIL SZCZYGIEŁ

On 15 September this year, an amendment to the Commercial Companies Code came into force, which is intended to make it easier for Polish businesses to operate in the single European market. We have already discussed the general direction of the changes, but it is worth taking a closer look at the final form of the regulations now in force.

### Mandatory changes to national legislation in connection with the transposition of EU law, but not only...

In addition to the need to transpose EU legislation into the Polish legal system, the amendment of national legislation was also dictated by Poland's obligation to comply with a specific ruling of the Court of Justice of the European Union.

In case C-106/16 Polbud-Wykonawstwo, the Court ruled that the scope of the principle of freedom of establishment enshrined in Article 49 of the Treaty on the Functioning of the European Union includes the obligation to guarantee entrepreneurs operating as companies/partnerships the possibility of transferring their seat from one Member State to another, without having to go through liquidation proceedings.

In addition to the implementation of EU regulations on cross-border divisions and conversions, significant changes have been made to national legislation, with the aim of simplifying a number of mechanisms, whilst increasing the protection of entities undergoing conversion or reorganisation and enhancing their competitiveness in the European market.

## SCOPE OF THE AMENDMENT

### Enabling limited joint-stock partnerships to divide and enhancing their ability to merge

The amendment introduces solutions to enable or enhance the ability of limited joint-stock partnerships to participate in reorganisation processes.
The new regulations have extended the ability of limited joint-stock partnerships to merge.

As a result, under the current regulations, limited joint-stock partnerships are the only type of partnership that can have the status of an acquiring or newly formed entity.

**On the other hand, with regard to divisions, the lawmakers have extended the list of companies/partnerships that can have the status of a divided entity, which previously could only be granted to companies, but now also applies to limited joint-stock partnerships.**

## Cross-border divisions and conversions of companies and limited joint-stock partnership

Another revolution introduced by the amendment to the Companies & Partnerships Code is the possibility of cross-border divisions of companies and limited joint-stock partnerships. The added provisions relate to the direct application of the general provisions on divisions.

The lawmakers have introduced cross-border conversions, allowing both companies and limited joint-stock partnerships to convert into one of the legal forms existing in the legal systems of other EU Member States or state parties to the EEA Agreement (provided, however, that their seat, central administration or principal establishment is located in the EU or in a state party to the EEA Agreement).

The permitted legal forms of entities for converted companies/partnerships are listed in Annex II to Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017. Moreover, in practice, the transfer of the seat from the Member State where the business was originally conducted to another Member State does not require the entity to be liquidated in the former Member State.

## New possibilities for simplified mergers

Another important change is the introduction of a new, simplified form of merger procedure in legal transactions, i.e. without the obligation to carry out a procedure to increase the share capital and issue new shares.
Such a procedure may be carried out if one of the following two conditions is met, i.e.:

- One member holds, directly or indirectly, all shares in merging entities, or
- The members of merging entities hold shares in the same proportion in all merging entities
- Spin-off – a new form of division in Polish corporate law

The list of division procedures has also been updated to include a new type of division, i.e. a spin-off, previously unknown in Polish law, which involves the partial transfer of the assets of a divided entity to an existing or newly established entity, with the shares in the acquiring or newly established entity being held by the divided entity and not by its members.

**Importantly, the new type of division will apply to both domestic and cross-border transactions.**

## Preliminary assessment of the amendment

Despite the short duration of the amendments, it is impossible not to agree that the regulations in question will increase the attractiveness of the domestic market for foreign entrepreneurs operating in the single European market. And this could lead to the desired increase in foreign investment in Poland. However, it remains to be seen what the final impact of the changes will be.

# RECENT AND PLANNED CHANGES IN LABOUR LAW

ANNA GWIAZDA

ANGELIKA STAŃKO

**April amendments in law have been followed by several important changes have been introduced in the Polish legal order, which may prove to be of particular interest from the employers' perspective.**

**Some of the changes include an increase in the minimum wage, the strengthening of the employee's position in disputes with the employer, a higher limit on the exemption from social security contributions or changes to the rules on the employment of adolescent workers. We look at what employers should be preparing for in the first few months of the new year, 2024.**

## Increase in the minimum wage

On 1 July 2023 – for the second time this year – we witnessed the increase in the minimum wage to PLN 3,600 (PLN 23.50 per hour).

