

Message 001

Communication from the Commission - TRIS/(2026) 2590

Directive (EU) 2015/1535

Notification: 2026/0505/PL

Notification of a draft text from a Member State

Notification – Notification – Notifizierung – Нотификация – Oznámení – Notifikation – Γνωστοποίηση – Notificación – Teavitamine – Ilmoitus – Obavijest – Bejelentés – Notifica – Pranešimas – Paziņojums – Notifika – Kennisgeving – Zawiadomienie – Notificação – Notificare – Oznámenie – Obvestilo – Anmälan – Fógra a thabhairt

Does not open the delays - N'ouvre pas de délai - Kein Fristbeginn - Не се предвижда период на прекъсване - Nezahajuje prodlení - Fristerne indledes ikke - Καμμία έναρξη προθεσμίας - No abre el plazo - Viivituste perioodi ei avata - Määräaika ei ala tästä - Ne otvara razdoblje kašnjenja - Nem nyitja meg a késésekét - Non fa decorrere la mora - Atidėjimai nepradedami - Atlikšanas laikposms nesākas - Ma jiftaħ il-perijodi ta' dewmien - Geen termijnbegin - Nie otwiera opóźnień - Não inicia o prazo - Nu deschide perioadele de stagnare - Nezačína oneskorenia - Ne uvaja zamud - Inleder ingen frist - Ní osclaíonn sé na moilleanna

MSG: 20262590.EN

1. MSG 001 IND 2026 0505 PL EN 16-09-2026 PL NOTIF

2. Poland

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4. 2026/0505/PL - SERV60 - Internet services

5. Draft Act amending the Act on the Provision of Electronic Services and certain other Acts (UC141)

6. Information Society services. The draft regulates the obligations of providers of intermediary services regarding illegal content and establishes a national procedure for the application of Article 9 of Regulation (EU) 2022/2065 (Digital Services Act).

7.

8. The draft Act empowers the public prosecutor, the police, the National Revenue Administration, a holder of copyright or related rights, service users and the Border Guard, in relation to offences concerning human trafficking and illegal migration, to apply for an order disabling access to illegal content disseminated via the services of an intermediary service provider, the dissemination of which may constitute a criminal offence, as well as content inciting the commission of a criminal offence.

The draft sets out an exhaustive list of prohibited acts (selected provisions) to which the prescriptive procedure applies, as set out in the Criminal Code, the Fiscal Penal Code, the Act on Copyright and Related Rights, the Act on the Protection of Health against the Consequences of the Use of Tobacco and Tobacco Products, and the Industrial Property Law Act.

The list of offences covered by the procedure has been drawn up on the basis of such offence's connection to the internet, its link to the dissemination of content, and the fact that disabling such content would not have a negative impact on public debate and electoral processes.

The competent authorities for considering the application will be the Chair of the National Broadcasting Council (KRRiT) – in respect of content featured in the service provided by the video-sharing platform – and the President of the Office of Electronic Communications (UKE) – in respect of other content.

The draft also provides for a mechanism to restore access to unreasonably restricted content. The service user will be able to request the removal of restrictions if they consider that the information they have provided does not constitute illegal content and that the restrictions applied were unjustified or imposed as a result of a manifest error on the part of the provider.

The parties to the proceedings before the authority competent to examine the application will be the applicant, the provider of intermediary services and the service user who uploaded the content in question. The service user will be able to remain anonymous; however, taking part in the proceedings or lodging an objection with the court will require them to disclose their identity; this will depend on the service user's own decision.

Following this procedure, the competent authority will issue a decision based on an assessment of the evidence collected. It will order that access to the content be disabled if the evidence unequivocally demonstrates that it is unlawful, or it will order the removal of restrictions imposed by the hosting provider if the evidence shows that the content is not unlawful or that the restriction was the result of an error on the part of the provider. Similarly, the authority will refuse to issue a blocking order where the evidence does not unequivocally confirm that the content is unlawful, and will refuse to issue an order to restore access where the evidence confirms that the content is unlawful or that there was no fault on the part of the provider.

An appeal against the decision may be lodged with a common court. As a general rule, decisions will not be immediately enforceable, except in cases concerning the most serious crimes to the detriment of minors, which may meet the criteria set out in Article 200(3) and (5), Article 200a and Article 200b of the Criminal Code. The solution is intended to ensure effective judicial review of the decisions issued.

