

# Benchmarking of existing national legal e- business practices

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Country report – Poland

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## **Poland**

### **1. General information on the national legal system**

Poland is a republic. The Republic of Poland is a unitary State. There is a single unified judicial system, and Poland is a Member of the European Union<sup>1</sup>.

The usual way to implement an EU Directive in Poland, regulating a new legislative field, is to make a specific law containing all regulatory provisions. However, if a Directive concerns an already regulated field, the regulatory provisions are most often implemented through changes in the existing legislation.

The sources of universally binding law of the Republic of Poland should be: the Constitution, statutes, ratified international agreements, and regulations.

Enactments of local law issued by the operation of organs should be a source of universally binding law of the Republic of Poland in the territory of the organ issuing such enactments.

According to the Polish tradition of civil law and law system established by constitutions, written legislation is the most important legal source. Court decisions are also considered important sources of law, but courts are not required to follow previous precedence even if it originates from a court placed higher in the judiciary system. The Polish court system is inspired by the traditions of continental Europe.

The courts and tribunals constitute a separate power and are independent of other branches of power.

The courts and tribunals pronounce judgments in the name of the Republic of Poland. The administration of justice in the Republic of Poland is implemented by the Supreme Court, the common courts, administrative courts and military courts. Extraordinary courts or summary procedures may be established only during a time of war. Court proceedings have at least two stages. The common courts implement the administrations of justice concerning all matters save for those statutorily reserved for other courts. The Supreme Court exercises supervision over common and military courts regarding judgments.

The Supreme Administrative Court and other administrative courts exercise, to the extent specified by statute, control over the performance of public administration. Such control extends also to judgments on the conformity to statute of resolutions of organs of

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<sup>1</sup> Poland has been a member of the European Community since 1 May 2004.

local government and normative acts of territorial organs of government administration.

The Constitutional Tribunal adjudicates regarding the following matters:

- 1) the conformity of statutes and international agreements to the Constitution;
- 2) the conformity of a statute to ratified international agreements whose ratification required prior consent granted by statute;
- 3) the conformity of legal provisions issued by central State organs to the Constitution, ratified international agreements and statutes;
- 4) the conformity to the Constitution of the purposes or activities of political parties;
- 5) complaints concerning constitutional infringements

In Civil Law court cases, there are two basic principles for dealing with evidence: 1) The parties of the dispute choose the evidence they wish to bring before the court, and 2) The court's assessment of the evidence is free in the sense that it is not bound by law and that the purpose of the assessment is to find the correct material result.

The courts in Poland have the power to re-balance the contractual rights and obligations of the parties.

The parties to a contract are also free to choose arbitration for settlement of a dispute.

Consumers may, however, choose to bring disputes concerning delivery of goods and services, including disputes pertaining to e-commerce, before arbitration consumer courts.

The tasks in the field of the protection of consumer interests are performed also by the territorial self-government as well as by consumer organizations and other institutions whose statutory tasks include protection of consumer interests. The task of the territorial self-government in the field of consumer protection should consist in promoting consumer education, in particular by way of introducing elements of consumer awareness into educational programmes in public schools. The tasks of the district (powiat) self-government in the field of the protection of consumer rights should be performed by the district (municipal) consumer advocate, hereinafter referred to as "Consumer Ombudsman".

An application for the institution of proceedings on the matter of a practice infringing collective consumer interests may be filed with the President of the Office for Protection of Competition and Consumers by: 1) Civil Rights Ombudsman, 2) Insurance Ombudsman, 3) Consumer Ombudsman, 4) consumer organisation.

The application may also be filed by a foreign organisation entered in the list, published in the Official Journal of the European

Communities, of organisations entitled in the European Union Member States to file an application with the institution of proceedings, where the object of its activity warrants its filing an application with the institution of proceedings on the matter of an infringement resulting from unlawful failure or such acts performed in Poland, which jeopardise collective consumer interests in the Member State where the organisation is seated.

## **2. Electronic signatures**

### **2.1 National legislation and administrative practices**

Poland has implemented Directive 1999/93/EC of a Community framework for electronic signatures by the Act of 18 September, 2001 on Electronic Signature (Journal of Laws of 15 November, 2001). The law entered into force as of August 16, 2002.

The Electronic Signature Act is supplemented by a few regulations (executive orders).

Poland has carried out a very stringent implementation of Directive 1999/93/EC. Like the Directive, Poland has, however, no regulations concerning the contractual relationship between the parties who use digital signatures.

The Polish Acts describes 2 types of signatures: 1) An electronic signature, 2) A secure electronic signature. Both types of electronic signatures are regulated by the Act.

The electronic signature means data in electronic form which, together with other data, either attached thereto or logically associated therewith, are capable of identifying the signatory;

The secure electronic signature means electronic signature which:

- a) is uniquely assigned to the signatory,
- b) is made using secure signature-creation device and signature-creation data that the signatory can maintain under his sole control,
- c) is related to the data to which it has been attached in such a manner that any subsequent change of the data is recognizable,

The Act on Electronic Signature provides for a secure electronic signature verified by a qualified certificate, as an equivalent to the advanced electronic signature as described in the Article 5.1 of Directive 1999/93/EC. According to the Act data in electronic form bearing a secure electronic signature verified by a valid qualified certificate should be legally recognized as equivalent to documents bearing handwritten signatures, unless other provisions of law provide otherwise. Consequently, the Polish Act on Electronic

Signature provides for a possibility of a situation where a legal provision excludes the above principle that a document bearing a secure electronic signature verified by a valid qualified certificate equals to a written document.

Electronic signatures are admissible as evidence in legal proceedings in Poland. The Act states that a secure electronic signature verified by a valid qualified certificate should be considered as a proof of the fact that it was created by the person indicated in the certificate as the signatory. Therefore, documents bearing a secure electronic signature verified by a valid qualified certificate are treated in court proceedings as proofs from a document, not as so called other proofs.

Additionally, the electronic signature may not be denied validity and legal effectiveness solely on the grounds that it is in the electronic form or that the signature verification data do not have a qualified certificate or that the signature has not been created with the use of a secure signature creation device.

As there have not yet been any cases to be examined by appeal courts or the Supreme Court, it still remains to be seen how courts will rule in this field.

The Minister of Economy is the central government administration organ proper in relation to the supervision over certification-service-providers' activity. The Minister authorized the National Bank of Poland to conduct the root certification authority for the infrastructure of the secure electronic signature in Poland. Therefore, the National Bank of Poland initiated the National Certification Centre – the root certification authority for the infrastructure of the secure electronic signature.

Pursuant to the Register of Qualified Certification-Service-Providers as of 11 September 2006, kept by the National Bank of Poland under a commission of the Ministry of Economy, there are three following entities entered into the Register, and therefore having the right to issue qualified certificates:

- 1) UNIZETO TECHNOLOGIES S.A.
- 2) POLSKA WYTWÓRNIA PAPIERÓW WARTOŚCIOWYCH (Polish Security Printing Works)
- 3) KRAJOWA IZBA ROZLICZENIOWA (National Clearing House)

All Polish citizens have an Identity Card, however not linked with an electronic signature. At the date hereof, no legal act has been adopted or respective works in the Ministry of Internal Affairs and Administration have been commenced in order to provide for a possibility of issuing Identity Cards with electronic signatures.

Moreover, the Act on Health Care Benefits from the Public Resources<sup>2</sup> provides for a Health Insurance Card, which is to be the European Social and Health Insurance Card. However, the Act on health benefits does not provide for the direct possibility of including an electronic signature into the card.

Major practical problems enterprises and consumers have experienced in relation to the use of electronic signatures in Poland.

During the four-year period of the Act on Electronic Signature being in force, electronic signature has a potentially wide spectrum of functionality, e.g. it may be used in the following sectors:

- business – e.g. electronic invoices, contracts, offers etc.; however, the usage of electronic signatures in business has been minor so far;
- banking and financial institutions –e.g. e-banking, electronic orders submitted to a broker; financial institutions execute their information obligation towards public authorities in an electronic form with use of electronic signature;
- insurance – e.g. approximately 90% of documents submitted to the Social Insurance Fund in Poland are electronic documents with electronic signatures; However, from 21 July 2007 only the secure electronic signature verified by a qualified certificate will be acceptable; moreover, the above functionality is anticipated to be extended to contacts with open retirement funds, therefore the biggest insurers undertake efforts aimed to implement the public key infrastructure for contacts with their services receivers and intermediaries;
- public administration – e.g. the Act on Electronic Signature obliged public authorities to make it possible for certification services customers to submit applications and requests as well as other actions in the electronic form, within four years from the Act coming into force i.e. until 15 August 2006. However, this term was postponed until May 2008, as described below.