However, employers have to face further increases. The Regulation[1] stipulates that the minimum wage in 2024 will increase in two steps, and will be as follows:

- From 1 January 2024 – PLN 4,242
- From 1 July 2024 – PLN 4,300

And the minimum hourly rate will be as follows:

- From 1 January 2024 – PLN 27.70
- From 1 July 2024 – PLN 28.10

The minimum wage constitutes a very important variable that directly affects the amount of other costs that employers are required to pay.

The following benefits will be affected by the increase in the minimum wage:

- Increase in allowance for night work – in January-April 2024 it will amount to PLN 5.05 per hour.
- Compensation to an employee for breach of equal treatment in employment or harassment – cannot be less than PLN 4,242 and, from July 2024 – PLN 4,300.
- The maximum amount of severance pay for termination of employment for reasons not related to employees until 30 June 2024 cannot exceed PLN 63,630, and from 1 July – PLN 64,500.
- The amount free of deductions will increase.
- The minimum benefit assessment basis will increase – pursuant to Article 45 sec. 1 of the Act on cash benefits from social insurance in the event of sickness and maternity – to PLN 3,660.42.

## Significant changes in employee processes

On 22 September, legislation came into force that has increased the position of employees in disputes with their employer.

Today, in cases of recognition of termination of employment or reinstatement, the court imposes on employers an obligation to continue employing the employee until the proceedings have become final. Vulnerable employees may make such a request throughout the proceedings, and therefore also at the time of filing a claim. Other employees may obtain such entitlement together with the judgment of the court of first instance.

These are not all the changes that make a significant improvement to the situation of employees – the rules for paying court fees on lawsuits have also changed.

**From 28 September 2023, an employee may sue an employer for any amount without having to pay any fee. So far, lawsuits in which the demand did not exceed the amount of PLN 50,000 benefited from such an exemption.**

The above changes may significantly affect the day-to-day operations of employers.

Firstly, due to the absence of an initial fee, more lawsuits against employers can be expected than before, including lawsuits involving higher claims than before.

Secondly, employers should draft their termination notices in even greater detail, in particular for protected employees, so that the court already concludes at the stage of the analysis of the case and the lawsuit filed that the claim is unfounded, which is the only reason to deny security.

## Higher limit for exemption from social security contributions

On 1 September 2023 we witnessed the application of an increased amount of exclusion of the value of employer-funded meals for employees from the base for pension contributions, without entitlement to an allowance therefor. Previously it was PLN 300, today it is PLN 450.

At the same time, coupons, vouchers, meal vouchers and prepaid cards were also excluded from the contribution base.

## Changes to the employment of adolescent workers

Start from the new school year, there have been a number of changes to the employment of adolescent workers.

They resulted from the fact that the ratios that constitute the basis for the calculation of adolescent workers' remuneration have increased, which from 1 September 2023 amounts to the following:

- In the first year of study or in class I of a first-degree vocational school in the case of an adolescent worker's undertaking further theoretical training at this school – not less than PLN 560.46 (not less than 8% of the average monthly wage in the previous quarter, previously not less than 5%).
- In the second year of study or class II of a first-degree vocational school in the case of an adolescent worker's undertaking further theoretical training at this school – not less than PLN 630.52 (not less than 9% of the average monthly wage in the previous quarter, previously no less than 6%).
- In the third year of study or class III of a first-degree vocational school in the case of an adolescent worker's undertaking further theoretical training at this school – not less than PLN 700.58 (not less than 10% of the average monthly wage in the previous quarter, previously not less than 7%).

Please note that the increase covers all adolescent workers, including those employed before 1 September 2023.

**The Regulation on the list of work prohibited to adolescent workers has also changed, which may entail the need to update internal regulations (e.g. work regulations).**

## Changes to immigration law

In connection with the visa scandal, the Ministry of Foreign Affairs has announced its decision to terminate contracts with external outsourcing companies that supported the Polish visa application process.

The MFA is planning to open its own network of visa application points using its own infrastructure. Currently, visa applications can be submitted at the Polish Consular Offices by appointment through the e-konsulat system. In some countries, it will still be possible to use the so-called "visa centre" reception points.

The list of selected countries and methods to apply for a visa is the following:

- Japan – consular post with territorial jurisdiction in the Republic of Poland;
- China – consular post with territorial jurisdiction in the Republic of Poland;
- United Kingdom – Consular and Polish Section of the Polish Embassy in London;
- India – Embassy of the Republic of Poland in New Delhi / Consulate General of the Republic of Poland in Mumbai (depending on the state of which the applicant is a citizen or resident);
- Belarus – Visa Application Points.

