

**NATIONAL REGULATORY
AUTHORITY

IN POLAND**

OFFICE OF TELECOMMUNICATIONS REGULATION

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Governmental institution in telecommunications

After coming into force the new Telecommunication Law (adopted on 21 July 2000 and entered into force on 1 January 2001) institution environment in telecommunication has changed. The new independent National Regulatory Authorities (Office of Telecommunications Regulation) with new competencies was established on 7 October 2000. Ministry competent for telecommunications and posts has only dealt with policy and new legislation in the sector. At present Ministry of Infrastructure is responsible for telecommunications matters.

President of the Office of Telecommunications Regulation

The President of the OTR is the competent regulatory authority for telecommunications activities, frequency management and the monitoring of compliance with electromagnetic compatibility requirements.

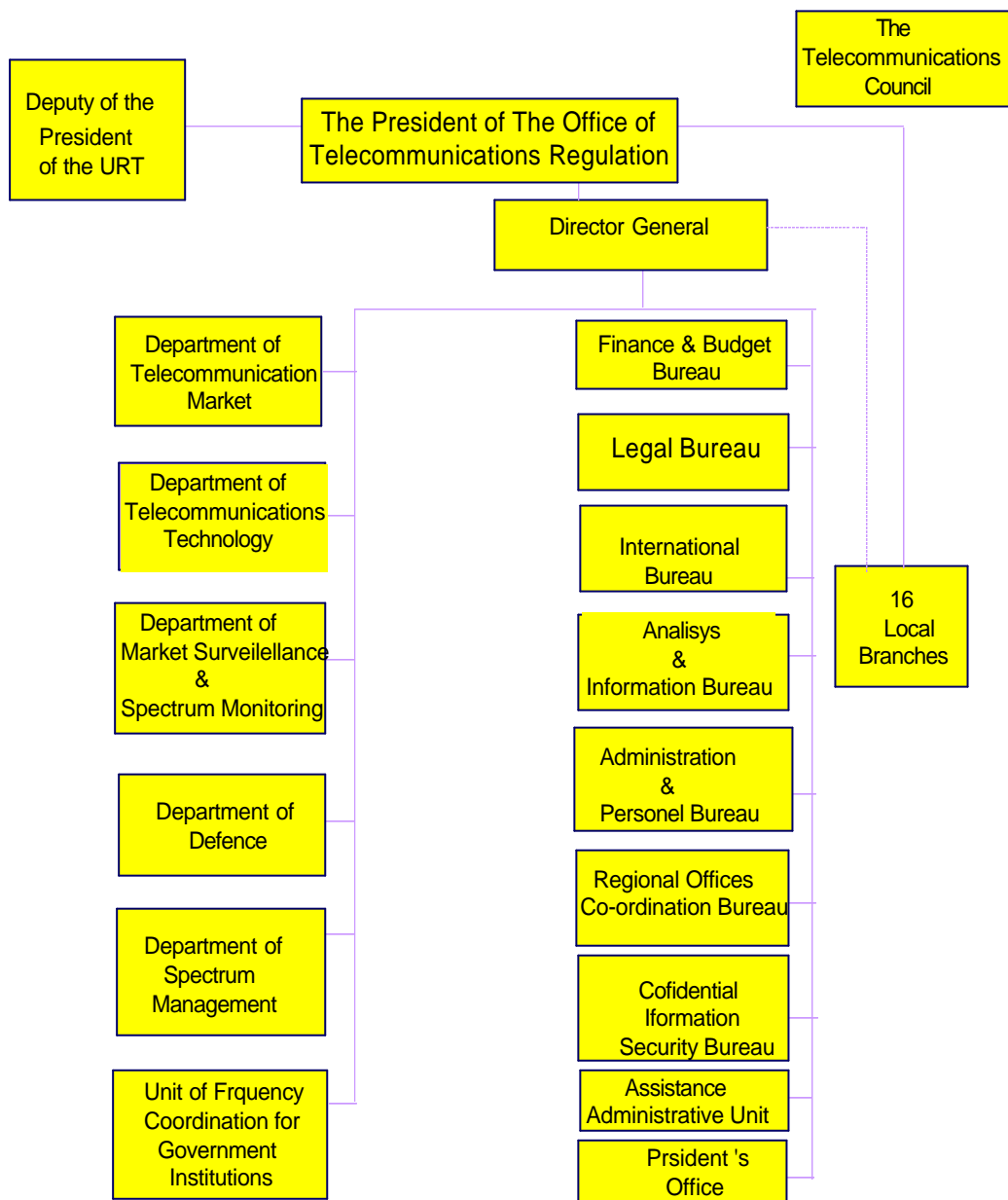
The President of the OTR is a „central-level administration authority”. He is appointed and dismissed by the President of the Council of Ministers. The deputies of the President of the OTR are appointed and dismissed by the President of the Council of Ministers at the request of the President of the OTR.

