

## Poland

### *National AI Strategy*

In September 2020, the Polish Council of Ministers Committee for Digital Affairs<sup>660</sup> adopted the ‘Policy for the Development of Artificial Intelligence in Poland.’<sup>661</sup> The Policy has not been published yet, but the government website states that the Policy should be adopted by the Standing Committee of the Council of Ministers by the end of 2020.<sup>662</sup> According to a description of the Policy provided by the government website, it is designed to support and complement the work of the EU and the OECD in AI. The Policy establishes goals and actions for Poland in the field of AI in the short-term (until 2023), medium-term (until 2027), and long-term (after 2027).<sup>663</sup> Six key categories are identified in the AI Policy:

- AI and society
- AI and innovative companies
- AI and science
- AI and education
- AI and international cooperation
- AI and the public sector

Once adopted, the Polish Council of Ministers Committee for Digital Affairs will steer the implementation of the strategy and evaluate its implementation on a yearly basis.<sup>664</sup>

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<sup>660</sup> Komitet Rady Ministrów do Spraw Cyfryzacji (KRMC). The KRMC is an auxiliary body of the Council of Ministers and the Prime Minister. The Council of Ministers serves as Poland’s Cabinet with the Prime Minister acting as the President of the Council of Ministers. <https://www.gov.pl/web/digitalization/council-of-ministers-committee-for-digital-affairs>.

<sup>661</sup> <https://www.gov.pl/attachment/a8ea194c-d0ce-404e-a9ca-e007e9fbc93e>. Developed by the Ministry of Digital Affairs, Ministry of Development, Ministry of Science and Education, Ministry of Funds and Regional Policy and Chancellery of the Prime Minister.

<sup>662</sup> OECD, STIP Compass, *Poland's National AI Strategy* (2020), <https://stip.oecd.org/stip/policy-initiatives/2019%2Fdata%2FpolicyInitiatives%2F24268>.

<sup>663</sup> Government of Poland, *The development of artificial intelligence in Poland - an important decision* (Sept. 14, 2020), <https://www.gov.pl/web/cyfryzacja/rozwoj-sztucznej-inteligencji-w-polsce--wazna-decyzja>.

<sup>664</sup> European Commission, *Poland AI Strategy Report* (Feb. 2020), [https://ec.europa.eu/knowledge4policy/ai-watch/poland-ai-strategy-report\\_en](https://ec.europa.eu/knowledge4policy/ai-watch/poland-ai-strategy-report_en).

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The Polish Government website sets out a roadmap towards Poland's AI strategy, with the first step towards the strategy being marked in September 2016 and the most recent being marked in September 2020 (with the KRMC adoption of the 2020 Policy).<sup>665</sup> The 2020 Policy follows on from a draft policy document that was released for consultation in 2019<sup>666</sup> and a document released by the Minister for Digital Affairs in 2018, titled "Assumptions to AI Strategy in Poland."<sup>667</sup> The Assumptions document was the product of a group of independent experts who volunteered their time to develop recommendations for the development of AI in Poland under the guidance of the Ministry of Digital Affairs. The Assumptions document identifies four key areas of importance:

- data-driven economy
- financing and development
- education
- law and ethics.

The Assumptions document states that Poland's approach to ethical and legal issues with AI should: be proactive in creating ethical standards and legislation; be inclusive and cooperative; take into account the specific circumstances in Poland; be flexible; instate consistent supportive measures; engage in discussion and consultation; and be firm in response to violations of ethical and legal standards. The primary goals are asserted to be the development of transparent and effective mechanisms ensuring the protection of fundamental rights, gaining understanding of the social effects of AI, the setting of ethical standards, and the creation of high-quality legislation.

Fundamental rights and values identified in the Assumptions document as being important to the development of a legal and ethical approach in Poland include: dignity; freedom (described as including freedom to understand processes with which individuals interact and the making of free and independent decisions); privacy and data protection;

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<sup>665</sup> Government of Poland, *Digitalization of the Chancellery of the Prime Minister* [GT], <https://www.gov.pl/web/cyfryzacja/ai>.

