

POLAND, OBLIGATION UNDER ARTICLE 10 of DIRECTIVE 2006/24/EC.

Attachment 1:

Information for the European Commission on the statistics on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or a public communications network in connection with Article 10 of Directive 2006/24/EC and the Article 180g (2) of the Polish Telecommunications Act (Polish Official Journal of 3rd August 2004 [Dz.U.04.171.1800] with further amendments).

1) Transposition

The Directive 2006/24/EC has been transposed into the Polish law by:

- a) The Act of 24th April 2009 amending Telecommunications Act as well as several other Acts (Polish Official Journal no 85 item 716 [Dz.U.2009.85.716]),
- b) The Ordinance of the Minister of Infrastructure of 28th December 2009 on the detailed list of data as well as on categories of public communications network operators or/and providers of publicly available electronic communications services obliged to their retention and storage (Official Journal no 226 item 1828 [Dz.U.2009.226.1828]),
- c) The Ordinance of the Minister of Infrastructure of 30th December 2009 on the template form to be used by the telecom undertaking when transmitting to the President of UKE the information on the provision of data (Official Journal of 2010, no 3, item 15 [Dz.U.2010.3.15]).

2) Scope of transposition

- a) The scope of data subject to retention is compliant with Directive 2006/24/EC. Some broadening of the scope of data retention obligation in terms of quality has been introduced under the Polish law. That is, data retention obligation in Poland covers also location data without being restricted to cell ID and its geographic coordinates. Thus, the obligation was extended to data identifying beam and working range of antenna of BTS which serves a subscriber. It is considered to introduce an obligation of data retention not only at the beginning of connection in mobile telephony network but also on location, during the connection and at the time of call termination (which is in particular important for connections carried out in movement);
- b) For all categories of services the obligation of data retention equals 24 months. After this period all data are destroyed except for data which have already been accessed by competent state authorities, Courts or Public Prosecutor Office.
- c) No telecommunications undertaking (as defined under the Directive) is exempted from the obligation of data retention and in this respect nor temporary neither individual exemption can be granted.
- d) It is possible to carry out data retention jointly (technically and financially) under agreement made by several telecom undertakings. It is also possible to outsource the execution of data retention obligation to an external telecom undertaking.
- e) Data are protected and secured in the same way as personal data subject to confidentiality protection. Technical and organizational conditions of protection, access, authorization etc are defined by the telecommunication undertaking itself.
- f) It is possible to access remotely to the collected data. Works are carried out currently in order to define technical conditions of interface between telecommunications undertaking and

competent state authorities. The use of author's systems is allowed, however it is conditional on prior agreement granted by competent state authorities.

- g) The cost of data retention is incurred 100% by the telecommunications undertakings. The law does provide neither for cost reimbursement nor for fee for provision of data.

3) Statistics on the use of data subject to retention.

Since the Ordinance to which reference is made in point 1 c) entered into force on 28th January 2010 the reporting obligation (imposed under the Polish law on the telecom undertakings and not on Courts, Public Prosecutor Office or other competent State authorities) arose for the first time in 2010 and concerns data for 2009.

The statistical data were processed on the basis of information from sample of 156 telecommunications undertakings representative for telecom market. This sample includes dominant operator on the market of fixed telephony services, a group of several biggest operators providing services on the market of fixed telephony, all operators providing mobile telephony services, a large group of operators providing Internet access services and other electronic communications services carried out in IP technology.

In 2009 the above mentioned undertakings received 1,06 million requests for access to data from competent State authorities, Courts and Public Prosecutor Office.

Approximately 99% of requests were addressed to the five biggest operators, namely: to dominant operator in the market of fixed calls *Telekomunikacja Polska S.A.* – ca 13,6 %, and to the following mobile telephony operators: *PTK Centertel sp. Z.o.o.* – ca 26,3%, *Polkomtel S.A.* ca 20,7%, *PTC Spółka z.o.o.* ca 30,1%, *P4* – 8,2 %. The competent State authorities have not addressed any requests to 67 undertakings, which constitute 45% of the representative sample.

As far as the period of storage of data is concerned 71% of data which were made available fell into the category of the first four months of storage. Detailed data referring to the period of storage defined by law are presented in the table as well as in the form of graph (see attachment 2).

In 10 771 cases the requests for data from competent State authorities, Courts and Public Prosecutor Office were denied. It constitutes 1,02% of the total number of requests.

Statistical data are presented in the form of overall table which is conform with the template form to be used by undertakings to transmit the data to the NRA, as well as in the form of graphs (see attachment 1).