The competencies of the President of the OTR include, in particular:

- duties relative to the regulation of telecommunications activities and frequency management, as well as the monitoring of compliance with the requirements of electromagnetic compatibility, provided for by the present Act and provisions issued in pursuance thereof,
- collaboration with the minister competent for posts and telecommunications in drafting legal acts within the competencies of the President of the OTR,
- assessment of the operation of the market of telecommunications services and of the telecommunications equipment market,
- intervention in matters related to the functioning of the market of telecommunications services on its own initiative or brought to its attention by the parties concerned, in particular by users and operators, including the making of decisions on these matters within the scope provided by the present Act,
- creating conditions for the development of the domestic radiocommunications service by securing the necessary frequency assignments for Poland and access to satellite-orbital resources,
- duties related to national defence and security,
- co-operation with international telecommunications organisations and competent foreign national authorities, within the competencies of the President of the OTR,
- ruling on the professional qualifications in telecommunications laid down in separate legal provisions,
- inspiring and supporting scientific research.

The President of the OTR shall discharge its duties through the Office of Telecommunications Regulation.

Structure of the Office of Telecommunications Regulation



The core Departments are:

Department of Telecommunications Market Regulation

Department deals with market regulation for telecommunications, especially in the filed with interconnection matters, competition conditions and universal service policy.

Department of Telecommunications Technology

It takes care about numbering management, standards, technical requirements for apparatus, certification process, qualification and authorisation for telecommunication architecture and electromagnetic compatibility.

Department of Spectrum Management

It deals with spectrum frequency management and radiocommunications matters. It issues radio permits and authorisations for cable TV and reserves the frequency.

Department of Market Surveillance and Spectrum Monitoring

It monitors public telecommunications networks, quality of telecommunications services, usage of frequency resources and supervises the compliance with authorisation, permits and frequency reservation. It controls the telecommunications and radio equipment with Polish requirements.

Department of Defence

It plans activities for public operators, co-ordinates realisation of defence tasks and ensures continuous provision of public telecommunication services in emergency situations.Employees.

Regional offices are settled in the province cities and their competencies are the following:

- keeping records, issuing admenting and withdrawing of radio permits in region,
- handling consumer regional complaints on interruption and significantly restriction of the provision of universal service,
- monitoring the compliance with the provision, decision and rulings on telecommunications and posts,
- others (analysis on market, monitoring of the radiocommunications services development, etc.).

The Telecommunications Council acts as a consultative and advisory body to the President of the OTR in matters of telecommunications activities, frequency management and compliance with electromagnetic compatibility requirements. The Telecommunications Council shall submit its opinions on all matters brought before the Council by the President of the OTR. The Council may also submit its opinions on its own initiative on matters within the jurisdiction of the President of the OTR, with the exception of matters concerning the performance of duties relative to national security by the President of the OTR. The President of the OTR seeks the opinion of the Telecommunications Council on matters related to:

- assuring access to universal services,
- the quality of universal services,
- the determination of the principles of network interconnection and operator's co-operation resulting therefrom.

The Council is made up of 15 persons.

Staffing and financing of the OTR

The OTR staff includes civil servants. The total number of employees (including the Regional Offices staff) is 750.

The President of the OTR manages its financial activities in accordance with the principles applicable to budget-funded units.

The expenses of the OTR are financed by the state budget in the amount fixed each year in the Annual Budget Act. There are also supplementary funds available which are used to finance the process of granting permits and certificates, tendering procedures, purchase of monitoring equipment, research, bonuses for the OTR employees.

Co-operation of the OTR with other Polish administrative bodies

In certain cases the OTR acts in co-operation with other Polish administrative bodies.

The President of the OTR collaborate with the minister competent for posts and telecommunications in drafting legal acts within the competencies of the President of the OTR.