<sup>666</sup> <https://www.gov.pl/attachment/a8ea194c-d0ce-404e-a9ca-e007e9fbc93e>. The document is only available in Polish and machine translation was used in combination with other sources.

<sup>667</sup> Ministry for Digital Affairs, *Assumptions for the AI Strategy in Poland* (Nov, 9, 2018) [GT], (<https://www.gov.pl/attachment/1a3fba75-c9f9-4aff-96d8-aa65ce612eab>

equality; and justice. The Assumptions document calls for the development of an ethical impact assessment mechanism. Where AI projects are supported by public funds, the Assumptions document calls for ethical impact assessments at various stages of a project's implementation, not just at the application stage. As part of the objective of coordinating national efforts in this space, the Assumptions document also proposes the establishment of an entity designed to, amongst other things: monitor the social impact of AI; recommend regulatory actions; participate in the development of regulations and ethical standards; and perform ethical impact assessments on publicly funded projects. It is envisioned that such an entity would include representatives from science, government, business, and NGOs. The legal analysis in the report was prepared by experts invited by the Ministry of Digital Affairs to consider the legal aspects of AI as part of the working group on the legal and ethical aspects of AI under the guidance of the Ministry. The research was preliminary and based on the presentation of selected legal issues by individual experts based on their personal views. As a result, the recommendations primarily call for the conducting of more research and discussion.

Subsequently, a Draft Policy for the Development of Artificial Intelligence in Poland for the years 2019–2027 was released for consultation in August 2019. The Draft Policy document was designed to open a national debate from which a national strategy could be built.<sup>668</sup> The Draft Policy states its goals to include the supporting of AI research and development for the benefit of economic growth and innovation. In tandem with this, the Policy describes the necessity to support citizens in the face of transformations to the working environment and to protect human dignity and fair competition.<sup>669</sup> The Draft Policy is designed to be coherent with EU and OECD policies on AI. Strategic documents the Draft Policy takes into account include: the EU Communication's Coordinated Plan on Artificial Intelligence;<sup>670</sup> the High-Level Expert Group on AI's Ethics Guidelines for Trustworthy Artificial Intelligence;<sup>671</sup> the High-Level Expert Group on AI's

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<sup>668</sup> European Commission, *Poland AI Strategy Report* (Feb. 2020),

[https://ec.europa.eu/knowledge4policy/ai-watch/poland-ai-strategy-report\\_en](https://ec.europa.eu/knowledge4policy/ai-watch/poland-ai-strategy-report_en).

<sup>669</sup> <https://www.gov.pl/attachment/a8ea194c-d0ce-404e-a9ca-e007e9fbc93e>.

<sup>670</sup> European Commission, *Coordinated Plan on Artificial Intelligence* (Dec. 7, 2018), <https://ec.europa.eu/transparency/regdoc/rep/1/2018/EN/COM-2018-795-F1-EN-MAIN-PART-1.PDF>.

<sup>671</sup> European Commission, *Ethics Guidelines for Trustworthy AI* (Apr. 8, 2019), <https://ec.europa.eu/digital-single-market/en/news/ethics-guidelines-trustworthy-ai>.

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Policy and Investment Recommendations for Trustworthy Artificial Intelligence;<sup>672</sup> and the OECD Council Recommendation on Artificial Intelligence.<sup>673</sup>

Supportive of human-centric AI, Poland rejects the idea of granting legal personality to AI. The Draft Policy identifies the need to address intellectual property issues with AI and to develop international consensus around AI and liability. The Draft Policy states that Article 30 of the Polish Constitution – which protects the inherent and inalienable dignity of the person – forms the basis of its approach. While the Draft Policy recognizes the importance of the Charter of Fundamental Rights and international human rights treaties in providing a foundation for ethical principles, the Policy suggests that Article 30 of the Polish Constitution provides broader protection. In addition to supporting the OECD recommendations, the Draft Policy asserts that the ethical development of AI should be based on the European concept of Trustworthy AI.