The Ministry of Economy has not recognized formally concrete legal problems concerning usage of electronic signatures. However, the major practical problem regarding the usage of electronic signatures in Poland is the public authorities in the large part not ready yet to receive electronic documents with secure electronic signatures verified by a qualified certificate (equal to documents in a written form) and conducting relevant proceedings based on applications submitted in such a form.

On 18 May 2006 the VII Round Table Conference was convened in the premises of the Polish Parliament under the following banner: "Strategic ways of the development of information society in Poland". Pursuant to the Vice-Minister of Economy, present at the conference,

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<sup>2</sup> Ustawa z dnia 27 sierpnia 2004 o świadczeniach opieki zdrowotnej finansowanych ze środków publicznych (Dz. U. 2004, No. 210, item 2135, as later amended)

amendments are planned to the Act on Electronic Signatures currently binding, in order to eliminate obvious defects of the above Act, to extend the day-to-day functionality of electronic signatures, and to intensify the development of the electronic contact between a citizen and a public authority. Therefore, the following was planned:

- making the Minister in charge of Information Technology, instead of the Minister of Economy, responsible for the matter of electronic signatures;
- postponing the term for enforcing the obligation of public authorities to receive electronic documents with secure electronic signature verified by a qualified certificate, from currently binding deadline as of 15 August 2006 to the beginning of 2008;
- extending the meaning of the "regular" electronic signature in Citizen-State relation.

At the present moment it may not be stated, whether and which of the planned amendments to the Act on Electronic Signature will come into force. However, executing the above plans, the Act of 21 July 2006 on Amending the Act on Announcing the Statutory Law and Other Legal Acts as well as the Act on Electronic Signature came into force on 15 August 2006, and postponed the term for enforcing the obligation of public authorities to receive electronic documents until 1 May 2008.

## **2.2 Cross border regulatory issues**

Electronic signature and electronic certificates confirming the identity are perceived as a prerequisite to the development of both electronic economy and e-administration. It is beyond any question that the e-signature is essential to the legal turnover with electronic methods as it does not only open the way for performing electronic legal actions but also guarantees safety and confidentiality of transactions and relations between citizens and public administration. Therefore, this topic has taken the vast part of the activity of the Ministry of Economy. In September 2001 the Polish Parliament approved the Law on the electronic signature and its regulation was put into practice in August 2002. The Law of 18 September 2001 on the electronic signature is based on European Directive 99/93/EC and European standards, recommendations and guidelines in this respect, worked out by the various organizations such as CEN, ITESEC.

The law on the electronic signature with many executive orders establishes the legal framework for operating of the Public Key Infrastructure and enables to use the e-signature in electronic turnover and administration procedures as well.

Basing on the content of the directive, the provisions of the Polish law on the electronic signature have the following character:

- 1) civil and legal - concerning the introduction of the principle of the equality of the legal consequences of the electronic signature and hand signature. In this respect it introduces relevant changes

to the Polish Civil Code. Exceptions to this rule concern only these legal actions with respect to which the presently effective regulations require a specific form of making the statement of will (e.g. notarial acts),

- 2) technical - determining the criteria concerning the construction of the 'infrastructure for the system of certification of the electronic signature', including criteria in the scope of public keys, rules of issuance and cancellation of certificates for electronic signatures, principles of operation and responsibility of certification entities as well as the principles of the construction of the system and technology of making public keys with the use of the asymmetric cryptography technique.

According to the Law on the electronic signature, a certificate issued by a certification-service-provider who is not established on the territory of the Republic of Poland and does not provide services on its territory, is legally recognized as equivalent to qualified certificates issued by a qualified certification-service-provider who is established or provides services on the territory of the Republic of Poland, if:

- 1) certification-service-provider issuing the certificate has been entered in the register of qualified certification service-providers,
- 2) it is stipulated by an international agreement on mutual recognition of certificates, to which the Republic of Poland is a party,
- 3) the certification-service-provider that issued the certificate fulfils the requirements laid down in this Act and has been granted accreditation in a Member State of the European Union,
- 4) a certification-service-provider established on the territory of the European Union, which meets the requirements laid down in this Act issued a guarantee with respect to the certificate,
- 5) the certificate has been recognized as qualified by an international agreement concluded between the European Union and third countries or international organisations,
- 6) the certificate has been recognized as qualified by an agreement on the European Economic Area,
- 7) the certification-service-provider that issued the certificate has been recognized by an international agreement, concluded between the European Union and third countries or international organisations.

### **3. General elements of electronic contract law**

Directive 1997/7/EC on the Protection of Consumers in Respect of Distance Contracts has been implemented through the Civil Code, Civil Code Proceedings, Act on freedom of economic activity (Journal of Laws of 6 August, 2004), Act on the protection of certain consumer rights and on the liability for damage caused by a dangerous product (Journal of Laws of 31 March, 2001) and Act on competition and consumer protection (Journal of Laws of 15 December 2005 – published consolidated text).

Directive 99/44/EC on certain aspects of the sale of consumer goods and associated guarantees has been implemented in national law through the Civil Code and Act on specific terms and conditions of consumer sale and amendments to the Civil Code (Journals of Laws of 5 September 2002).

Directive 1998/6/EC on consumer protection in the indication of the price of products offered to consumers has been implemented through the Act on pricing (Journal of Laws of 11 September 2001) supplemented by a regulation of the Council of Ministers, and Act on specific terms and conditions of consumer sale and amendments to the Civil Code (Journals of Laws of 5 September 2002). The Directive's obligations concerning correct and complete indicating of the selling price have been correctly implemented.

Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce in the Internal Market has been implemented into national law system through Civil Code and the Act on Providing Services by Electronic Means (Journal of Laws of 9 September 2002). Art. 5 and 6 concerning information to be given prior to the completion of a contract is implemented correctly in specific provisions in the Polish law containing the regulatory provisions from the Directive.

Directive 2002/65/EC concerning the distance marketing of consumer financial services and amending Directives 90/619/EEC, 97/7/EC and 98/27/EC, have been implemented through the Civil Code, the Civil Procedure Code, Act on the protection of certain consumer rights and on the liability for damage caused by a dangerous product (Journal of Laws of 31 March, 2001) and Act on competition and consumer protection (Journal of Laws of 15 December 2005 – published consolidated text).

Regulation (EC) No. 2006/2004 of the European parliament and of the Council on co-operation between national authorities responsible for the enforcement of consumer protection laws, has direct impact.

Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market and amending Directives

84/450/EC, 98/27/EC and 2002/65/EC has not been implemented yet.

### **3.1 National legal and administrative practices**

The regulatory framework for all contracts including electronic ones is based on the Civil Code of 23 April 1964 as later amended (the Civil Code), which contains the basic principles of the Polish contract law.

It can be derived from the contract law that conclusion of contracts is not subject to formal requirements unless directly stated in a specific law. This principle has been recognised and accepted in numerous court decisions. A written document is not required, as such, to form a contract, which also means that electronic contracts are considered to be just as valid as a traditional paper contract.

If statutory law stipulates that an act in law is in a written form, that act performed without observance of the stipulated form should be null and void only if statutory law provides for the pain of nullity.

If statutory law stipulates for an act in law to be in another special form, the act performed without the observance of that form should be null and void. However, this should not apply to the cases in which the observance of the special form is reserved only for definite effects of that act in law.

A contractual obligation will, however, only be enforced by the courts, if the party claiming the existence of the obligation can prove before the courts that the parties have actually entered into a valid contract. The practical question of documentation (evidence) of what really is agreed is consequently very important. According to the Civil Code, a declaration of will is to be interpreted in such a way as is required by the circumstances in which it was made, the principles of community life, and the established custom.

In the case of contracts, the congruent intention of the parties and the purpose of the contract, rather than relying on its literal wording, must be established.

If it can be demonstrated before the court that a contract exists between the parties, it should be noted that the courts are free to interpret the contract and that the courts may "fill" in obligations if the area of the dispute is unregulated in the contract.

