

## From the Editor

### Articles

#### Andrzej Nałęcz, **Traffic Management under Regulation 2015/2120 Laying Down Measures Concerning Open Internet Access**

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- I. Introduction
- II. Selected technical aspects of Internet traffic
  1. Introduction to technical solutions of dealing with Internet traffic
  2. Network congestion on the Internet
- III. The term 'traffic management'
  1. No definition of traffic management
  2. Terms used in Regulation 2015/2120
- IV. Traffic management under Regulation 2015/2120
  1. Types of traffic management under Regulation 2015/2120 – general issues
  2. Reasonable traffic management measures
  3. Exceptional traffic management measures
  4. Contractual obligations and commercial practices outside the scope of traffic management measures
- V. Conclusions

**Summary:** The article deals with traffic management under Regulation 2015/2120. Basic technical aspects of Internet traffic have been described. The terms used in Regulation 2015/2120 have been characterized, in particular traffic management itself and traffic management measures. Both reasonable and exceptional traffic management measures in line with Regulation 2015/2120 have been analyzed in detail. Contractual obligations and commercial practices, which do not constitute traffic management measures but are functionally similar to them, have also been mentioned.

**Key words:** traffic management, reasonable traffic management measures, exceptional traffic management measures, commercial practices.

**JEL:** K23

#### Ewa M. Kwiatkowska, Małgorzata Skórzewska-Amberg, **Information and Communication Technologies in Health Care – Infringement of Privacy Issues**

##### Table of contents:

- I. Introduction
- II. Information and Communication Technologies – legal conditions
- III. Electronic Health Records – legal regulations
- IV. Medical Information System
- V. Electronic Health Records in practice
- VI. Computerization of health care
- VII. Conclusions

**Summary:** The article concerns issues of Information and Communication Technologies (ICT) in the health care sector. The legal concepts used in the discussed field are presented. Threats related to the protection of sensitive data, including information on patients' health, are highlighted. The state of the computerization of health care in Poland has been analyzed in the context of the forthcoming introduction of the obligation to create medical records in an electronic form.

**Key words:** Internet of Things; privacy protection; personal data protection; Medical Information System; Electronic Health Records.

**JEL:** I18, K14

Małgorzata Olszewska, **Legal rules on cookie files and the protection of personal data of the Internet user**

**Table of contents:**

- I. Introduction
- II. Protection of telecommunications terminal equipment and information stored therein in EU law
- III. Terms and conditions of legal use of software in telecommunications terminal equipment in Polish law
- IV. User consent for cookies
- V. Final remarks

**Summary:** The objective of the study is to indicate the relationship between legal rules contained in provisions on personal data protection and in telecommunications law with relation to legitimate use of software installed on user devices (called in English 'cookies'). The subject of the article is to show applicable legal rules in the context of the reform of the legal framework of the European Union on the protection of personal data, with particular attention to the way information is provided and consent [from the users] obtained, by those service providers that are obliged to do so.

**Key words:** personal data, cookies, internet, access, information

**JEL:** K23

Justyna Michalak-Królicka, **Response by the President of UKE to enquiries made by telecommunications enterprises regarding their entry into the register of telecommunications enterprises**

**Table of contents:**

- I. Introduction
- II. Disclosure obligation under Article 9 of the Administrative Procedures Code
- III. Disclosure obligation under the provisions of the Telecommunications Law
- IV. Disclosure obligation under the Act on access to public information
- V. Conclusions

**Summary:** The article presents the prerequisites for assessing the existence of the obligation of the President of UKE, as a body of central government administration, to respond to the enquiries of a telecommunications enterprise about satisfying the conditions of entry into the register of telecommunications enterprises, taking into account the nature of the services which that entrepreneur is planning to provide. In order to determine the sources of the obligation of the President of UKE

to reply to the enquiries of a telecommunications enterprise regarding the interpretation of legal rules applicable to telecommunications activities, the article presents an analysis of the provisions of the Administrative Procedures Code, the Telecommunications Law and the provisions of the Act on access to public information. The issue presented in this article is significant from the point of view of the practice of conducting telecommunications activities.