The Virtual Chair of Ethics and Law criticized the Draft Policy document and recommended significant changes.<sup>674</sup> In addition to criticizing the structure of the Draft Policy, the Virtual Chair of Ethics and Law called for increased detail regarding strategic goals and objectives and the legal acts required to implement policy.

In response to the EU Commission's White Paper on Artificial Intelligence, Poland professed to sharing the Commission's view on the need to define a clear European regulatory framework that would contribute to building confidence in the AI among consumers and businesses, thereby accelerating the spread of this technology, while ensuring socially, environmentally, and economically optimal results and compliance with EU's laws, principles, and values. However, Poland suggests limiting regulatory action “only to the areas of necessary intervention that promote

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<sup>672</sup> European Commission, *Policy and investment recommendations for trustworthy Artificial Intelligence* (June 26, 2019), <https://ec.europa.eu/digital-single-market/en/news/policy-and-investment-recommendations-trustworthy-artificial-intelligence>

<sup>673</sup> OECD Legal Instruments, *Recommendation of the Council on Artificial Intelligence* (May 21, 2019), <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0449>.

<sup>674</sup> The Council of the Virtual Chair of Ethics and Law, *Comments on the Policy for the Development of Artificial Intelligence in Poland for the years 2019 - 2027* (Nov. 11, 2019), <http://cpptint.wpia.uni.opole.pl/rada-wirtualnej-katedry-etyki-i-prawa-zabieraglos-w-sprawie-ai/>.

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legal certainty and relations, ensure coordination within the EU, and limit the negative social impact.”<sup>675</sup> Poland states that the regulations “should be sufficiently effective to achieve their objectives, but should not be overly prescriptive, as this could lead to disproportionate burdens, especially for SMEs and MSMEs.” Poland endorsed incentives for voluntary ex ante control rather than mandatory. In particular, Poland cautioned against the imposition of mandatory certification regimes.

### *Ultima Ratio*

Poland has begun an online arbitration court which incorporates AI techniques. Ultimately, according to *Polish Science*, “artificial intelligence will automatically prepare a ready draft judgment together with justification, processing for this purpose the data and positions of the parties collected in the course of the proceedings.”<sup>676</sup> The first modules began in 2020. Ultimately, artificial intelligence will automatically prepare a ready draft judgment together with justification, processing for this purpose the data and positions of the parties collected in the course of the proceedings. The Ultima Ratio judgment has the same legal force as a decision before a common court.<sup>677</sup> The main legal issue raised by the use of Ultima Ratio is whether it is compatible with Article 47 of the EU Charter on Fundamental Rights which guarantees the right to a fair trial before an independent and impartial court.

### *Poland’s Position on AI and Fundamental Rights*

Earlier this year, the Presidency of the Council of the EU failed to secure unanimous support from the Member States for its conclusions on the application of the Charter of Fundamental Rights in the AI context.<sup>678</sup>

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<sup>675</sup> Government of Poland, *Poland’s position in the consultations on the White Paper on Artificial Intelligence - a European approach to excellence and trust* (June 12, 2020), <https://www.gov.pl/attachment/583eb32c-7344-4317-b607-fee0532c3eeb>.

<sup>676</sup> Polish Science, *Ultima Ratio- the first online court of arbitration in Poland to implement Artificial Intelligence* (Jan. 2, 2020), <http://polishscience.pl/en/ultima-ratio-the-first-online-court-of-arbitration-in-poland-to-implement-artificial-intelligence/>

<sup>677</sup> Warsaw Business Journal, *Online arbitration as remedy for closed common courts and pandemics* (March 16, 2020), <https://wbj.pl/online-arbitration-as-remedy-for-closed-common-courts-and-pandemics/post/126416>

<sup>678</sup> European Council, *Artificial intelligence: Presidency issues conclusions on ensuring respect for fundamental rights* (Oct. 21, 2020), <https://www.consilium.europa.eu/en/press/press-releases/2020/10/21/artificial->