As it results from the above, a contractual obligation may arise, when the will thereto has been expressed, even though the parties to the contract have only agreed orally on the most essential elements of the contractual obligations. The same applies if the contract is in an electronic format that carries the will to a contractual obligation.

The parties to a contract may arrange the legal relationship as they deem proper on the condition that the contents or the purpose of

that contract are not contrary to the nature of the relationship, to statutory law, and to the principles of community life.

The debtor must discharge his obligation in accordance with its contents and in a manner complying with its socioeconomic purpose and the principles of community life, and if there are established customs in that respect, also in a manner complying with those customs.

The creditor should be obliged to co-operate in the discharge of the obligation in the same way.

The debtor should be obliged to act with diligence generally required in the relationships of a given kind (due diligence).

The due diligence of the debtor within the scope of his economic activity should be assessed with the consideration of the professional nature of that activity.

The creditor may demand a personal performance on the part of the debtor only if that follows from the contents of the act in law, from statutory law, or from the nature of the performance.

If, following an extraordinary change of circumstances, the performance would be faced with excessive difficulties or threaten one of the parties with substantial loss, which the parties did not foresee when concluding the contract, the court may, after considering the interests of the parties, define the mode of performing the obligations and the degree of the performance, and even decide upon termination of the contract, in accordance with the principles of community life. When terminating the contract the court may, as far as necessary, decide upon a settlement of accounts being guided by the principles specified in the preceding sentence.

Subject to exceptions provided for by statutory law, pecuniary obligations on the territory of the Republic of Poland may be expressed only in the Polish currency.

If the object of the obligation from its beginning is a sum of money, the performance should be made by the payment of the nominal sum unless separate provisions state otherwise.

The parties may stipulate in the contract that the amount of a performance in money should be fixed by a measure of value other than money.

In the case of an essential change of the purchasing power of money after the arising of the obligation, the court may, after considering the interests of the parties and in accordance with the principles of community life, change the amount or the mode of making a performance in money even if these were fixed in the decision or the contract.

The party running an enterprise cannot demand a change of the amount or the mode of effecting a performance in money if the latter is connected with the running of an enterprise.

Continuous obligations unlimited in time should expire after a notice has been given by the debtor or creditor with the observance of contractual, statutory or customary time limits and, where there are no such time limits, immediately after said notice has been given.

### *3.1.1 Electronic invitation to make an offer and submission of an offer*

According to the Polish law, an electronic invitation to make an offer (including electronic submission of tender specification) should be treated as so called invitation to conclude a contract.

The Civil Code states that announcements, advertisements, price lists and other information addressed to the public (e.g. on a webpage) or to particular persons should be considered, in case of doubt, not as an offer but an invitation to conclude a contract. However, it needs to be pointed out that pursuant to the Article 543 of the Polish Civil Code displaying a thing to the public at the place of sale with the indication of the price is deemed to be an offer of sale. A part of the Polish legal doctrine representatives thinks that this provision applies to websites, as well. Therefore, it is theoretically possible that presenting goods on a webpage together with indication of prices may be recognised in particular circumstances as an offer (e.g. when presented on a webpage of an internet shop), although there are doubts in the doctrine with reference to such interpretation due to the general principle, which states that in case of a doubt it should be treated as an invitation to conclude a contract.

Taking this into consideration, it should be stated that if the electronic invitation cannot be classified as an offer (due to its contents) such invitation cannot bind the sender of the invitation. These rules should be applied in business to business and business to consumer relations.

### *3.1.2 Legal status of an electronic submission of an offer and electronic acceptance of an offer*

A declaration made to another party of the intention to conclude a contract should be deemed an offer if it determines the essential provisions of the contract.

If no time limit was specified for a reply by an offeror in the offer, the offer made in the presence of the other party or by means of direct communication over distance should cease to be binding if it is not accepted immediately; if made in a different way, it should cease to be binding upon the lapse of the time limit in which the maker of the offer could, in the normal course of business, receive a reply sent without unjustified delay.

An offer made electronically should be binding for the maker of the offer if the other party confirms its receipt without delay.

Before concluding a contract an entrepreneur making an offer electronically should be obligated to inform the other party unambiguously and clearly of:

- 1) technical acts covered by the procedure of concluding a contract;
- 2) legal effects of the receipt of the offer by the other party;
- 3) rules and methods of fixing, protecting and making accessible the contents of the contract by an entrepreneur to the other party;
- 4) technical methods and means for detecting and correcting errors in the introduced data that must be made available by him to the other party;
- 5) languages in which the contract may be concluded;
- 6) codes of ethics applied by him and their availability in the electronic form.

This rule should apply accordingly if the entrepreneur invites the other party to start negotiations, make offers or conclude contracts in another way.

All the mentioned above rules should not apply to contracts concluded through electronic mail or similar means of individual communication over distance. Nor should they apply to the relations between entrepreneurs if the parties so agreed.

In relations between entrepreneurs an offer may be revoked before the contract is concluded if the declaration of revocation was submitted to the other party before his sending a declaration of acceptance of the offer.

However, the offer may not be revoked if such results from its contents or a time limit has been fixed therein.

If the declaration of acceptance of an offer arrived with a delay but it follows from its contents or the circumstances that it was sent in due time, the contract should be effective unless the maker of the offer immediately notifies the other party that because of a delay of the reply he considers the contract as not concluded.

The acceptance of an offer made with a stipulation of change or a completion of its contents should be considered as a new offer.

In relations between entrepreneurs a reply to the offer made with a stipulation of changing or supplementing the offer in a way that does not change its contents substantially should be deemed its acceptance. In this case the parties should be bound by the contract with the contents determined in the offer, taking into account the stipulations made in the reply thereto.

The above rule should not apply if the contents of an offer state that it may be accepted only without stipulations, or if the offeror has immediately objected to the inclusion of the stipulations in the contract, or if the other party in reply to the offer made its acceptance conditional upon the offeror's consent to include the stipulations in the contract and did not receive such consent immediately.

If an entrepreneur has received from a person with whom he is in permanent business relations an offer to conclude a contract within the scope of his activity, the lack of immediate reply should be considered the acceptance of the offer.

If, in accordance with the custom established within given relations or in accordance with the contents of the offer, it is not required that the maker of the offer receives from the other party the declaration of its acceptance, in particular if the maker of the offer demands immediate performance of the contract, the contract should be effective if the other party in due time proceeds to carry it out; otherwise the offer should cease to be binding.

In case of doubt, a contract should be considered concluded at the moment when the maker of the offer receives the declaration of its acceptance, and if it is not required that the maker of the offer receives the declaration of its acceptance, at the moment when the other party proceeds to perform the contract.

In case of doubt, a contract should be considered concluded at the place where the maker of the offer received the declaration of its acceptance, and if it is not required that the maker of the offer receive the declaration of its acceptance or the offer is made electronically, at the place of residence or in the seat of the maker of the offer at the moment of conclusion of the contract.

#### 3.1.2.1 Information obligations in relation to electronic contract conclusion

The legislation in Poland complies with the requirements laid down in Article 5 of Directive 2000/31/EC on electronic commerce, Articles 4 and 5 of Directive 97/7/EC on distance contracts, and Arts. 3, 4 and 5 of Directive 2002/65/EC on distance marketing of consumer financial services, regarding the information that must be given to the consumer before and after the order is placed.

The consumer contracts concluded without simultaneous presence of both parties, by way of a use of means of communication at a distance, in particular order form without the address or addressed, serial letter, press advertising with a printed order form, catalogue,

telephone, radio, television, automatic calling machine, videophone, videotext, electronic mail, facsimile machine, should be considered distance contracts, provided that the party to the contract with the consumer is the entrepreneur who organized his business activity in such a way.

The proposal to conclude the contract in a form of an offer, invitation to offer or order, or to start negotiations should univocally and clearly indicate the intention of the person making such proposal to conclude the contract.

Making use of e.g. electronic mail, automatic calling machine and telephone in order to propose the conclusion of a contract may be done only upon the prior consent of the consumer.

The consumer who concluded the distance contract may withdraw from it without giving reasons, by way of an appropriate written statement, within the period of ten days from the conclusion of the contract.