Acting in communication with the President of the Office for Competition and Consumer's Protection, The President of the OTR:

- shall by its decision rule that an authorised operator in the area designated by its decision:
 - has a dominant position within the definition of the Act on Counteracting Monopolistic Practices and Protection of Consumer Interests in the market of particular services in the designated area,
 - is a significant market power operator with regard to the provision of a particular service, where this operator's share in the provision of that service in that area is equal to or higher than 25%,
- may by its decision rule that an authorised operator whose market share in the provision of a particular service in a particular area is lower than 25% is a significant market power operator with respect to that service, taking account of its:
 - ability to influence the functioning of the market,
 - revenues relative to the size of market,
 - access to end-users,
 - experience in the provision of telecommunications services in the market.

The President of the OTR acting in communication with the Chairman of the National Broadcasting Council shall award, modify or withdraw frequency reservations to the extent provided for in the Radio and Television Act.

The reservation of the frequencies intended for the terrestrial or satellite radio-diffusion shall be made in communication with the Chairman of the National Broadcasting Council with regard to:

- the identification of television or radio components of the digital composite signal broadcast using the reserved frequency, hereinafter referred to as the „multiplex signal”,
- the proportion of the audio-visual components within the multiplex signal,
- the area in which the multiplex signal can be broadcast.

International Co-operation

The OTR is responsible for co-operation with international and regional telecommunications organizations and competent foreign NRAs and institutions with similar competencies. The OTR as a Polish NRA strictly co-operates with:

- ITU, CEPT, ETSI, satellite organization (like EUTELSAT, INMARSAT, INTELSAT).
- European Institutions related to negotiation process and adjustment Polish regulation to EU requirements.
- National Regulatory Authorities (especially with members states of EU, like Oftel – British NRA, Post & Teletyrelsen – Swedish NRA, Reg TP – German NRA).

On European level OTR participates in PL-EU Association Committee, IRG Committee (as observatory) and many meetings, workshops and seminars related to new regulation in EU telecommunications market.

OTR has also established many bilateral relations with similar institutions. At present Polish NRA implements some assistance Phare projects based on twinning co-operations with other NRAs. It helps to expand relations with other NRAs in other European countries and to find out more about European regulation in telecommunications and the individual implementation methods for regulation, especially for EU Directives.

At the present OTR is the beneficiary of the following Phare projects:

Project Phare PL99.05.03 „Approximation of Polish Telecommunications and Postal Market Regulation to the Requirements of the EU Internal Market”

Beneficiary: OTR, Ministry competent for telecommunications and posts,

Twinning partners: Oftel (British NRA), Post&Telestyrelsen (Swedish NRA), British Radiocommunications Agency

The wide objective of the project is the harmonisation of Polish telecommunications and postal market regulation with the requirements of the EU internal market, including the establishment of regulatory framework of the postal and telecommunications markets. The immediate objectives are: support for the preparation of secondary legislation necessary for the functioning of independent regulatory bodies, including the preparation of appropriate rules and procedures, effective performance of various organisational activities aiming at the creation of regulatory bodies in the telecommunications and postal sectors, performance of organisational activities aiming at the creation of a universal service obligation in the field of telecommunications, performance of various organisational activities aiming at the creation of efficient market surveillance systems in the telecommunications and postal sectors, to be administered by independent regulatory authorities, in conformity with EU models.

The project has been divided into two parts: advice assistance implemented in twinning co-operation (based on twinning covenant signed by partners) and investment part (realised by the Consultant chosen in EU tender procedure).

Twinning part, separated in telecommunications, radiocommunications and posts, composes of 18 components focused on the following matters:

- Legislative framework for the adoption of the *acquis* (an overview of EU regulation, increase of knowledge of the *acquis* among all officials who will work within the OTR),
- Structure and organisation of the NRA (advice on the most appropriate structure for the Regulatory Authorities),
- Interconnection (recommendations concerning best practice as regards the setting up of an interconnection regime),
- Universal Service (recommendations concerning best practice as regards the setting up of an interconnection regime),
- Licencing Regime and allocation of scarce resources (advice on the identification of appropriate mechanisms for financing different regulatory functions including the licensing of scarce resources),
- Billing Systems (to provide the OTR with the knowledge it requires to develop appropriate metering and billing approval schemes),
- Establishing a numbering plan (advice on the efficient and effective allocation of the numbering resource),
- Development of policies to promote competition (advice on the different approaches to promoting competition and monitoring the markets),
- Development of the terminal equipment market (to provide advice and assistance on the certification of technical equipment and assess how existing laboratories in Poland relate to EU requirements),
- Pricing Policies (advice on setting the prices of certain telecoms and postal services offered by relevant operators),