Where no effective measures are available to ensure the implementation of a decision ordering the prevention of access to illegal content available through a service provided by an intermediary service provider, in relation to illegal content available through a mere conduit service, the authority competent to examine the application may report the domain to the register of domains used for the dissemination of illegal content. The register will be available only to the President of the UKE, the Chair of KRRiT and telecommunications operators providing internet access services.

The draft provides that, in respect of certain categories of content requiring an in-depth assessment – in

particular hate speech – the final decision on their removal will lie with the common courts.

9. At present, there is no specific legal basis under Polish law that would allow an application to be made to a court or administrative body for an order to take action against illegal content made available on the internet. Exceptions include Article 53 of the Act of 12 July 2024 on Electronic Communications, Article 32c of the Act of 24 May 2002 on the Internal Security Agency and the Intelligence Agency, the Act of 28 July 2023 on Combating Abuse in Electronic Communications, and Article 47t(6) of the Act of 29 December 1992 on Radio and Television. The draft enables a faster response to illegal content, including fake websites, adverts and misleading content. The draft sets out the procedure for issuing orders to take action against illegal content.

9a. The draft Act aims to address an identified gap consisting of the lack of effective legal measures to enable a swift response to the dissemination of illegal content online, and to implement the powers provided for in Article 9 of Regulation (EU) 2022/2065 of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act), hereinafter referred to as ‘the Regulation’.

There is currently no general procedure in Polish law allowing orders to be issued against illegal content made available through intermediary services. The exceptions apply only to selected, specific categories of content. This means that, for the other categories of illegal content, there is currently no general procedure for issuing the orders provided for in Article 9 of the Regulation. Consequently, the level of protection for users in Poland remains lower than in those Member States of the European Union which have implemented mechanisms enabling the application of Article 9 of the Regulation. This highlights the need to develop national mechanisms to tackle illegal content in the digital environment.

The solution proposed in the Act is to establish an administrative procedure enabling the competent authority to issue orders to disable access to illegal content and orders to remove restrictions imposed by a hosting service provider on a service user. The purpose of this solution is to ensure the effective application of Article 9 of the Regulation, which provides for the possibility for the competent national authorities to issue orders concerning illegal content, and also to implement recital 39 thereof, according to which Member States may provide for mechanisms to restore access to content that has been wrongly declared illegal and removed (which is reflected in the draft as an order to remove restrictions imposed by a hosting service provider).

The solution is directly linked to the problem identified, as it provides an effective and, as far as possible, swift mechanism for legal protection against illegal content, the dissemination of which may constitute the offences set out exhaustively. It thus enables the practical application of Article 9 of the Regulation and the achievement of the objective of effectively combating the dissemination of particularly harmful categories of illegal content on the internet.

The draft provides for the involvement of an intermediary service provider and allows for the participation of the service user who published the content being the subject of the proceedings (as well as the possibility for that service user to present their position on the matter and lodge an objection with the court), which serves to uphold the relevant procedural safeguards.

The draft implements the mechanism provided for in the Regulation and ensures the functioning of the general procedure for issuing orders against categories of illegal content which are not already covered by the existing specific national arrangements. At the same time, the scope of application of the proposed

provisions has been limited to the specific prohibited acts listed exhaustively, which have been selected on the basis of objective criteria. These criteria include the online nature of the perpetrator's activities, the link between the act in question and the dissemination of content, and the assessment that disabling access to such content does not have a negative impact on public discourse and democratic processes. Such an approach limits the application of the procedure only to the categories of content for which this measure is actually justified. It also ensures that it is predictable, consistent and aimed at safeguarding important public interests, whilst respecting the rights of users and participants in the digital market.

9b. The draft act affects the functioning of the market for digital services (intermediary service providers) regardless of where they are established in the EU. This impact is limited because the proposal does not prohibit the provision of services, impose a general obligation to monitor content or impose new specific requirements on the digital services themselves. The impact on cross-border trade is limited to the enforcement of orders concerning specific illegal content.

Adoption of the draft is justified. Under Polish law, there is no specific legal basis that would allow an application to be made to a court or administrative body for an order to take action against illegal content made available on the internet. Exceptions include:

- (a) Article 53 of the Electronic Communications Act of 12 July 2024 (Journal of Laws of 2024, item 1221, as amended),
- (b) Article 32c of the Act of 24 May 2002 on the Internal Security Agency and the Intelligence Agency (Journal of Laws 2026, item 937, as amended) (Implementation of the Regulation (EU) 2021/784 of the European Parliament and of the Council of 29 April 2021 on addressing the dissemination of terrorist content online),
- (c) the Act of 28 July 2023 on Combating Abuse in Electronic Communications (Journal of Laws of 2024, item 1803; and 2026, item 252),
- (d) Article 47t(6) of the Act of 29 December 1992 on Radio and Television (Journal of Laws of 2022, item 1722, as subsequently amended).