## Extension of temporary protection on the territory of the Republic Poland in connection with the armed conflict in Ukraine

According to the current wording of the Law of 12 March 2022 on assistance tocitizens of Ukraine in connection with the armed conflict on the territory of that country, Ukrainian citizens (and some of their family members) who have been coming to our country since 24 February 2022 due to the war may legally stay here under temporary protection until 4 March 2024.

This means that Ukrainian citizens can stay in Poland without a valid visa or other residence permit and can take up employment without additional work permits. As recommended by the EU Council, this deadline is to be extended to 4 March 2025.

## Occupational health and safety at work – changes to the workstation equipped with screen monitors

On 2 November this year we saw publication of the Regulation of the Minister of Family and Social Policy of 18 October 2023 amending the Regulation on health and safety at work in workplaces equipped with screen monitors (Journal of Laws 2023, item 2367).

The most important changes concern screen monitors, chairs and the obligation to provide glasses or contact lenses.

**The changes also include the definition of a workstation as a space with basic equipment, including a screen monitor, keyboard, mouse or other input devices, software with a user interface, chair and table, and optional accessories such as a disk station, printer, scanner, document holder and footrest.**

For many employers, the new definition of the "workplace" may mean additional costs for the purchase of missing equipment.

The Regulation sets forth the minimum health, safety and ergonomic requirements to be met by workstations equipped with screen monitors. This includes the obligation to provide equipment to employees working with laptops (or other portable devices) for at least half of their daily working hours.

The employer will have to equip their workstations with a desktop monitor or (alternatively) a stand ensuring that the screen is positioned so that its top edge is at eye level, an additional keyboard and a mouse. The above requirements apply not only to stationary workers, but also to remote workers.

The Regulation also introduces other changes to the workplace, i.e.:

- The monitor does not need to be set at the required tilt angle, it is sufficient to ensure a position that does not strain head and neck movements.
- The employee's chair must have an adjustable armrest.
- The obligation to finance the purchase – not only of corrective glasses – but also of contact lenses, if these are recommended to the employee by an occupational medicine doctor.

At the same time, the legislator has left it up to the freedom of the employer to determine the frequency with which glasses/contact lenses are subsidised or the amount of the subsidy. In practice, this means that the above regulations should be established by the employer in internal regulations (e.g. work regulations).

The Regulation is effective as of 17 November 2023. In relation to workstations with screen monitors created before the Regulation came into force, the employer has 6 months to comply with the new regulations. This deadline will expire on 17 May 2024.

## What we can expect in the future

In addition to the above changes, employers should be aware of the numerous draft laws, regulations and EU legislation that will directly affect employment rules in Poland.

## KEY PROJECTS INCLUDE

### Act on the protection ofwhistleblowers

A draft act on whistleblowers is being developed, and should be in force for almost three years. Currently, the draft has undergone the review of the Committee on Legal Affairs and in the current state, it assumes, inter alia, the following:

- Obligation for entities employing more than 50 people to establish an internal notification procedure (for companies employing fewer people, the establishment of a procedure will be voluntary);
- Rules for the receipt and processing of any notifications, including the duration of data retention and method of safeguarding their confidentiality;
- Penalties for breach of statutory obligations.

The entry into force of the act will result in the obligation to introduce a new procedure and to activate numerous mechanisms within the organisation itself, as the act requires procedures to be established at local level. It is also important to note that the procedure will have to be consulted with the company's trade union organisation or, if there is none, with the employees' representatives.

### Equal pay directive

An EU directive, which came into force in May, introduces a number of mechanisms to counteract gender-based pay discrimination and to close the pay gap between women and men. You can read more about this in our article.

### Directive of the European Parliament and of the Council on the improvement of working conditions through online platforms

Online platforms are becoming the workplace for many people, so this is a topic the European Union has decided to address. The directive provides for, inter alia, a definition of an online platform and a presumption of an employment relationship in cases defined by the act. It is still under development and its final form is not known, which will have to be introduced into the Polish legal order by means of an appropriate act.

### Act on industrial disputes

A new act onindustrial disputes is being drafted. The draft envisages a departure from the enumerative definition of the subject matter of an industrial dispute: the act will set out the rules for the initiation, conduct and termination of an industrial dispute.

