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## POLAND—New proposal on implementation of a “cookie” rule in Poland



By Joanna Tomaszewska

The Ministry of Administration and Digitalization published a draft law of 5 June amending the Telecommunications Act and other acts, which, in Article 173, proposes a new wording for implementation of Article 5(3) of the so-called amended e-Privacy Directive in Poland.

The draft law proposes an opt-in solution for cookies with a corresponding duty for the entities providing services by electronic means as well as for the telecommunications entrepreneurs to provide information concerning cookies, whilst also enabling a subscriber or an end user to express their consent by settings of software installed in the “terminal equipment”; i.e., device which subscriber or end user uses to use services or by configuration of service.

Under the proposed complex opt-in solution implementing the “cookie rule,” in order to store data and to access the stored data, it is necessary to fulfill two conditions:

- Compliance with the duty for the entities providing services by electronic means as well as for the telecommunications entrepreneurs to supply information to the subscriber or end user; i.e., information provided in advance to the subscriber or end user in an unambiguous and direct manner and in an easy and comprehensive way as regards the purpose for storing data, the manner in which such data will be used and the possibility for the subscriber or end user to define the conditions applicable to the processing of such data by way of settings of software installed in a used by subscriber or end-user terminal equipment or configuration of service;
- Obtaining the consent of subscriber or end user following the provision of information stated above.

The reasoning of the draft law emphasizes that the conditions stated above are required to be met prior to the commencement of any data processing. Information stated in the first point above should be presented in an easy, friendly and comprehensive manner, whereas the consent must always be explicitly provided and may not be expressed by way of passive inaction. All elements of consent must be clear to a person expressing consent, and consent might be also revoked at any time.

Under the draft law, the following shall also constitute the consent of a subscriber or end user to the processing of their personal data:

- Where the subscriber or end user has adjusted the relevant settings in the software installed on their terminal equipment or configured the service in such a manner as would enable the processing of data by

entities providing services by electronic means or telecommunication entrepreneurs;

- Where the default settings of the software installed in the terminal equipment of the subscriber or end user, or the configuration of service, enable the processing of the data, such consent will be assumed if:
  - The entities providing services by electronic means or telecommunication entrepreneurs shall prove that it has fulfilled the duty to provide information referred to in the first point above, and
  - The subscriber or end user, after receiving such information, does not modify the settings of software or configuration of service leading to the removal of data from the terminal equipment and preventing the future storage thereof.

The reasoning to the draft law emphasizes that a subscriber or end user should have ongoing and easy access to the information stated above and should also have the possibility to influence the conditions governing the processing of the personal data not merely by altering browser settings but also by configuring the service itself; e.g., using the functionality offered by the service provider's website.

The draft law is currently at the advanced stage of a legislative process in Poland, and it should be submitted to the Parliament before summer holidays this year. As Poland is late with the implementation of the provisions of the amended so-called e-Privacy Directive into the Polish law, the draft law should be enacted as quickly as possible. Therefore, it will be interesting to see what would be the final wording of the provisions of the Telecommunications Act implementing the "cookie rule" in Poland as well as if any guidelines on the practical aspects of implementation of the "cookie" rule will be available soon.

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