The reservation that consumer is allowed to withdraw from the contract against determined remuneration (compensation) should not be admitted.

In the case of withdrawal, the contract should be considered null and void and the consumer should be free from any obligations.

The consumer should be informed, by making use of any means of communication at a distance, and latest at the moment of making an offer to conclude the contract, about:

- 1) first name and surname (trade name) and the domicile (premises) of the entrepreneur and about the body which registered his business activity as well as about the number under which he was registered,
- 2) relevant characteristics of the performance and its subject matter,
- 3) price or remuneration covering all its components, in particular customs duties and taxes,
- 4) payment conditions for price or remuneration,
- 5) costs, time limit and mode of delivery.
- 6) right of withdrawal from the contract within the period of time of 10 days,
- 7) costs resulting from using means of communication at a distance, where they are calculated differently than according to normal tariff,
- 8) period for which the offer or information on price or on remuneration remains binding,
- 9) minimum duration for which the contract for permanent or periodic services may be concluded,
- 10) place and procedures for lodging complaints,
- 11) right of withdrawal from the contract.

The entrepreneur is obliged to confirm to the consumer in writing the mentioned above information, not later as at the moment of starting the performance.

The ten-day period when a consumer may withdraw from the contract should commence as of the date on which product is delivered, and in the case of the contract related to providing services, as of the date on which the contract is concluded.

In the case where confirmation of the information above is deficient, the period when the consumer may withdraw from the contract should be established for three months from the day of receipt of product or for the contract for providing services from the day it is concluded. However, if the consumer receives the confirmation after the course of this period has begun, the period should be abbreviated to ten days from that date.

Unless the parties have agreed otherwise, the right of withdrawal from the distance contract should not be vested in the consumer in the following cases:

- 1) provision of services if performance started with the consumer's consent before the end of the ten-day period,
- 2) contracts concerning audio and video recordings as well as recorded on computer software carriers, once the original packing is removed by the consumer,
- 3) contracts concerning performance whose price or remuneration depends solely on price fluctuations on the financial market,
- 4) performance with characteristics specified by the consumer in his order or directly connected with his person,
- 5) performance which by reason of its nature cannot be returned or which subject is susceptible to quick deterioration,
- 6) supply of press,
- 7) services in the field of games of chance and betting.

The provisions regarding the information requirements and ten-day term for withdrawing should not apply to:

- 1) sales of foodstuffs supplied recurrently by the seller to the customer's household or his workplace,
- 2) provision, within strictly defined period of time, of services in the scope of accommodation, transport, leisure and catering business.

The contract may not impose on the consumer the obligation to pay the price or remuneration before the performance is rendered.

The contract should indicate location and conditions for lodging complaints which do not cause excessive difficulties or costs for the consumer.

Unless the parties have stipulated otherwise, the entrepreneur should execute the contract concluded at a distance in the time limit not exceeding thirty days since the consumer have declared his willingness to conclude the contract.

Where the entrepreneur is not able to fulfil his obligation due to the fact that its subject is not available, he should without delay, however not later than within thirty days since contract conclusion, inform the consumer and refund the full amount of the money the latter has paid.

In the case where the entrepreneur is not able to fulfil the obligation because of even transitory impossibility to provide performance with characteristics ordered by the consumer,

the entrepreneur may, if such reservation is included to the contract, release himself from this obligation by way of providing a substitute performance of equivalent quality and destination against the same price or remuneration, at the same time informing the consumer in writing about his right to refuse this service and withdraw from the contract by returning the object at the entrepreneur's cost.

In the case described in the sentence above, the consumer should have the right of withdrawal from the contract. The return of the object should be at the charge of the entrepreneur.

In the case of the consumer withdrawal from the contract, the entrepreneur should be obliged to certify in writing the return of the performance.

Where the performance of the consumer is to be fulfilled with use of credit or loan granted by the entrepreneur or where the contract foresees use of the credit granted based on the agreement between the creditor and the entrepreneur, the withdrawal from the distance contract should be effective also with respect to the credit or loan contract concluded by the consumer.

The consumer may request, at the charge of the entrepreneur, the invalidation of the payment effected by a payment card where such card was inappropriately used in performance of the distance contract. It is without prejudice to the obligation to remedy the consumer for incurred damage.

Performance unsolicited by the consumer should be effected on the entrepreneur's risk and should not impose any obligation on the consumer.

Following the national legislation transposing Directive 97/7/EC on distance contracts, sites are required to inform online bidders of their cooling-off rights.

The provisions of the Act on the protection of certain consumer rights and on the liability for damage caused by a dangerous product, transposing among others art. 9 of Directive 2000/31/EC - Directive on electronic commerce, states that rules regarding distance contracts should not apply to the following contracts:

- 1) making use of vending machines,
- 2) making use of another automatic machines located in commercial premises,
- 3) concerning capital investments,
- 4) concerning insurance, including membership to open pension funds and reinsurance,
- 5) connected with banking operations and such activities performed by co-operative saving crediting accounts,
- 6) pensions,
- 7) concerning financial operations with a fixed time limit and options,
- 8) concluded with the telecommunications operators involving use of public payphones,
- 9) pertaining real estate, rental exempted,
- 10) auction sales.

Act on the Polish Language (Journal of Law of 8 November 1999), states that contracts with consumers should be concluded in the Polish language.

#### 3.1.2.2 Standard terms and unfair clauses

According to the Polish Civil Code, a model form of a contract set up by one of the parties, in particular general conditions of contracts, standard forms of contracts and rules should be binding upon another party if having been delivered to such a party on concluding the contract.

Where the use of a model form is customarily accepted in a given kind of relationships (e-commerce), it should also be binding upon the other party if such party might have easily learned about its contents. This should not be valid, however, for contracts concluded with the participation of consumers, except for contracts commonly made in petty current matters of quotidian life.

If one of the parties applies an electronic model form of contract it should render it accessible to the other party prior to conclusion of the contract in a manner which would enable the other party to keep and display it in the normal course of business.

The model form delivered within the duration of a contractual relationship of a continuous nature should be binding upon the other party if the conditions specified above have been met and the party concerned has not terminated the contract by notice at the earliest possible date of dissolution.

In the case of any discrepancies between the contents of a contract and the model form thereof, the parties should be bound by the contract.

The model form of contract must render its contents explicitly and comprehensibly. Controversial provisions must be interpreted for the benefit of a consumer.

Directive 1993/13/EC on unfair terms in consumer contract was transported to the Civil Code, which states, that provisions of a contract concluded with a consumer, which have not been individually agreed with him, should not be binding thereupon, if his rights and duties have been stipulated in conflict with public decency and in flagrant violation of his interest (wrongful contractual provisions). Additionally the Civil Code states that, in the case of doubt, the wrongful contractual provisions should be, in particular, those which:

- 1) exclude or limit the liability to the consumer for bodily injury to a person;
- 2) exclude or substantially limit the liability to the consumer for non-performance or improper performance of an obligation;
- 3) exclude or substantially limit the setting off of a consumer's receivable debt against a receivable debt of another party;
- 4) include the contents that the consumer was not able to learn before the conclusion of the contract;
- 4) include the contents that the consumer was not able to learn before the conclusion of the contract;
- 5) allow a party contracting with the consumer to transfer rights and duties resulting from the contract without consent of the consumer;
- 6) make the conclusion of a contract contingent upon a consumer's promise to enter into further similar contracts in the future;
- 7) make the conclusion, contents or performance of a contract contingent upon the conclusion of another contract without direct connection with the contract including the provision being examined;
- 8) make the performance of a contract contingent upon circumstances that depend only on the will of the party contracting with the consumer;
- 9) entitle the party contracting with the consumer to make a binding interpretation of the contract;
- 10) entitle the party contracting with the consumer to make a unilateral amendment to the contract without an important reason determined in the contract;
- 11) entitle only the party contracting with the consumer to state the consistency of a performance with the contract;
- 12) exclude the duty to return to the consumer a payment for the performance that has not been made in full or in part in the event where the consumer withdraws from the contract or its performance;
- 13) stipulate the loss of a right to claim the return of a performance made by the consumer earlier than a performance made by the contracting party where the parties terminate, dissolve or withdraw from the contract;
- 14) deprive only the consumer of the right to dissolve the contract, renounce or terminate it;
- 15) stipulate the right for the party contracting with the consumer to terminate the contract concluded for an indefinite period without important reasons and without a reasonable notice to terminate the contract;
- 16) impose the duty to pay a fixed sum only on the consumer in the event of the withdrawal from the conclusion or performance of the contract;