- Creation of Market Surveillance Systems (advise the OTR on the information they will need to collect in order to promote competition and ensure adherence with license conditions and competition rules),
- Monitoring Methods - of both equipment and radio spectrum (to provide advice and assistance on monitoring requirements and to disseminate best practice on spectrum management and monitoring issues including procedures and approaches),
- Development of a consumer protection strategy including procedures for handling consumer complaints (development a consumer protection strategy),
- Co-operation with other Polish organisations,
- Dealing with emergency situations (to advise on the safeguarding of telecoms, radio and postal services in cases of civil emergency and advise how such preparations should be funded),
- Broadcasting and Multimedia (establishment a regulatory framework which maximise the development of broadcasting and multimedia markets)
- Quality of Postal Service (information and recommendations concerning best practice as regards of quality measurement systems for mail services - access to universal services, speed and reliability of mail, security, customer satisfaction, treatment of inquiries and convenience for disabled users).

Overall the project has made excellent progress and it seems to be on the way towards meeting its objectives in most areas. On telecom side, the beneficiaries received substantial support for the preparation of ordinances to the Telecommunication Law, most components of the project have been initiated and many seminars and workshops have been organised. The Polish side has received legal and practical advice on interconnection issues, SMP, number portability, carrier pre-selection, cost accounting system and universal service policy, licencing, billing systems and promotion competition.

On postal side, the half of the planned activities have been carried out. The major part of preparatory work for the creation of the postal regulatory authority was done. Several fact-finding missions and seminars have been held on legal instrument, postal infrastructure, methods of monitoring the postal market and promotion competition in postal sector.

Twinning will have been implemented by February 2002.

The investment part. The main objective is the creation of complex system for frequency management as the first part of the OTR information system. The frequency spectrum management, control and continuous spectrum monitoring constitute at present one of essential elements of the OTR's activity. The permanent and complex analysis of the compliance with national and international electromagnetic compatibility requirements is a requisite of proper and effective utilisation of limited spectrum resources. For the appropriate performance of frequency management in Poland it is necessary to create a comprehensive system, which would improve activities in this area.

Implementation of the investment part has just started. Deadline for this part is July 2002.

Project Phare PL9905.01: Certification and Standards - in telecommunications part

Beneficiaries: Ministry of Economy, Electrotechnical Institute, Office of Technical Inspection, Ministry competent for telecommunications and posts, OTR, Central Office of Measure, Institute of Metal Cutting.

Twinning partners: French Association of Standardisation /AFNOR/, German Regulatory Authority for Telecommunications and Posts - /RegTP/

The wider objective of the project is to increase Poland' ability to adopt a certification and standardisation system in conformity with the EU requirements with regard to the New approach Directives 99/5/EC (RT&TE) of the European Parliament and of the Council of 9 March 1999 relating to radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity and Council Directive 89/336/EC (EMC) of May 1989 on the approximation of the laws of Member States relating to electromagnetic compatibility amended by Directive 91/263/EEC of 29 April, 92/31/EEC of 28 April and

amended by Directive 93/68/EEC of 22 July 1993 and 93/97/EEC of 29 October. The Phare'99 project for the telecommunications sector is implemented in the Office of Telecommunications Regulation but the leading institution is the Ministry of Economy. Activities under the project include the organisation of local offices of the OTR and advice for their local laboratories on obtaining accreditation, notification of equipment in non-harmonised frequencies, publication of interfaces in public telecommunications networks and working out plans for the system of market surveillance under the two Directives. The project's formula will entail seminars, expert advice from the twinning partner (French Association of Standardisation /AFNOR/ in cooperation with Regulatory Authority for Telecommunications and Posts from German - - /RegTP/) and activities in internal working groups in the OTR (framework co-operation with other MS organs, notified bodies and international conformity assessment associations).

Project Phare PL0004.05 „Universal service in telecommunications”.