On a positive note, the definition of a maximum duration of the dispute (9 months with the possibility of an extension for a further 3 months), which must be concluded with the elaboration of relevant documents or, after expiry, with the termination of the dispute by operation of law.

A new catalogue of punishable acts is likely to be introduced – the draft provides for a fine or restriction of freedom for, inter alia, failing to negotiate, preventing a vote, prohibiting participation in a strike or other industrial action.

[1] Regulation of the Council of Ministers of 14 September 2023 on the amount of the minimum wage and the amount of the minimum hourly rate in 2024(Journal of Laws, item 1893).

# KSEF: A CHALLENGE OR A HELP FOR BUSINESSES

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Technological developments in tax law are now inevitable. Revolutionary changes are shaping a new reality in which both businesses and tax authorities must find their way.

**And after the introduction of the Standard Audit File for Tax (JPK), it is time for another leap forward – the National e-Invoicing System (KSeF). We look at whether the KSeF will be a help or a hindrance for businesses, looking at both the pros and cons of the new system.**

## Tax revolution: the JPK and the KSeF

Lawmakers have long been aware that traditional methods of tax collection have been outstripped by the pace of technological developments. The introduction of the JPK was therefore one of the first natural steps towards streamlining and automating the processes of recording tax events, while at the same time safeguarding the interests of the State Treasury. But the JPK is not the end. The next step will be the introduction of the KSeF.

The KSeF is an IT platform that enables taxable persons to generate and share structured invoices, which will soon become the primary and obligatory way of documenting transactions.

**Currently, taxable persons can use the KSeF on an optional basis. We believe the KSeF will minimise the risk of future errors and encourage you to take advantage of this early opportunity to try it out. However, use of the KSeF will be mandatory from 1 July 2024.**

The KSeF will be obligatory for:

- Businesses registered as active VAT taxable persons
- Businesses exempt from VAT
- Taxable persons identified for the special EU OSS procedure, and having a Polish tax identification number (NIP)

## Challenges for businesses: KSeF invoicing and invoice errors

Once a draft has been submitted to the system, the invoice undergoes a validation process, which consists of a technical check only. According to the system developers, this process should take a few seconds. Under heavy load, however, the waiting time could extend up to an hour. The rejection of an invoice by the KSeF can, for example, be due to the file structure not corresponding to the established template.

The KSeF does not check data for factual errors, including VAT compliance. In the event of such errors, it will therefore be necessary to issue a correcting invoice.
However, the problem becomes apparent in the case of minor errors. This is because there is no possibility of issuing a correction note in the KSeF.

Previously, in certain situations, a correction note could be issued by an invoice recipient. It did not have to be accounted for and concerned formal errors that did not affect the right to deduct VAT. Therefore, in case of an error on a structured invoice, it will be obligatory to issue a correcting invoice, and this will be an additional obligation for taxable persons. Correcting invoices, like basic invoices, will also be issued as structured invoices.

## Adaptation of accounting IT systems

It can also be a challenge for businesses to adapt their accounting systems to the KSeF, especially with regard to the new structured invoice template, which can involve high costs for legal, tax and IT advisory.

However, the Ministry of Finance provides free invoicing tools. An alternative may be to use programmes offered by private companies, which often offer greater accessibility and customisation for individual businesses.

## Benefits of the KSeF / The KSeF is not just about challenges

The benefits of the KSeF include a reduction in the waiting time for the refund of overpaid VAT from 60 to 40 days. A streamlined process and faster verification of VAT refund eligibility by tax offices will certainly satisfy businesses. Such a change will also have a positive impact on their financial liquidity.

An additional benefit is the automation of processes and the security of transactions. The increased speed of data exchange between business partners will allow invoices to be made available to recipients in near real time, speeding up business processes.

What's more, because the KSeF also offers a service to store e-invoices for 10 years, there is no need to archive these documents individually. Such an initiative not only simplifies administration, but also opens up the prospect of significant savings associated with long-term document storage.

## KSeF pays off

The KSeF is bringing about beneficial changes, but also a number of challenges. One of the most important may be the effective implementation of the system. Businesses will have to adapt to the new reality without correction notes. Nevertheless, it is worth noting the positive aspects, such as reduced waiting times for the refund of overpaid VAT, the automation of processes and the increased security of transactions.

We are monitoring all information relating to the KSeF. Although there is still time remaining to fully implement the system, we encourage you to contact us now and adapt your business to the significant tax changes it brings. Our tax team is here to help.

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