**Key words:** the President of the UKE; obligations of the President of the UKE; telecommunications enterprise; entry into the register of telecommunications enterprises; disclosure obligation of an administration body; conducting telecommunications business activities;

**JEL:** K23

Stanisław Piątek, **Certified mechanism of monitoring internet access service quality**

**Table of contents:**

- I. Introduction
- II. Liability for internet access service quality
- III. Functions of certified mechanism of monitoring internet access service quality
- IV. Requirement and procedure of certification
- V. Usage of certified monitoring mechanism
- VI. Legal nature of measurement results
- VII. Scope and methodology of quality measurements
- VIII. Activities of national regulatory authorities to establish certified mechanisms of monitoring
- IX. Summary

**Summary:** The article analyses legal, technical and organizational conditions related to the establishment of certified mechanisms of monitoring internet access service quality in EU Member States in connection with the provisions of EU Regulation 2015/2120. Certified mechanisms are necessary in order to allow consumers to take advantage of the presumption of an inappropriate service performance by a service provider in case of discrepancies between the measurements results and the quality requirements set out in the service contract. The article analyses the nature of the obligation of providers concerning service quality, effects of performing the measurements, making use of the certified mechanism, and the requirements of certification. Presented are the activities undertaken in EU Member States, in particular in Poland, to establish certified monitoring mechanisms as well as main difficulties in performing this task.

**Key words:** internet access, service quality, certification, data transmission, inappropriate service performance

**JEL:** K23.

Jędrzej Skrzypczak, **Legal regulations on media ownership in selected European Union countries**

**Table of contents:**

- I. Introduction
- II. Pluralism, concentration and media ownership structure
- III. Regulations concerning media concentration in selected EU countries
- IV. Conclusions

**Summary:** This paper deals with the issue of media pluralism and media ownership by presenting relevant regulations in selected EU countries.

**Key words:** media pluralism; media ownership; media freedom; legal regulations.

**JEL:** K23.

Maciej Rogalski, **Regulation of the Council of Ministers on the requirements and ways of ensuring the conditions of access and recording of telecommunications transmission and data**

#### **Table of contents**

- I. Introduction
- II. Exemption from the obligation to provide access and recording conditions
  1. Scope of the exemption in the Regulation
  2. Difficulties in providing conditions for access and recording conditions by small and medium entrepreneurs
  3. Widening the scope of redundancies
- III. Protection of classified information
  1. Interpretation doubts
  2. Limitation of the requirements for the protection of classified information
- IV. Summary

**Summary:** This article analyzes the draft of the Regulation of the Council of Ministers on the requirements and manner of providing access and recording conditions for telecommunications data and data transmission and types of telecommunications activities or types of telecommunications undertakings not subject to this obligation. This project will finally replace the Regulation of the Council of Ministers of 13.9.2005 on the fulfillment by telecommunications undertakings of duties and obligations for defense, state security and public order. Two issues are the subject of the analysis in this paper, both of which have important practical significance. First, the scope of the exemption from the obligation to provide conditions for access and recording. Second, the duties concerning the protection of classified information. The Draft Regulation foresees an extension of the scope of the exemptions from these obligations, which, however, still appear to be insufficient. On the other hand, solutions benefiting small and medium-sized enterprises are being adopted with respect to the protection of classified information in the Draft Regulation.

**Key words:** obligations for eligible entities; access and recording conditions; protection of classified information

**JEL:** K23

#### **Legislation and Case Law Reviews**

Jakub Woźny, **Text messages from a computer – how to classify electronic communications service. Comments on EFTA Court judgment of 22 December 2016, case No E-6/16**

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- V. Summary

Tadeusz Piątek, **Processing personal data by online service providers. Comments to the judgment of the European Court of Justice of 19 October 2016, case No C-582/14**

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- IV. Analysis of the Court regarding the first question
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Kamil Kosmala, **Transfer of frequency spectrum rights. Comments to the verdict of the Court of Appeals in Warsaw of 20 April 2017, case No I ACa 123/16**

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- II. Civil law aspects of the transfer of rights to frequency spectrum
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**Books Reviews**

**Piotr Brzeziński, Bartłomiej Opaliński, Maciej Rogalski, *Gromadzenie i udostępnianie danych telekomunikacyjnych* (*Retention and transfer of telecommunications metadata*), C.H. Beck, Warszawa 2016 (reviewed by Daniel Szmurło).**