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*Practice Group(s):
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Poland - Cookies served on a tray. New regulations on the use of cookie files

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Regulations in Poland relating to entities providing services electronically (meaning practically all entities running Internet websites) have been amended. These changes derive from the new provisions of the EU law, in particular Directive 2002/58/EC of the European Parliament and of the Council concerning the processing of personal data and the protection of privacy in the electronic communications sector.

The implementation of the EU regulations has been carried out by amending Poland's Telecommunication Law with respect to installing cookie files on a computer. In Internet parlance, a "cookie" is a small file that records which sites a user has visited, and may contain some information about that site. They are widely used across the Internet, and are often required for a website to function correctly. Until now, the Polish law allowed websites to place cookies on an Internet user's computer or other device without the user's consent. The provisions relating to websites use of cookies were based on the "opt-out" model, which meant that the user could object to storing a cookie, yet the user's prior and actively expressed consent was unnecessary.

The new law changes the situation. It is based on the "opt-in" model. Now, a user of an Internet website must first be informed for what purposes information gathered by the website on his computer would be stored and accessed. Moreover, the user has to be informed that he is able to specify the conditions of storing and accessing cookies by choosing particular settings of the relevant software installed on his machine. Only after the website provides this information in clear and simple language can the user express consent for the website to use cookies. Without such consent the website operator cannot store information on the computer or device of the Internet user. In other words, it is the user who now decides whether cookies will be installed on the user's computer or device. Consent, however, is not necessary in every situation. For example, the law allows for cookies to be installed without consent if it is necessary to deliver the service requested by the Internet user.

Consent for creating a cookie must be clear and should be given prior to installation of the cookie file. Consent cannot be interpreted from a user's statement on a different issue or agreement. The Internet user can withdraw the consent at any time and such withdrawal may not result in any difficulties or fees for the user. The provisions additionally state that recording of information on the Internet user's computer or device can occur upon consent expressed by the user through applying the relevant software settings installed on his computer – i.e., settings which allow cookies.

These new regulations raise many practical questions for website operators. However, not adhering to the new rules may result in serious sanctions. A financial penalty totaling up to 3% of the yearly turnover may be imposed on the website owner by the Chairman of the Electronic Communication Office.

In order to ensure compliance of website functioning with the law, it may be necessary to change the model of the website's operation. Introduction of new procedures as well as new terms and conditions of using websites (including the language of the notification for the website users on cookies) may be required. Should you need any additional information regarding these issues, please do not hesitate to contact us.

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