

Data rights – Polish perspective



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Legal concepts



No general concept of proprietary/IP rights in unstructured data



The protection of data (as assets) is only possible under additional conditions, such as:

- the type (category) of data (e.g. data constituting copyrightable works)
- their structure (e.g. a database), or
- their confidentiality (e.g. data as a trade secret)



Other protective regimes (such as GDPR, and other secrecy obligations, incl. banking, insurance, telecommunications law, client-attorney privileges etc.) do not protect data as (data holder's) assets



Protection of personal (moral) rights to scientific data (of person who gathered specific data/made a discovery – recognition of the authorship)



Sui generis, proprietary right in geological information vested in the State Treasury

Data ownership – interpretations

“Data ownership” (e.g. in contracts) must be “translated” into recognized concepts, such as contractual obligation to:

- Refrain from using data generated, collected, or otherwise provided in the course of cooperation/provision of services; and/or
- Use such data only in a specific (limited) way (e.g. duty imposed on the customer to keep the data confidential and to use them solely for limited purposes) or allowing their (broader) use only under specific conditions (e.g. for additional charges)

Legal nature of data-related contracts – usually based on concepts recognised under IP laws

Access #1

Perspectives

– vertical vs. horizontal, voluntary (contractual) vs. mandatory



1

existing regulations on the access to Public Sector Information and Public Information

2

reporting duties of private entities

3

powers of investigating bodies

Access #2



1) no (special) regulations – general rules on contacts apply

2) “Policies for the development of artificial intelligence in Poland from 2020”:

- Incentives for data sharing by non-public entities and cultural institutions; incentives for sharing access to data (on a reciprocal basis) by entities collecting significant amounts of data (including businesses); creating commercial standards and incentives to open data that would respect the principles of trade secrets (by 2023);
- Updating the law in the field of providing access to data, including sensitive data (e.g. medical data); preparation and updating of the legal system in terms of the possibility of practical implementations of AI e.g. through new rules on sharing industrial data (by 2027);
- Development of transparent mechanisms for sharing non-public data (long-term goal, beyond 2027).

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