

Artykuły RODO, które będą przedmiotem dyskusji w dniu 23 kwietnia 2013 r.:		
Obecne brzmienie	Proponowana zmiana	Komentarze
<p><i>Article 22 Responsibility of the controller</i></p> <p>1. Taking into account the nature, scope and purposes of the processing and the risks for the (..) rights and freedoms of data subjects, the controller shall (...) implement appropriate measures to ensure and be able to demonstrate that the processing of personal data is performed in compliance with this Regulation .</p>		<i>Nie zgłaszamy uwag</i>
<p>2. (...)</p>	<p><u>2. The measures provided for in paragraph 1 shall in particular include:</u></p> <p><u>(a) keeping the documentation pursuant to Article 28;</u></p> <p><u>(b) implementing the data security requirements laid down in Article 30;</u></p> <p><u>(c) performing a data protection impact assessment pursuant to Article 33;</u></p> <p><u>(d) complying with the requirements for prior authorisation or prior consultation of the supervisory authority pursuant to Article 34(1) and (2);</u></p> <p><u>(e) designating a data protection officer pursuant to Article 35(1);</u></p> <p><u>(f) establishing and documenting the measures referred to in Article 11.</u></p>	<p>Projekt rozporządzenia powinien doprecyzować, co znaczą <i>appropriate measures</i> aby uniknąć wątpliwości interpretacyjnych. Zaproponowana zmiana nie zmierza do poszerzenia zakresu obowiązków administratora danych ponieważ odwołuje się do wymogów i procedur, które zostały przewidziane w innych przepisach projektowanego rozporządzenia.</p>

<p>2a. <u>Where proportionate in relation to the processing activities , the measures referred to in paragraph 1 shall include the implementation of:</u></p> <p>(a) <u>appropriate data protection policies by the controller ;</u></p> <p>(b) <u>mechanisms to ensure that the time limits established for the erasure and restriction of personal data are observed .</u></p>	<p>2a. Where (...) relevant, the measures referred to in paragraph 1 shall include the implementation of:</p> <p>(c) appropriate data protection policies by the controller ;</p> <p>(d) mechanisms to ensure that the time limits established for the erasure and restriction of personal data are observed .</p>	<p>Zaproponowana zmiana ma na celu ograniczenie swobody oceny administratora danych co do tego, czy zastosowanie określonych środków jest zasadne. Test proporcjonalności, jeśli jedynym oceniającym ma być administrator danych, otwiera duże pole do interpretacji niekorzystnych dla podmiotu danych.</p>
<p>3. (...)</p>	<p><u>3. The controller shall implement mechanisms to ensure the verification of the effectiveness of the measures referred to in paragraphs 1 and 2. If proportionate, this verification shall be carried out by independent internal or external auditors.</u></p>	<p>Zaproponowana zmiana ma na celu przywrócenie mechanizmów umożliwiających zweryfikowanie, czy administrator danych wdrożył odpowiednie środki i czy dochował przy tym należytej staranności. Ma to duże znaczenie szczególnie, jeśli projekt rozporządzenia będzie dopuszczał szeroki zakres oceny samego administratora.</p>
	<p><u>3a. The controller shall make public a summary of the measures referred to in paragraphs 1 and 2.</u></p>	<p>Wprowadzenie tego obowiązku ma na celu zwiększenie transparentności i umożliwienie podmiotowi danych oceny środków wdrażanych przez administratora.</p>
<p>4. (...)</p>		<p><i>Nie zgłaszamy uwag</i></p>