Beneficiary: OTR, Ministry competent for telecommunications and posts

Twinning partners: not yet selected

The wide objective is continuation of activities, started in the framework of Phare PL99.05.03, for establishment the effective Policy for Universal Service . The immediate objectives are:

- Overview of the current state of needs in the areas of legislation, infrastructure and users, and development of an implementation strategy to address these needs
- Establishment of appropriate legal, economic and institutional instruments to increase the availability of telephony services.
- Development of appropriate regulations with regard to principles of universal service provision
- Identification of which operators (if any) should be the subject of a universal service obligation within relevant geographic areas.
- Consideration of alternative approaches for providing universal service such as through mobile telephony, fixed wireless access, telecottages etc.
- Review of the compensation schemes that could be used to support any universal service obligation, including those in operation in Member States.
- Assessment of the costs and benefits of universal service
- Assessment of the concept of affordability in Poland.
- Establishment of any necessary Price Controls to encourage efficiency and bring prices more into line with costs.
- Improvement of procedures for dealing with access deficits including a timetable for phasing out access deficits to coincide with re-balanced tariffs.
- Development of special schemes to assist low income households and specific minority groups (such as the disabled).
- Creation of complaint procedures and rules.
- Higher infrastructure development and teledensity in rural areas.
- Higher infrastructure investments in rural areas and higher teledensity, diminishing the civilizational gap between rural and urban areas
- Increased co-operation with other Accession Countries concerning the development of Universal Service policies.

It has divided into twinning and investment part.

Twinning component will start after end of twinning partners selection procedure. It will start by January 2002.

Some activities have been undertaken to prepare for the investment part of the project, which is the database for processing information on the provision of universal service and its economic determinants.

The OTR is preparing a project design of the relevant database, sub-bases and relational databases, to be later verified by an analyst who should also categorise the proposed data/parameters.

Project Phare **PL0002.04**: „Certification Phase II” – in telecommunications part

Beneficiaries: Central Institute for Labour Protection, Testing and Research Centre PREDOM-OBR, Central Mining Institute, OTR, National Institute of Telecommunications

Twinning partner: AFNOR, Reg TP

Project is continuation of Phare PL99.05.01 activities. The wide objective is enforcement of institutional capability for implementation of New Approach Directives and implementation institutional framework of conformity assessment to EU requirements.

In twinning part the twinning partner from MS was selected (AFNOR). The Twinning Covenant was prepared, and acceptance and endorsement procedure was initiated.

Initial stage of investment is in preparation, additional data gathered to prepare Terms of Reference (ToR) and Technical Assistance (TA) contract for equipment enhancing the technical capability of measurement testing in the OTR's laboratory. The equipment is provide the up-to-date infrastructure for measurement in the scope of Directives 89/336/EC and 99/5/EC.

Project Phare 2001 – PL01.02.01: „Certification, Accreditation and Standardisation Strengthening” – in telecommunications part

Beneficiaries: Ministry of Economy, Polish Centre for Testing and Certification, Polish Centre for Accreditation, Ministry competent for telecommunications and posts, Polish Committee for Standardisation, OTR, National Institute of Telecommunications, Wroclaw University of Technology.

The project is the continuation of previous Phare projects. The wider objective is establishment of effective functioning for *acquis communautaire* in the field of free movement of goods in harmonised area through efficient transition from certification system exists in Poland to EU conformity assessment system. The project contains the implementation of appropriate Directives and focuses on enhancement of Polish laboratories and standardisation institutions as well as technical assistance (especially the purchase of new equipment).

The project fiche was completed and accepted by the EC Commission. The Financial Memorandum was signed. The twinning partners selection procedure is to be finish as the next step.

In investment part it is foreseen that the tender procedure will start in October 2002.

Project Phare 2002 - „Market surveillance ” - in telecommunications part.

The wider objective is to achieve the effective functioning of *acquis communautaire* in the field of free movement of goods in the harmonised area through a smooth transition from existing inspection system in Poland to the market surveillance system in line with the EU requirements.

The immediate objective is alignment of institutions involved in the Polish market surveillance system with the requirements of European competent bodies by:

Adaptation to meet requirements of the MS competent bodies and MS organs (modernisation, complementation of equipment of their laboratories and training),

IT in MS work implemented; MS databases,

Competencies of the market surveillance personnel upgraded through adequate training,

Technical infrastructure supporting market surveillance activities in Poland strengthened,

Adaptation of the Polish institutions and infrastructure responsible for market surveillance to the Union requirements on the basis of New Approach Directives implemented to the Polish law: 88/378/EEC (safety of toys), 89/336/EEC (Electromagnetic compatibility), 99/5/EC (radio and telecommunication terminals).

The project fiche has been approved by the EC.

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