- 17) impose a duty on the consumer who has not performed an obligation or has renounced the contract to pay a glaringly excessive contractual penalty or compensation for the loss of contract;
- 18) envisage the prolongation of a contract made for a definite period of time, unless the consumer, for whom an excessively short time limit has been fixed, makes a statement to the contrary;
- 19) stipulate only for the party contracting with the consumer a unilateral right to modify substantial features of the performance without any important reasons;
- 20) entitle the party contracting with the consumer to fix or increase a price or a remuneration after the conclusion of the contract without granting to the consumer a right to renounce the contract;
- 21) make the reliability of the party contracting with the consumer contingent upon the fulfilment of obligations by persons who substitute the contracting party while concluding the contract or who assist such party to perform its obligation or the provisions which make such reliability contingent upon the completion of excessively arduous formalities;
- 22) impose a duty to fulfil an obligation by the consumer despite a non-performance or improper performance of the obligation by the contracting party;
- 23) exclude the jurisdiction of the Polish courts, or have the case decided by a Polish or a foreign court of conciliation or another authority, or force a decision in the case to be made by the court which has no local competence.

### 3.1.3 *Choice of law and forum*

Poland has ratified the Rome Convention on the law applicable to contractual obligations<sup>3</sup>.

Council Regulation (EC) No 44/2001<sup>4</sup> that replaces the Brussels and Lugano Conventions in the other Member States countries is applicable to Poland.

Poland has ratified the United Nations Convention on the International Sale of Goods (CISG).

Choice-of-law/forum selection is not considered as being a specific barrier for e-business in B2B transactions in Poland. The challenge for e-business in this area is the same as for traditional business relations.

As it was stated in the previous point, the Polish Civil Code provides that the wrongful contractual provisions should be also these, in particular, which exclude the jurisdiction of the Polish courts, or have the case decided by a Polish or a foreign court of conciliation or

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<sup>3</sup> 80/934/EEC: Convention on the law applicable to contractual obligations opened for signature in Rome on 19 June 1980

<sup>4</sup> Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

another authority, or force a decision in the case to be made by the court which has no local competence.

The choice-of-law or forum selection cannot create barriers for e-business in B2B or B2C transactions, different than in traditional transactions. As the main barriers we may point fear of legal systems other than Polish and law regulations and difficulties with proper representation before foreign courts (costs connected with such proceedings).

Directive 2000/31/EC on electronic commerce is based on a country of origin principle, which provides that information society services are only required to comply with the requirements of the Member State in which the service provider is located. The Directive has been implemented to the Polish legal system through a horizontal implementation to the new Act of 18 July 2002 on Providing Services by Electronic Means<sup>5</sup>, which came into force on 10 March 2003. However, no Polish courts practice has been fixed yet as to the interpretation of the country of origin principle with reference to e-commerce.

### **3.2 Cross border regulatory issues**

Polish Act of 12 November 1965 on Private International Law<sup>6</sup> provides for general terms and conditions on determining which national legislation is applicable in case the service provider is in one State and the service receiver is in other State, depending on the type of a contract. However, as to B2C transactions Polish Act of 27 July 2002 on specific terms and conditions of consumer sale and amendments to the Civil Code<sup>7</sup> provides for the rule pursuant to which any rights regulated by the Act may not be excluded or restricted by an agreement concluded before the seller is notified of the inconsistency of the consumer good with the agreement. In particular, exclusion or restriction of the rights may not be effected by opting to apply a foreign law. The same rule applies to consumer protection against damages caused by dangerous products, pursuant to art. 449(11) of the Polish Civil Code, as well as to consumer rights regarding contracts concluded away from business premises and distance contracts, pursuant to the Act of 2 March 2000 on the protection of certain consumer rights and on the liability for damage caused by a dangerous product<sup>8</sup>.

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<sup>5</sup> Ustawa z dnia 18 lipca 2002 r. o świadczeniu usług drogą elektroniczną (Dz. U. 2002 No. 144, item. 1204 as amended)

<sup>6</sup> Ustawa z dnia 12 listopada 1965 r. prawo prywatne międzynarodowe (Dz. U. 1965 no. 46 item 290, as amended)

<sup>7</sup> Ustawa z dnia 27 lipca 2002 o szczególnych warunkach sprzedaży konsumenckiej oraz o zmianie Kodeksu Cywilnego (Dz. U. 2002, No. 141, item 1176, as later amended)

<sup>8</sup> Ustawa z dnia 2 marca 2000 o ochronie niektórych praw konsumentów oraz o odpowiedzialności za szkodę wyrządzoną przez produkt niebezpieczny (Dz.U. 2002 no. 22, item 271 as amended)

During the research, no specific court rulings on the use of electronic contracts in cross-border trade between enterprises have been identified. However, it seems reasonable to assume that especially small and medium-sized enterprises are unaware of the specific legal status of electronic contracts agreed with trade partners from another Member State. This could be an obstacle to cross-border use of electronic contracts.

## **4. Electronic invoicing, payment and other matters related to execution of electronic contracts**

### **4.1 National legislation and administrative practices**

#### *4.1.1 Electronic invoicing*

Poland has implemented the Directive 2001/115/EC amending Directive 77/388/EEC with a view to simplify, modernise and harmonise the conditions laid down for invoicing in respect to value added tax through the Act of 11 March 2004 on Value Added Tax<sup>9</sup> and the following Regulations of the Minister of Finance:

- Regulation of 14 July 2005 regarding issuing and transferring of invoices in an electronic form, as well as storage and disclosure thereof to a tax office or fiscal inspection office<sup>10</sup>;
- Regulation of 25 May 2005 regarding tax return to certain tax-payers, advance tax return, invoice issuing terms, the manner of storing thereof, as well as the list of goods and services, not included in the value added tax exemptions<sup>11</sup>.

We are not aware of any problems in the transposition of Directive 2001/115/EC into the Polish legal system. However, although the Directive has been rather correctly transported into the Polish legal system, Polish government or the EU legislator should put greater emphasis on the technical side of e-invoices. Having one technical standard of an e-invoice (e.g. xml and xsl types specifications, obligatory fields) would improve the Polish and international e-invoices circulation.

Moreover, it needs to be stated that the Regulation of 14 July 2005 regarding issuing and transferring of invoices in an electronic form,

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<sup>9</sup> Ustawa z dnia 11 marca 2004 o podatku od towarów i usług (Dz. U. 2004, No. 54, item 535 as later amended)

<sup>10</sup> Rozporządzenie Ministra Finansów z dnia 14 lipca 2005 r. w sprawie wystawiania oraz przesyłania faktur w formie elektronicznej, a także przechowywania oraz udostępniania organowi podatkowemu lub organowi kontroli skarbowej tych faktur (Dz. U. 2005, No. 133, item 1119)

<sup>11</sup> Rozporządzenie z dnia 25 maja 2005 r. w sprawie zwrotu podatku niektórym podatnikom, zaliczkowego zwrotu podatku, zasad wystawiania faktur, sposobu ich przechowywania oraz listy towarów i usług, do których nie mają zastosowania zwolnienia od podatku od towarów i usług (Dz. U. z 2005 No.95 item 978)

as well as storage and disclosure thereof to a tax office or fiscal inspection office is incoherent with many different laws and regulations concerning invoices and taxes in general (e.g. the Act on Value Added Tax and the Regulation regarding tax return to certain tax-payers, advance tax return, invoice issuing terms, the manner of storing thereof, as well as the list of goods and services, not included in the value added tax exemptions, as indicated above), which still refer to an invoice as a paper document. As for an example there is an obligation for the invoice issuer to make an entry "original/copy" on each document. The same refers to e-invoices although the concept of originality of a file in IT word does not exist. Ambiguity of fiscal law combined interpretation is causing that even a year after introducing the e-invoices in Poland they are barely used.

Invoices issued in the electronic form are transferred, made available and stored in the same form with the use of electronic equipment for processing (including digital compression) and storage of data, and employing wires, radio transmission, optical technologies or other electromagnetic means.