<p>Article 23 Data protection by design and by default</p> <p>1. Having regard to the state of the art and the cost of implementation and taking account of the risks for rights and freedoms of individuals posed by the nature, scope or purpose of the processing, the controller shall, both at the time of the determination of the means for processing and at the time of the processing itself, implement (...) technical and organisational measures (...) appropriate to the activity being carried on and its objectives, including the use of pseudonymous data, in such a way that the processing will meet the requirements of this Regulation and ensure the protection of the rights of (...) data subjects.</p>	<p>Article 23 Data protection by design and by default</p> <p>1. Having regard to the state of the art and the cost of implementation and taking account of the risks for rights and freedoms of individuals posed by the nature, scope or purpose of the processing, the controller shall, both at the time of the determination of the means for processing and at the time of the processing itself, implement technical and organisational measures appropriate to the activity being carried on and its objectives, including the use of pseudonymous data, in such a way that the processing will meet the requirements of this Regulation and ensure the protection of the rights of the data subject.</p> <p><u>Where a controller has carried out a data protection impact assessment pursuant to Article 33, the results of this shall be taken into account when developing the measures referred to in this paragraph.</u></p>	<p>Zaproponowana zmiana ma na celu doprecyzowanie, jakie kryteria powinny być wzięte pod uwagę przy wdrażaniu środków ochrony prywatności (w ramach zasady <i>privacy by design and by default</i>). Odwołanie do <i>data protection impact assessment</i> jest szczególnie uzasadnione na gruncie koncepcji <i>risk based approach</i>.</p>
<p>2. The controller shall implement <u>appropriate measures</u> for ensuring that, by default, only (...) personal data (...) which are necessary for each specific purpose of the processing <u>are processed</u>; (...) <u>this applies to the amount of (...) data collected,</u> (...) <u>the period of their storage and their</u></p>	<p>2. The controller shall implement appropriate measures for ensuring that, by default, only personal data which are necessary for each specific purpose of the processing are processed (...) <u>and are especially not collected or retained beyond the minimum necessary for those purposes, both in terms</u></p>	<p>(1) Zaproponowane zmiany mają na celu doprecyzowanie koncepcji <i>privacy by default</i> oraz podniesienie standardu ochrony podmiotu danych, szczególnie w odniesieniu do ryzyka udostępnienia danych nieograniczonej liczbie odbiorców. Takie ryzyko istnieje nie tylko w przypadku</p>

<p>accessibility. In particular, those mechanisms shall ensure that by default personal data are not made accessible to an indefinite number of individuals <u>without human intervention</u>.</p>	<p><u>of the amount of the data and the time of their storage. This shall be ensured using technical and/or organisational measures, as appropriate.</u> In particular, those mechanisms shall ensure that by default personal data are not made accessible to an indefinite number of individuals (...) <u>and that data subjects can control the distribution of their personal data.</u></p>	<p>automatycznego przetwarzania danych, czego autorzy poprawki do projektu Komisji Europejskiej wydają się nie zauważać.</p> <p>(2) Proponujemy również przywrócenie bardzo ważnego wymogu, jakim jest zbieranie i przechowywanie minimalnej ilości danych potrzebnych do realizacji zakładanych celów. Jest to zgodne z zasadą minimalizacji danych.</p> <p>(3) Doprecyzowanie w postaci zdania “This shall be ensured using technical and/or organisational measures, as appropriate” ma na celu uspołnienie ustępu 1 i 2 oraz ograniczenie możliwych wątpliwości interpretacyjnych.</p>
<p><u>2a. The controller may demonstrate compliance with the requirements set out in paragraphs 1 and 2 by means of a certification mechanism pursuant to Article 39.</u></p>		<p><i>Nie zgłaszamy uwag</i></p>
<p>3. (...)</p>		<p><i>Nie zgłaszamy uwag</i></p>
<p>4. (...)</p>		<p><i>Nie zgłaszamy uwag</i></p>

