Poland would like to thank the Presidency for the work done, which aimed to bring the proposed ePrivacy regulation closer to the GDPR. Considering the discussion that took place during the last meeting of the working group, written comments of states and numerous comments sent by interested organizations, Poland presents the following doubts regarding proposed changes. Due to the fact that consultations mainly concerned issues related to art. 6-6c and art. 8, comments were limited to this scope. At the same time, I would like to point out that Poland maintains its comments regarding emarketing, processing of data for the purpose of preventing child sexual abuse, the supervisory authority (article 18), the right to lodge a complaint with a supervisory authority (Article 21) and cooperation between authorities.

I. Legitimate interests, deleting other bases covered by legitimate interests – art. 6b i art. 8

1. Poland understands that contained in art. 6b and art. 8 safeguards referring to "legitimate interests" are aimed at strengthening the protection of processed data. Addition of safeguards and at the same time deletion of existing specific grounds for data processing (art. 6b para 1 letter a, b, f, art. 8 para 1 letter da, e) could tighten the data processing conditions compared to the ePriv text version from the end of last year. Processing of data based on a "legitimate interest" requires prior impact assessment (article 35 of the GDPR), which may result in the need to consult the DPA (article 36 (1-3) of the GDPR) and informing the user about the right to object.
2. It seems unjustified that in every case of metadata processing due to legitimate interests, the user may object to this processing - this applies to processing for the purpose of detecting or stopping fraudulent or abusive use of, or subscription to, electronic communications services, or in the case of processing to ensure mandatory technical quality of service requirements. Raising an objection in this case will prevent the provider from taking action to ensure quality requirements, even though it is their responsibility under EECC or Regulation (EU) 2015/2120. The provider will also not be able to prevent fraud or abuse in the use of services or subscription to these services, especially if the entity itself committing these abuses objects to the processing of metadata. Perhaps it would be necessary to examine the possibility of restoring the deleted independent bases of data processing without these additional safeguards. It is also possible to consider that the current bases should be included in other bases, e.g., corresponding to the processing necessary to comply with the legal obligation, or the processing necessary to provide services.
3. The way of exercising the right to object in art. 6b and art. 8 raises doubts - it should be specified how to object. Is it expedient to regulate this matter different from the GDPR? According to art. 21 of the GDPR:

   „1. The data subject shall have the right to object, on grounds relating to his or her particular situation, at any time to processing of personal data concerning him or her which is based on point (e) or (f) of article 6(1), including profiling based on those provisions. The controller shall no longer process the personal data <u>unless the controller demonstrates compelling legitimate grounds for the processing which</u>

override the interests, rights and freedoms of the data subject or for the establishment, exercise or defence of legal claims."

4. In the scope of art. 8 it seems reasonable to restore deleted bases, which clearly indicated the possibility of data processing when it is necessary to maintain or restore the security of information society services or end-user terminal equipment, prevent fraud or detect technical faults, or when it is necessary to update the software necessary for security reasons. Doubts are raised here by the legitimacy of objection by the user, especially with the proposed wording of art. 8, which does not reflect the wording of art. 21 of the GDPR. In addition, the imprecise wording of art. 8 para 1 letter g) may suggest that processing based on a legitimate interest is prohibited when the user is a child, while it seems that the above-mentioned bases can also protect such a user, e.g. by restoring the security of services or terminal equipment.

5. PL is strongly against the deletion of letter (f) of art. 6b. In our opinion, the letter should be maintained. The wording of recitals is not enough to ensure interests of official statistics which serves fundamental public goods. Such an approach is consistent with GDPR regulation.

II. Other remarks

1. Article 6 para. 1 letter a, art. 6b paragraph 1 letter ca - in the scope of replacing the following base for data processing - "necessary to provide an electronic communication service" to "achieve the transmission of the electronic communication" Poland supports the questions of other delegations regarding the question whether the ancillary services are covered by this regulation.
2. Change in art. 6 para. 1 letter can narrow the possibilities of data processing from electronic communications, as the existing (deleted) "provide an electronic communication service" is a broader concept than the current "achieve the transmission of the electronic communication" - the latter seems to limit the possibility of data processing only in the scope which is necessary for technical establishment of communication, bypassing e.g. the processing of data necessary e.g. for service accountability. At the same time, such a change is not "compensated" by changes in subsequent regulations. The introduced art. 6b paragraph 1 letter ca) (it is necessary for the provision of an electronic communications service for which the end-user has concluded a contract) also focuses on the performance of the service without directly determining whether on this basis you can e.g. process the data necessary to perform the contract concluded with subscriber, including for billing the service provided.
   Expressed in art. 6 para 1 letter a) and art. 6b para 1 letter ca) the legal grounds for data processing are intended to be equivalent to the legal basis provided for in the GDPR, which is the necessity of data processing to perform the contract to which the data subject is a party or to take action at the request of the data subject before concluding the contract (art. 6 para 1 letter b) of the GDPR), however, also in this case there is no consistency between e-Privacy and the GDPR, as both acts use different

terminology in this respect, which can have practical significance for the use of these regulations.

3. Art. 6b para 1 letter d - Poland would like to obtain confirmation that the "vital interest of natural person" basis may also constitute a sufficient basis for the Police to obtain metadata to save human life or health or to support search or rescue operations. In Poland, the Police's right to obtain metadata to save human life or health or to support search or rescue operations results from art. 20c paragraph 1 of the Act of April 6, 1990 on the Police.