Generally, under the relevant provisions of the Polish tax law VAT invoices may be issued without the necessity of being signed. Invoices may be issued and transferred in the electronic form under a prior acceptance of an invoice receiver (the Acceptance). The Acceptance may be given in writing or in the electronic form. Invoices may be issued and transferred in the electronic form no sooner than from the day subsequent to the day in which the invoice receiver has given the Acceptance. In the event of withdrawing the Acceptance by the invoice receiver the invoice issuer loses his right to issue and transfer invoices in the electronic form to this receiver, from the day subsequent to the day of receiving the invoice receiver's statement on withdrawing the Acceptance.

Invoices (as well as the Acceptance) may be issued, transferred and stored in the electronic form provided that the authenticity of the origin and integrity of the contents are guaranteed:

- 1) by means of a secure electronic signature within the meaning of the Act on Electronic Signature, verified by a qualified certificate; or
- 2) by means of electronic data interchange (EDI) as defined in Article 2 of Commission Recommendation 1994/820/EC of 19 October 1994 relating to legal aspects of electronic data interchange when the agreement relating to the exchange provides for the use of procedures guaranteeing the authenticity of the origin and integrity of the data.

Electronic invoices issued in accordance with the relevant provisions of the Polish law, including without limitation the above conditions, have the same legal status as paper invoices.

However, it needs to be pointed out that e-invoices need to be signed with a secure electronic signature verified by a qualified

certificate, whilst no relevant obligation exists towards paper invoices. Such a distinction between paper and e-invoices is unjustified, and causes, in a part, minor usage of e-invoices in Poland,

#### 4.1.2 *Electronic payment*

Poland has implemented Directive 97/7/EC on the protection of consumers in respect of distance contracts and Directive 2002/65/EC concerning distance marketing of consumer financial services and amending Directive 90/619/EEC, 97/7/EC and 98/27/EC, within the scope of the electronic payment issue, through the Act of 2 March 2000 on the Protection of Certain Rights and on the Liability for Damage Caused by a Dangerous Product<sup>12</sup>. We are not aware of any problem in the transposition of Directive 97/7/EC and 2002/65/EC into the Polish legal system.

Generally, pursuant to the relevant provisions of the Polish law, the payment obligation for goods and services in B2B and B2C transactions does not differ from the payment obligation in traditional commercial relationships. The Polish Civil Code provides for that performances which are the subject matter of obligations resulting from mutual contracts (mutual performances like e.g. goods for payment) should be made simultaneously unless it follows from the contract, statutory law or a decision of the court or other competent authority that one of the parties is obliged to an earlier performance. Moreover, the Act on the Protection of Certain Rights and on the Liability for Damage Caused by a Dangerous Product provides that a distance contract may not impose on the consumer the obligation to pay a price or remuneration before the performance is rendered. Performance unsolicited by the consumer will not be effective at the entrepreneur's risk and will not impose any obligation on the consumer.

Article 8 of Directive 97/7/EC and Directive 2002/65/EC has been implemented correctly, through Article 14 of the Act on the Protection of Certain Rights and on the Liability for Damage Caused by a Dangerous Product, pursuant to which a consumer may request, at the charge of an entrepreneur, the cancellation of a payment effected by a payment card where fraudulent use has been made of this payment card in connection with the distance contract (for B2C contracts on goods and services, as well as contracts on financial services); it is without prejudice to the obligation to remedy the consumer for incurred damage.

The matter of security measures and other types of guarantee and protection against misuse of different types of electronic payment instruments has been regulated by the Polish Act on Electronic Payment Instruments of 12 September 2002<sup>13</sup>. This Act implements

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<sup>12</sup> Ustawa z dnia 2 marca 2000 o ochronie niektórych praw konsumentów oraz o odpowiedzialności za szkodę wyrządzoną przez produkt niebezpieczny (Dz. U. 2000 r. No. 22, item 271, as later amended)

<sup>13</sup> Ustawa z dnia 12 września 2002 r. o elektronicznych instrumentach płatniczych (Dz. U. 2002, No. 169, item 1385, as later amended)

Directive 2000/46/EC of the European Parliament and of the Council of 18 September 2000 on the taking up, pursuit of and prudential supervision of the business of electronic money institutions.

The term of an electronic payment instrument, according to a definition provided by the Act on Electronic Payment Instruments, means every payment instrument (including that with a remote access to money resources) enabling its holder to perform operations by means of an electronic device or making possible the electronic identification of the holder, necessary to perform an operation, including without limitations a payment card or an electronic money instrument. The adopted security measures aimed to protect a holder of an electronic payment instrument are of a high level.

A holder of an electronic payment instrument may not be charged with operations performed by means of the electronic payment instrument, lacking his confirmation. However, a payment card holder will be charged with operations performed by persons to whom he has made available the payment card or disclosed the identification code. If the contract does not provide otherwise, the holder will bear the costs of operations performed by means of a lost payment card until the time of notifying the issuer about losing it, up to an amount equivalent to EURO 150 in PLN (Polish zlotys). This restriction does not concern the operations performed through the fault of the holder or user, and in particular when he did not fulfill the duties specified in the Act. The holder, however, does not bear the costs of operations performed by means of a lost payment card, if this performance took place in consequence of defective execution of obligations by the issuer or merchant. Contractual provisions less favourable to the holder are null and void. The holder bears the costs of operation performed after the notification, if they have been performed through his or user's deliberate fault. Contractual provisions concerning the above less favourable to the holder are null and void, as well. The holder does not bear the costs of operations, subject to provisions regarding electronic money instruments, if the payment card has been used without its physical presentation and without electronic holder's identification or without putting his signature on the paper voucher. The use of identification code is not sufficient to charge the holder with an operation contested by him, unless a secure electronic signature has been put. If the contract for payment card provides for such possibility, the holder will bear the costs of operations remotely performed, although the payment card has been used without physical presentation.

The holder of a bank account using electronic banking services will bear the costs of all operations performed by persons to whom he made available the confidential information on the functioning of the electronic payment instrument provided within the frames of a contract for services of electronic banking. The security measures regarding the payment card holder, as indicated above, apply respectively to the holder of electronic banking services.

The security measures adopted with reference to an electronic money instrument include the following major provisions: contract for electronic money instrument cannot limit the responsibility of the bank or electronic money institution to the holder for loss of electronic money or damage resulting from incorrect performance of operation ordered by the holder, if the loss of electronic money or incorrect performance of operation is caused by defective functioning of the device, that the bank or electronic money institution consented to use; electronic money instrument made available to the holder should contain a mechanism preventing from storing electronic money of a value exceeding the equivalent of EUR 150 in PLN; electronic money is issued to the holder only up to the amount of cash previously paid in or funds on his account; responsibility of the bank or electronic money institution to the holder resulting from the contract for electronic money instrument is limited up to the value of electronic money acquired by the holder; however, the contract may extend the responsibility of the bank and electronic money institution to the holder above the said limit.

#### 4.1.3 *Delivery of the goods or provision of services ordered electronically and withdrawal period*

Article 11 of the Directive 1997/7/EC on the protection of consumers in respect of distance contracts has not been implemented directly through the Act on the Protection of Certain Rights and on the Liability for Damage Caused by a Dangerous Product; however, relevant general provisions of the Polish law regarding consumer protection will apply, respectively.

Pursuant to the Act on Competition and Consumer Protection as of 15 December 2000<sup>14</sup> the President of the Office for Competition and Consumer Protection is the central government administration organ competent in the protection of competition and consumers. The tasks in the field of the protection of consumer interests are also performed by the territorial self-government and consumer organizations as well as other institutions whose statutory tasks include the protection of consumer interests. The tasks of the district self-government are performed by the district (municipal) consumer advocate – the Consumer Ombudsman. The Consumer Ombudsman may in particular bring an action on consumers' behalf and with their consent, join lawsuits in cases pertaining protection of consumer interests. The President of the Office may institute, on an *ex officio* basis, explanatory proceedings if the circumstances indicate the possibility that the provisions of the Act on competition and consumer protection have been infringed as to matters related to consumer interests. Moreover, the following entities may file an application for the institution of proceedings before the President of the Office on the matter of a practice infringing collective consumer interests:

- Civil Right Ombudsman

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<sup>14</sup> Ustawa z dnia 15 grudnia 2000 o ochronie konkurencji i konsumentów (unified text published in Dz. U. 2005, No. 244, item 2080)

- Insurance Ombudsman
- Consumer Ombudsman
- Consumer organization
- Foreign organization entered in the list of organizations entitled in the EU Member States to file an application for the institution of proceedings, under conditions specified in the Act on Competition and Consumer Protection.