The absence of a specific procedure for issuing orders under Polish law means that the legal protection afforded to citizens of the Republic of Poland is weaker than that afforded to citizens of other European Union Member States.

An alternative solution would have been to maintain the current legal framework and protect service users solely on the basis of existing measures under criminal or civil law. Another possible solution would also have been to maintain the tackling of illegal content limited solely to the notice and action mechanism applied by intermediary service providers under the Regulation. However, these measures do not ensure the achievement of the objective set out in Article 9 of the Regulation, namely the ability of the competent authorities to issue orders concerning specific illegal content as part of a separate and specialised procedure. They do not guarantee prompt legal protection that is tailored to the specific nature of the dissemination of illegal content in the digital environment either.

The draft adopts the least restrictive approach to achieve the intended objective. The scope of application of the procedure has been limited to exhaustively identified categories of illegal content selected according to objective criteria (as indicated in subparagraph 17). In the case of hosting services, it is provided that the initiation of proceedings is conditional upon prior use of the notice and action mechanism provided for in Article 16 of the Regulation. In addition, measures interfering most strongly with the functioning of the market, such as the mechanism for disabling access to internet domains, can only be applied in the absence of other effective means of enforcing the issued order.

9c. The draft Act ensures that the right balance is struck between protecting the public interest and the restrictions imposed on participants of the internal market.

Although the proposed amendments to the Act on the provision of electronic services do not stem directly from the obligation to implement the provisions of the Regulation, they do enable the application of the procedure set out in Article 9 of the Regulation by specifying which content is deemed unlawful and by aligning the national procedure in this regard. The Act exhaustively lists the types of illegal content to which the order procedure applies, with reference to other legal acts, such as the Criminal Code. The Act itself does not define what is illegal. Instead, the provisions introduce a transparent procedure for certain criminal offences, in line with the principle that what is illegal in the real world remains illegal also in the digital space. The draft Act imposes obligations relating to the establishment of a national procedure enabling the issuance of orders to disable access to illegal content. The National Broadcasting Council (KRRiT) has been designated as the competent authority for issuing orders – in respect of content featured on the video-on-demand platform – whilst the President of the Office of Electronic Communications (UKE) has been designated as the competent authority in respect of other content. Following the proceedings, the competent authority issues a decision in which it:

- (1) orders the disabling of access to illegal content being part of the service provided by the provider of intermediary services;
- (2) orders the removal of the restrictions imposed by the hosting service provider on the service user;
- (3) refuses to order the disabling of access to content appearing as part of the service provided by the intermediary service provider;
- (4) refuses to order the removal of the restrictions imposed by the hosting service provider on the service user.

Providers of intermediary services will therefore be required to implement the decisions in question.

The draft also provides for the maintenance by the President of the UKE of a registry of internet domains used for the dissemination of illegal content. The entry of a domain name in the register shall be applied only where there are no effective measures available that could lead to the enforcement of a decision ordering the disabling of access to illegal content being part of the service provided by an intermediary service provider.

The register will be kept in a computerised system enabling the information contained in the register to be automatically transmitted to the telecommunications operator, which will be required, free of charge, to:

- (1) prevent access to websites using a domain name entered in the register, by removing that domain name from the telecommunications operators' computerised systems used to convert domain names into IP addresses, no later than 48 hours after the entry has been made in the register;
- (2) redirect connections referring to a domain name entered in the register to a website operated by the UKE, containing a notice informing that the requested domain name has been entered in the register;
- (3) restore access to websites using a domain name removed from the register, no later than 48 hours after the domain name has been removed from the register.

Given the draft's objective of effectively combating illegal content online and ensuring adequate legal protection for citizens of the Republic of Poland, and thus exercising the powers provided for in Article 9 of the Regulation, the burdens put in place should be considered adequate.

It should be emphasised that, as regards service users and holders of copyright or related rights, the procedure set out in the draft will, as a general rule, apply only after the notice and action mechanism referred to in Article 16 of Regulation 2022/2065 has been implemented.

10. References to basic texts: No basic texts available

11. No

12.

13. No

14. No

15. Yes

16.

TBT aspects: No

SPS aspects: No

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