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Poland objected to the inclusion of “gender equality.” Poland was the only member state in the European Union to oppose the resolution on AI and fundamental rights.<sup>679</sup> Although Ambassador Andrzej Saros said that Poland will work to support the conclusions in the future, he also stated that: “The Treaties refer to equality between women and men, similar to the Charter of Fundamental Rights. The meaning of ‘gender’ is unclear; the lack of definition and unambiguous understanding for all member states may cause semantic problems. Neither the Treaties nor the Charter of Fundamental Rights use the term ‘gender’.”<sup>680</sup>

The position occurs in the context of the Polish government opposition to the Convention on Preventing and Combating Violence against Women and Domestic Violence.<sup>681</sup> While consensus was not reached as regards the Presidency’s conclusions, the Presidency stressed that the core elements of the conclusions, anchoring the Union’s fundamental rights and values in the age of digitalization, fostering the EU’s digital sovereignty and actively participating in the global debate on the use of artificial intelligence with a view to shaping the international framework, were shared by all delegations.<sup>682</sup>

### *OECD/G20 AI Principles*

As a member of the OECD, Poland is committed to the OECD Principles on Artificial Intelligence and references the OECD principles in its Draft Policy document. The OECD did not identify any instances of implementation of the AI Principles in Poland in the 2020 survey.<sup>683</sup>

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<https://www.consilium.europa.eu/media/46496/st11481-en20.pdf>.

<sup>679</sup> Warsaw Business Journal, *Poland rejects artificial intelligence because of gender* (Oct. 29, 2020), <https://wbj.pl/poland-rejects-artificial-intelligence-because-of-gender/post/128788>

<sup>680</sup> Samuel Stolton, *Poland rejects Presidency conclusions on Artificial Intelligence, rights*, Euroactiv, Oct. 26, 2020, <https://www.euractiv.com/section/digital/news/poland-rejects-presidency-conclusions-on-artificial-intelligence-rights/>.

<sup>681</sup> Eline Schaart, *Poland to withdraw from treaty on violence against women*, Politico (July 25, 2020), <https://www.politico.eu/article/poland-to-withdraw-from-istanbul-convention-treaty-on-violence-against-women/>

<sup>682</sup> Council of the European Union, *Presidency conclusions - The Charter of Fundamental Rights in the context of Artificial Intelligence and Digital Change* (Oct. 21, 2020), <https://www.consilium.europa.eu/media/46496/st11481-en20.pdf>.

<sup>683</sup> OECD G20 Digital Economy Task Force, *Examples of AI National Policies* (2020), <https://www.mcit.gov.sa/sites/default/files/examples-of-ai-national-policies.pdf>

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### *Human Rights*

Poland is a member of the European Union and Council of Europe and is, accordingly, committed to the upholding of the Charter of Fundamental Rights and the European Convention on Human Rights. In addition, Poland has acceded to international human rights treaties and has signed the Universal Declaration of Human Rights. The Polish Constitution also grants basic rights to citizens and includes prohibitions against discrimination.<sup>684</sup> While Poland ranks quite highly in its Freedom House 2020 Country Report (84/100), concerns were raised about the fairness of parliamentary elections, media freedom, judicial reforms, and LGBT+ rights.<sup>685</sup> Since 2015, Poland's ranking on the World Press Freedom Index has dropped from 18th to 62nd place.<sup>686</sup>

### *Algorithmic Transparency*

As a member of the European Union, Poland is committed to the protection of personal data as required by Article 8 of the Charter of Fundamental Rights and the data protection laws of the EU. The Personal Data Protection Act 2018 and the GDPR Implementation Act 2019 were enacted in order to adapt the GDPR and to implement the Law Enforcement Directive into domestic law. The Polish supervisory authority is the President of the Office of Personal Data Protection.<sup>687</sup> Poland supports the Ethics Guidelines for Trustworthy AI, including the requirements of human agency and oversight; privacy and data governance; transparency; and diversity, non-discrimination and fairness; and accountability.<sup>688</sup>

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<sup>684</sup> *The Constitution of the Republic of Poland, Article 32,*

<https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>

<sup>685</sup> Freedom House, *Freedom in the World 2020 – Poland* (2020),

<https://freedomhouse.org/country/poland/freedom-world/2020>. See also Case C-791/19 R *Commission v Poland* and Case C-619/18 *Commission v Poland*.