Moreover, in Poland there are arbitration consumer courts.

The above means are adequate and effective and may be used also in cross-border B2B and B2C transactions.

The Polish Civil Code provides for the general legal means for protection of rights of a party to a contract in the event of non-performance of improper performance of an obligation of the other party. Therefore, the following general remedies are granted to a purchaser in case of non-delivery of the good or non-performance of the service:

- If mutual performances are to be made simultaneously (which is the general rule in mutual contracts), each party may withhold the performance (e.g. payment) until the other party offers the mutual performance (e.g. goods or services);
- If one of the parties is delayed in making the performance (e.g. transfer of goods or rendering services) the other party may set an appropriate additional time limit for the performance with the warning that in case of an ineffective lapse of the time set he will be entitled to renounce the contract; the other party may also demand making of the performance and redress of the damage resulting from the delay;
- If the right to renounce a mutual contract was reserved for the case of non-performance of the obligation within strictly defined time, in such event the authorized party may renounce the contract without setting any additional time limit;
- If one of the mutual performances became impossible as a result of the circumstances for which the party obliged is responsible the other party may, at its own discretion, either demand the redress of the damage resulting from the non-performance of the obligation or renounce the contract;
- the party renouncing a mutual contract is obliged to return to the other party all that it received from the latter by virtue of the contract; it may demand not only the return of what it performed but also the redress of the damage resulting from the non-performance of the obligation.

The above remedies are available to consumers as well as businesses.

The consumer who concluded a distance contract may withdraw from the contract without giving reasons, by way of an appropriate written statement, within the period of ten (10) days from the day on which

the product is delivered, and if the contract relates to providing services, from the day on which the contract is concluded. In the case where the required entrepreneur's confirmation of the information provided to the consumer with respect to the contract is deficient, the period when the consumer may withdraw from the contract is three (3) months from the day of receipt of product or for the contract for providing services from the day it is concluded.

The consumer who concluded a distance contract for financial services may withdraw from the contract without giving reasons, by way of an appropriate written statement, within the period of fourteen (14) days from the day on which the contract is concluded or the day of the entrepreneur's confirmation of the information provided to the consumer with respect to the contract, if the latter is posterior. With reference to insurance activities the above period is thirty (30) days from the day on which the consumer was informed of the contract's conclusion, or from the day on which the contract is concluded or the day of the entrepreneur's confirmation of the information provided to the consumer with respect to the contract, if the latter is posterior.

Poland has implemented Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees through the Act of 27 July 2002 on the detailed conditions for consumer sales and on amendments to the Civil Code<sup>15</sup>. We are not aware of any problem in the transposition of Directive 1999/44/EC into the Polish legal system.

Pursuant to the said Act the seller is liable to the buyer where the consumer goods at delivery do not comply with the contract; in case of stating non-compliance prior to expiry of six (6) months from the goods' delivery it is assumed that it existed on delivery date. Where the consumer goods do not comply with the contract, the buyer may demand reinstatement compliant with the contract by free-of-charge repair or exchange for new goods, unless repair or exchange are impossible or incur excessive costs. Where the buyer for reasons referred to above cannot demand repair or exchange within a proper time or where the repair or exchange would expose the buyer to significant inconvenience, the buyer has the right to demand a reduction of the price or to withdraw from the contract; the buyer however, may not withdraw from the contract, where non-compliance of the consumer goods with the contract is insignificant. The buyer loses his rights indicated above where within two (2) months from stating non-compliance with the contract he did not notify the seller of this fact. The seller is liable for non-compliance of the consumer goods with the contract only in case of stating non-compliance prior to the expiry of two (2) years from the issue of the goods to the buyer.

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<sup>15</sup> Ustawa z dnia 27 lipca 2002 o szczególnych warunkach sprzedaży konsumenckiej oraz o zmianie Kodeksu cywilnego (Dz. U. 2002 No. 141, item 1176, as later amended).

Granting guarantees to buyers, under the said Act, occurs without separate fees by a declaration of the guarantor, included in the guarantee document or in advertisements regarding the consumer goods; the guarantee sets down the obligations of the guarantor and rights of the buyer in case where the properties of the sold goods do not correspond to the properties described in the declaration. Declarations which do not regulate obligations of the guarantor are not regarded as guarantees.

The matter of non-conformity of consumer goods with the contract and guarantee of the conformity of goods, is regulated in the remaining, not described above, provisions of the said Act in compliance with the applicable Directive. The Polish legislation does not provide for provisions on conformity of consumer goods more stringent than those of Directive 1999/44/EC.

#### **4.2 Cross border regulatory issues**

There are no court rulings on electronic invoicing or payment related to execution of cross-border electronic contracts

It is difficult to make an assessment of the awareness in Poland of the possibilities regarding the regulation pursuant to Regulation 2560/2001. It must be noted that transfers with the Polish currency (PLN) are not covered by the order. This means that a money transfer from a Polish bank account to a bank account in another member country does not benefit from the principle of equal charges for a cross-border transactions and a strictly domestic transactions within the European Union.

### **5. General assessment of national legislation and administrative practices in the fields of e-signatures, e-contracts and e-invoicing**

#### **5.1 Main legal and administrative barriers to e-business**

The following main legal and administrative barriers to e-business in Poland have been identified:

##### 1. Uncertainty of legal effectiveness and recognition of e-business documents in national trade relations

The Polish civil law tradition means that written legislation forms the most important source of law. Specific legal effectiveness and recognition of e-business documents in national trade are regulated by a general rule in the Polish Civil Law Proceedings, which stipulates that courts are free in their assessment of evidence. Thus, court decisions represent an important source of law in the field of e-business. However, no court cases from the Supreme Court have been identified in the fields of e-signatures, e-contract conclusion

and e-invoicing. This means that administrative bodies and enterprises are left uncertain about the exact legal status of electronic business documents.

## 2. Legal and administrative barriers to cross-border exchange of electronic signatures, electronic contracts and electronic invoices

Administrative practices are considered an obstacle to cross-border exchange of electronic signatures as there are no international standards.

As regards electronic contract conclusion, it seems reasonable to assume that especially small and medium-sized enterprises are unaware of the specific legal status of electronic contracts agreed with trade partners from another Member State. This could be an obstacle to cross-border use of electronic contracts.

Cross-border exchange of electronic signatures and e-invoices is limited by a lack of unified technical requirements towards electronic signatures or e-invoices. As for an example of an electronic signature, although the directive on electronic signature and the Polish Act on Electronic Signature deal with the issue of mutual recognition of certificates between EU member states and non-EU member states, these regulations has proven themselves as insufficient. Different types of various algorithms and signatures (sometimes even unique and specific for non EU country) make it almost impossible to provide a smooth business on the pan-European market. Moreover, as already stated in this report, Polish government or the EU legislator should put grater emphasis on the technical side of e-invoices. Having one technical standard of an e-invoice (e.g. xml and xsl types specifications, obligatory fields) would improve the Polish and international e-invoices circulation.

## 3. The legislation offers limited protection for smaller businesses in electronic commerce

A consumer is defied under the Polish Civil Code as a natural person undertaking a legal deed not connected directly with his/her business or professional activity. Consumer protection legislation in Poland does not apply to enterprises (including SMEs). However, the Act of 15 December 2000 on protection of competition and consumers<sup>16</sup> provides for special obligation for the State to establish, in compliance with the equality and competition principles, favourable conditions for functioning and development of micro, small and medium sized enterprises. Polish Agency for Enterprise Development (PAED) is a governmental agency admitted to the Minister of the Economy, which is responsible for fulfilling the above obligation, through the provision of grants to SME sector companies, institutions supporting SMEs, training institutions and labour market institutions, as well as rendering of advisory and expert services, etc.

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<sup>16</sup> Ustawa z dnia 15 grudnia 2000 o ochronie konkurencji i konsumentów (Dz.U. 2005 no. 244 item 2080, as amended)

While consumers are relatively well protected by the Polish legislation and the Consumer Ombudsman institution, enterprises are offered a very low level of protection by the legislation based on the rationale that commerce between two companies are a transaction between two equal partners. However, in the case of small companies buying online, this can be a barrier to conducting business online.

