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Poland – Telecommunications Act



Full title:	Telecommunications Act of 16 July 2004 (OJ 2004 No. 171, item. 1800)
Title of relevant section:	PART VII Telecommunications confidentiality and end user data protection PART XI Penal provisions and financial penalties
Relevant Amendments	- The Act of 16 November 2012 amending the Act - the Telecommunications Law and other laws (Journal of Laws 2012, no 241. item. 1445); Entry into force 21/01/2013 http://isap.sejm.gov.pl/DetailsServlet?id=WDU20120001445 Art. 1(122) replaced Art. 173 - Act of 30 th May 2014 on Consumer Rights (OJ 2014 item. 827); Entry into force: 25/12/2014 http://isap.sejm.gov.pl/DetailsServlet?id=WDU20140000827 Art. 48 replaced Art. 172(1) and added Art. 172(3)
PART VII	Telecommunications confidentiality and end user data protection
Article 172	<ol style="list-style-type: none"> 1. It is prohibited to use telecommunications terminal equipment¹ and automated calling systems for direct marketing purposes unless the subscriber² or end user³ has given his prior consent. 2. The provision of paragraph 1 shall be without prejudice to the bans and limitations concerning the transfer of unsolicited commercial information resulting from separate acts. 3. The use of the measures referred to in paragraph. 1, for the purposes of direct marketing cannot be carried out at the expense of the consumer⁴.
Article 173	<ol style="list-style-type: none"> 1. The storing of information or the gaining of access to information already stored in the telecommunications terminal equipment of a subscriber or a user is only allowed on condition that: <ol style="list-style-type: none"> 1) The subscriber or the end user is directly informed in advance in an unambiguous, easy and understandable manner with regard to: <ol style="list-style-type: none"> a. The purpose of storing and the manner of gaining access to this information,

¹ Art. 1(43) Telecommunications Act: *Telecommunications terminal equipment* – telecommunications equipment intended for connection directly or indirectly to network termination points. i.e. telecommunications terminal equipment refers to telephone (landline and mobile) and fax in this context

² Art. 2(1) Telecommunications Act: *Subscriber* – an entity who is a party to an agreement for the provision of telecommunications services concluded with a provider of publicly available telecommunications services.

³ Art. 2(50): *End user* – an entity using or requesting a publicly available telecommunications service to satisfy its own needs

⁴ Art. 2(18): *Consumer* – any natural person who requests or uses publicly available telecommunications services for purposes outside his/her trade, business or profession

URL of source: <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20041711800>

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- b. The possibility to define the conditions of the storing or the gaining of access to this information by using settings of the software installed on its telecommunications terminal equipment or service configuration;
- 2) The subscriber or end user, having obtained information referred to in point (1), gives his/her consent;
 - 3) The stored information or the gaining of access to this information do not cause changes in the configuration of the subscriber's or end user's telecommunications terminal equipment and in the software installed on this equipment.
2. The subscriber or end user may give its consent referred to in paragraph 1(2) using settings of the software installed on its telecommunications terminal equipment or service configuration.
 3. The conditions referred to in paragraph 1 shall not apply, if the storing of or the gaining of access to information referred to in paragraph 1 is necessary to:
 - 1) Transmit communication over a public telecommunications network;
 - 2) Provide a telecommunications service or services by electronic means, requested by the subscriber or an end user.
 4. Entities providing telecommunications services or services by electronic means may install software on the subscriber's or end user's terminal equipment intended for using these services or use this software, provided that a subscriber or an end user:
 - 1) Is directly informed, before the installation of the software, in an unambiguous, easy and understandable manner, about the purpose of installing this software, and about the manner in which the service provider uses this software;
 - 2) Is directly informed, in an unambiguous, easy and understandable manner, about the manner in which the software may be removed from the end-user's or subscriber's terminal equipment;
 - 3) Gives its consent for the installation and use of the software prior to its installation.
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Article 174

Where the provisions of the Act require the consent of a subscriber or an end user, this consent:

- 1) May not be presumed or implied by a declaration of will of other content;
 - 2) May be expressed by electronic means provided that it is recorded and confirmed by the user;
 - 3) May be withdrawn at any time, in a simple manner and free of charge.
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PART XI

Penal provisions and financial penalties

Art. 209(1)

Any person who:

(25) fails to fulfil obligations to obtain the consent of a subscriber or an end user, referred to in Articles 161, 166, 169 and 172-174,

- shall be liable to a financial penalty.

Art. 210

1. A financial penalty referred to in Article 209 (1) shall be imposed by the President of UKE, by means of a decision, in the amount of up to 3% of the revenues of a fined entity for the past calendar year. The decision to impose a financial penalty shall not be immediately enforceable.
 2. In determining the amount of a financial penalty, the President of UKE shall take account of the scope of the violation, the past record of an entity and its financial potential.
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