<sup>686</sup> Reporters without Borders, *2020 World Press Freedom Index,*

<https://rsf.org/en/ranking>; Reporters without Borders, *2015 World Press Freedom Index,* <https://rsf.org/en/ranking/2015#>.

<sup>687</sup> President of the Office of Personal Data Protection, <https://uodo.gov.pl/en>.

<sup>688</sup> Digitalization of the Chancellery of the Prime Minister, *Public consultations on the project Policy for the Development of Artificial Intelligence in Poland for 2019-2027*

(Aug. 21, 2019), <https://www.gov.pl/web/cyfryzacja/konsultacje-spoleczne-projektu-polityki-rozwoju-sztucznej-inteligencji-w-polsce-na-lata-2019--2027>; European

Commission, *Ethics guidelines for trustworthy AI* (Apr. 8, 2019),

<https://ec.europa.eu/digital-single-market/en/news/ethics-guidelines-trustworthy-ai>.

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In the Polish response to the EU Commission's White Paper on Artificial Intelligence, human oversight of AI systems is identified as the key guiding principle for all AI applications, not just for high-risk examples.<sup>689</sup> Poland supports the introduction of an ex-ante conformity assessment procedure for certain high-risk AI applications. The 2019 Draft Policy recognizes the importance of transparent, accountable, and impartial AI and endorses the use of voluntary standards systems for the certification of AI. The Draft Policy recommends the establishment of regulatory sandboxes to enable the early testing of AI systems before they meet compliance or certification standards and supports the mutual recognition of interoperability standards.<sup>690</sup>

In 2014, a profiling system was introduced in order to divide unemployed people into three categories based on their responses to a series of questions asked during a computer-based interview.<sup>691</sup> In a report on the issue, the NGO, Panoptykon, described the process as the computer system calculating the 'employment potential' of a given person on the basis of the provided answers.<sup>692</sup> The amount of assistance the individual received was determined by their categorization. The Polish data protection supervisory authority expressed reservations regarding the use of profiling in this context.<sup>693</sup> In particular, concerns were expressed regarding the protection of personal data and the absence of a transparent procedure to facilitate appeals.<sup>694</sup> In addition, concerns were raised by the Polish Supreme Audit

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<sup>689</sup> Government of Poland, *Poland's position in the consultations on the White Paper on Artificial Intelligence - a European approach to excellence and trust* (June 12, 2020), <https://www.gov.pl/attachment/583eb32c-7344-4317-b607-fee0532c3eeb>.

<sup>690</sup> <https://www.gov.pl/web/cyfryzacja/konsultacje-spoleczne-projektu-polityki-rozwoju-sztucznej-inteligencji-w-polsce-na-lata-2019--2027>.

<sup>691</sup> Amendment to the Act on the Promotion of Employment and Labor Market Institutions and Ordinance on the Profiling of Assistance for the Unemployed; [https://panoptykon.org/sites/default/files/leadimage-biblioteka/panoptykon\\_profiling\\_report\\_final.pdf](https://panoptykon.org/sites/default/files/leadimage-biblioteka/panoptykon_profiling_report_final.pdf).

<sup>692</sup> Amendment to the Act on the Promotion of Employment and Labor Market Institutions and ordinance on the profiling of assistance for the unemployed; [https://panoptykon.org/sites/default/files/leadimage-biblioteka/panoptykon\\_profiling\\_report\\_final.pdf](https://panoptykon.org/sites/default/files/leadimage-biblioteka/panoptykon_profiling_report_final.pdf).