For many Polish enterprises the application of modern methods of conducting economic activity can pose problems and the smaller the scale of the enterprise, the bigger the problems. Small and medium-sized enterprises are not only short of funds for investments but they also seem to lack the awareness of the benefits resulting from modern methods of conducting economic activity as well as relevant qualifications. Moreover, high telecommunication costs in Poland and the uncertainty as regards legal implications causes that access to the internet is available among small and medium-sized enterprises on a much smaller scale than among large ones. Small firms need a transparent and simple legal environment as well as telecommunication tariffs adjusted to the specific character of electronic economy. One of actions which should no doubt be carried out will be the promotion of trainings and awareness as well as knowledge raising among both citizens and entrepreneurs.

## **5.2 Awareness about national authorities in charge of solving legal problems in e-business**

National authorities in charge of solving legal problems in e-business consist of the President of the Republic of Poland (<http://www.prezydent.pl>), the Government (mainly the Minister of Economy - <http://www.mg.gov.pl>), the Polish Parliament (<http://www.sejm.gov.pl>, <http://senat.gov.pl>). The awareness related to national authorities in charge of solving legal problems in e-business amongst consumers and businesses has not been subject to a particular study.

However, the common opinion is demonstrating a lack of awareness in business in relation to the general legislation. This implies, in turn, that there could be a lack of awareness about national authorities in charge of solving legal problems in e-business.

In relation to consumer awareness, it could be argued that the fact that many consumers remain reluctant to use their credit card for payment by the Internet despite the safeguards offered to them, could be taken as a sign of lack of awareness about national authorities in charge of solving legal problems in e-business.

## **5.3 Legal and administrative best practices in e-business**

One of the most important tasks for Poland during its transformation to market economy is to join the process of building the information age by employing modern information and communication technologies, creating conditions for direct access to information,

raising the society's awareness and developing its intellectual and economic potential. The Ministry of Economic Affairs and Labour in co-operation with the Institute of Logistics and Warehousing has prepared project of electronic platform eHandel /e-Commerce/ which is a part of a comprehensive programme "Making the mechanism and structures for the development of e-commerce in Poland" adopted by the Council of Ministers on 22 of July 2003.

The Polish Institute of Logistics and Warehousing is responsible for the realisation of many tasks in this plan. The Institute is a state-owned, governmental institution working in close collaboration with the Ministry of Economy. Among the key objectives of this plan there is development of the public monitoring system regarding e-activities and helping SME's in meeting better the requirements of a modern economy, with growing e-business sector. Activities, which are included there, have been designed as complementary actions to those already undertaken and underway in the field of transposition of the equity, including telecommunication legislation, electronic signatures, e-commerce and electronic payments.

It is very important for the Polish Government to proceed with a thorough examination of the present situation (base-line analysis), to introduce on-going monitoring of changes in the sector, as well as in formulating and discussing the requirements of a conducive economic, social, technological and legal environment for e-business. These actions should then be accompanied with the development and implementation of international (global) standards for e-business.

These policy level actions will be tied to the operational development and implementation of an e-business platform to be used in the interface between public administration and business.

The Information e-platform will include such components as:

- 1) Business information originated in the public administration and in the wide public domain:  
This e-platform will form the bases for a future e-based one stop shop for business start-ups and all businesses dealing with the public administration, bringing together in a user-friendly environment the full spectrum of information and registration/reporting requirements. It will be further augmented by access to sectoral, export inward investment, regional and other business oriented information sources.
- 2) e-Catalogues of goods and companies:  
The e-catalogue of goods and companies will present all data required and used in e-commerce transactions: address, VAT number, all logistics data, description of products, pictures etc. It is worth stressing that catalogues would be built according to EAN/UCC rules. Companies would be identified by their worldwide unique Global Localization Number (GLN) and goods by EAN 13 number that are also unique. Such a solution would allow for the elimination of almost all communication problems within the

supply chain, as well as within the B2C exchange process. To be able to conduct business and transaction electronically such a direct linking of goods with their producers is necessary. Those two e-catalogues will work on the same basis and with similar functionality as those operating in the EU member countries. Central e-catalogues of goods and companies cannot be treated as merely an electronic version of the popular Yellow Pages. To be able to make electronic transactions the parties involved require specific information. This information has to be analysed and transformed as well as verified automatically.

3) Repository of e-documents:

The repository of e-documents will contain electronic versions of documents used in electronic trade e.g. invoices and orders and other documents required by businesses for conducting e-operations vis a vis the public administration and other parties. Businesses will be able to connect to the repository, download an up-to-date document, fill it in and send it to the partner and/or public administration without printing.

## ANNEX 1: E-business national legislation

The regulatory framework for e-business in Poland is based on the following laws in the matter: the Civil Code<sup>17</sup>, the Act on Providing Services by Electronic Means<sup>18</sup>, Act on freedom of economic activity<sup>19</sup>, Act on electronic signature<sup>20</sup>, Act on electronic payment instruments<sup>21</sup>, Act on the protection of certain consumer rights and on the liability for damage caused by a dangerous product<sup>22</sup> Act on competition and consumer protection<sup>23</sup>, Act on specific terms and conditions of consumer sale and amendments to the Civil Code<sup>24</sup>.

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<sup>17</sup> Ustawa z dnia 23 kwietnia 1964 r. Kodeks Cywilny (Dz. U. 1964, No. 16, item 93, as later amended)

<sup>18</sup> Ustawa z dnia 18 lipca 2002 o świadczeniu usług drogą elektroniczną (Dz. U. 2002, 144, item 1204, as later amended)

<sup>19</sup> Ustawa z dnia 2 lipca 2004 o swobodzie działalności gospodarczej (Dz. U. 2004, No. 173, item 1807 as later amended) [http://www.mgip.gov.pl/NR/rdonlyres/2541317F-0706-4402-9743-E1F1CFFB5F52/0/act\\_free\\_act.rtf](http://www.mgip.gov.pl/NR/rdonlyres/2541317F-0706-4402-9743-E1F1CFFB5F52/0/act_free_act.rtf)

<sup>20</sup> Ustawa z dnia 18 września 2001 o podpisie elektronicznym (Dz. U. 2001, No. 130, item 1450, as later amended) [http://www.mgip.gov.pl/NR/rdonlyres/F8C3BB43-06EA-4F88-8486-EF02526A0771/18224/act\\_on\\_eSignature.pdf](http://www.mgip.gov.pl/NR/rdonlyres/F8C3BB43-06EA-4F88-8486-EF02526A0771/18224/act_on_eSignature.pdf)

<sup>21</sup> Ustawa z dnia 12 września 2002 r. o elektronicznych instrumentach płatniczych (Dz. U. 2002, No. 169, item 1385, as later amended) [http://www.nbp.pl/en/system\\_platniczy/mf.pdf](http://www.nbp.pl/en/system_platniczy/mf.pdf)

<sup>22</sup> Ustawa z dnia 2 marca 2000 o ochronie niektórych praw konsumentów oraz o odpowiedzialności za szkodę wyrządzoną przez produkt niebezpieczny (Dz. U. 2000 No. 22, item 271, as later amended) [http://www.uokik.gov.pl/en/legal\\_regulations/national\\_legal\\_acts/consumer\\_protection](http://www.uokik.gov.pl/en/legal_regulations/national_legal_acts/consumer_protection)

<sup>23</sup> Ustawa z dnia 15 grudnia 2000 o ochronie konkurencji i konsumentów (unified text published in Dz. U. 2005, No. 244, item 2080) [http://www.uokik.gov.pl/en/legal\\_regulations/national\\_legal\\_acts/consumer\\_protection](http://www.uokik.gov.pl/en/legal_regulations/national_legal_acts/consumer_protection)

<sup>24</sup> Ustawa z dnia 27 lipca 2002 o szczególnych warunkach sprzedaży konsumenckiej oraz o zmianie Kodeksu Cywilnego (Dz. U. 2002, No. 141, item 1176, as later amended) [http://www.uokik.gov.pl/en/legal\\_regulations/national\\_legal\\_acts/consumer\\_protection](http://www.uokik.gov.pl/en/legal_regulations/national_legal_acts/consumer_protection)