<sup>693</sup> See, for example, <https://archiwum.mpips.gov.pl/download/gfx/mpips/pl/defaultopisy/8216/1/1/Uwagi%20GIODO-IV.pdf>; [https://panoptykon.org/sites/default/files/leadimage-biblioteka/panoptykon\\_profiling\\_report\\_final.pdf](https://panoptykon.org/sites/default/files/leadimage-biblioteka/panoptykon_profiling_report_final.pdf).

<sup>694</sup> Fundacja Panoptykon, *Profiling the Unemployed in Poland: Social and Political Implications of Algorithmic Decision Making* (2015),



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Office (Najwyższa Izba Kontroli) and the Human Rights Commissioner. Eventually, Poland's Constitutional Court found the system to be a breach of the Polish Constitution.<sup>695</sup> The system was abolished by December 2019.

In taking steps to implement the GDPR in 2019, Poland provided all banking customers with the right to an explanation regarding their credit assessment when applying for a loan.<sup>696</sup> STIR – System Teleinformatyczny Izby Rozliczeniowej – is a government tool that analyses information collected by financial institutions in order to detect illegal activity. If suspicion arises, the financial institution can block a flagged account for 72 hours at the request of the tax authorities.<sup>697</sup> The algorithms behind the system are not publicly available and a criminal offense – with a maximum prison sentence of up to five years – exists prohibiting the disclosure of relevant information.

### *Public Participation*

Documents relating to Poland's development of its AI policy are accessible on the internet. The process that led to the 'Assumptions to AI Strategy in Poland' document involved the participation of a broad range of representatives of science, business, social organizations and public administration.<sup>698</sup> The subsequently published Draft Policy document was released for public consultation in August 2019 (the consultation period closed in September 2019).<sup>699</sup> According to the government website, 46 entities took part in the consultation.

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[https://panoptykon.org/sites/default/files/leadimage-biblioteka/panoptykon\\_profiling\\_report\\_final.pdf](https://panoptykon.org/sites/default/files/leadimage-biblioteka/panoptykon_profiling_report_final.pdf). See also

<https://legislacja.rcl.gov.pl/docs//2/171820/171829/171833/dokument89898.pdf>.

<sup>695</sup> AlgorithmWatch, *Poland: Government to scrap controversial unemployment scoring system* (Apr. 16, 2019). <https://algorithmwatch.org/en/story/poland-government-to-scrap-controversial-unemployment-scoring-system/>.

<sup>696</sup> Article 46 [http://orka.sejm.gov.pl/opinie8.nsf/nazwa/3050\\_u/%24file/3050\\_u.pdf](http://orka.sejm.gov.pl/opinie8.nsf/nazwa/3050_u/%24file/3050_u.pdf); <https://en.panoptykon.org/right-to-explanation>.

<sup>697</sup> <https://automatingsociety.algorithmwatch.org/report2020/poland/>; <https://www.gov.pl/web/kas/sukces-analzyki-stir>.

<sup>698</sup> Digitization of the Chancery of the Prime Minister, *Artificial Intelligence - Poland 2118* (Nov. 9, 2018) [GT], <https://www.gov.pl/web/cyfryzacja/sztuczna-inteligencja-polska-2118>.

<sup>699</sup> Digitization of the Chancery of the Prime Minister, *Public consultations on the project "Policy for the Development of Artificial Intelligence in Poland for 2019-2027"* (Aug. 21, 2019), [GT], <https://www.gov.pl/web/cyfryzacja/konsultacje->

## *Artificial Intelligence and Democratic Values*

### *Evaluation*

Poland has yet to release its official national policy for the development of Artificial Intelligence. The precursor documents, including the draft policy, address the legal and ethical implications of AI, but it is difficult to predict what form the final policy will take. As a member of the EU, the Council of Europe, and the OECD, Poland has made commitments to upholding human rights and ethics in and endorsed the OECD AI Principles. Despite these commitments, Poland opposed the Council of Europe's Resolution on AI and fundamental rights. Also of concern is the prospect of the administration of justice by opaque AI techniques.

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