<p><i>Article 24 Joint controllers</i></p> <p>1. (...) Joint controllers shall determine their respective responsibilities for compliance with the obligations under this Regulation, in particular as regards the (...) exercising <u>of the rights of the data subject and their respective duties to provide the information referred to in Articles 14 and 14a</u> , by means of an arrangement between them <u>unless the respective responsibilities of the controllers are determined by Union or Member State law to which the controllers are subject</u> .</p>		<p><i>Nie zgłaszamy uwag. Tę poprawkę oceniamy bardzo pozytywnie.</i></p>
<p>2. <u>The data subject may exercise his or her rights under this Regulation in respect of and against each of the joint controllers.</u></p>		
<p><i>Article 25 Representatives of controllers not established in the Union</i></p> <p>1. In the situation referred to in Article 3(2), the controller shall designate <u>in writing</u> a representative in the Union .</p>		<p><i>Nie zgłaszamy uwag</i></p>
<p>2. This obligation shall not apply to:</p> <p>(a) a controller established in a third country where the Commission has decided that the third country ensures an adequate level of protection in accordance with Article 41 ; or</p> <p>(b) an enterprise employing fewer than 250 persons <u>unless the processing it carries out involves high risks for the rights and freedoms of data subjects, having regard to the nature, scope and</u></p>	<p>2. This obligation shall not apply to:</p> <p>(...)</p> <p><u>(a) an enterprise processing personal data relating to fewer than 250 data subjects</u> unless the processing it carries out involves high risks for the rights and freedoms of data subjects, having regard to the nature, scope and purposes of the processing ; or</p>	<p>(1) Proposed wording of this paragraph makes the obligation to appoint a representative in the EU conditional upon the number of employees. This exception would make effective enforcement very difficult, if not impossible, causing a major loophole. Smaller companies can hold enormous numbers of records and should therefore appoint a representative in the EU in order to allow for effective enforcement of the Regulation.</p>

<p><u>purposes of the processing</u> ; or (c) a public authority or body ; or (d) (...).</p>	<p>(b) a public authority or body.</p>	<p>Without such a representative, a European DPA would have to go to a court in its own country to ask for confirmation of its jurisdiction if the data controller does not comply. This is extremely time consuming as well as ineffective, as nothing prevents a data controller from going to a court in its own place of residence asking for a contradictory ruling.</p> <p>(2) Moreover, the concept of „employing” has not been defined in the draft regulation, which will inevitably lead to interpretative doubts with regard to various legal forms of employment that are available in each Member State.</p> <p>(3) We suggest to base the representation of the number of persons whose data are processed by the controller. This may relate to an employee, a customer, a prospect or a natural person in any other quality. The amount of personal data being processed should be the determining factor, not size of enterprise.</p> <p>(4) Additionally, the exception for controllers established in third countries regarding which a positive adequacy decision has been issued should be removed.</p>
<p>3. The representative shall be established in one of those Member States where the data subjects whose personal data are processed in relation to the offering of goods or services to them, or whose behaviour is</p>		<p><i>Nie zgłaszamy uwag</i></p>

monitored, reside.		
<u>3a. The representative shall be mandated by the controller to be addressed in addition to or instead of the controller by in particular supervisory authorities and data subjects, on all issues related to the processing of personal data, for the purposes of ensuring compliance with this Regulation.</u>		<i>Nie zgłaszamy uwag</i>
4. The designation of a representative by the controller shall be without prejudice to legal actions which could be initiated against the controller itself.		<i>Nie zgłaszamy uwag</i>
<i>Article 26 Processor</i> 1. (...) The controller shall <u>use only</u> a processor providing sufficient guarantees to implement appropriate technical and organisational measures (...) in such a way that the processing will meet the requirements of this Regulation (...).		<i>Nie zgłaszamy uwag. Tę poprawkę oceniamy bardzo pozytywnie.</i>
2. [<u>Where the processor is not part of the same group of undertakings as the controller</u>] the carrying out of processing by a processor shall be governed by a contract <u>setting out the subject-matter and duration of the contract, the nature and purpose of the</u>	2. [Where the processor is not part of the same group of undertakings as the controller ,] the carrying out of processing by a processor shall be governed by a contract setting out the subject-matter and duration of the contract, the nature and purpose of the	Zaproponowana zmiana (por. nowy punkt (h)) zmierza do penego wdrożenia koncepcji <i>data protection by design</i> . Wprowadzenie takiego obowiązku w swojej opinii do projektu rozporządzenia postuluje także Europejski Inspektor Ochrony Danych Osobowych.

<p><u>processing, the type of data and categories of data subjects</u> or other legal act binding the processor to the controller and stipulating in particular that the processor shall:</p> <p>(a) process the personal data only on instructions from the controller (...) , unless required to do so by Union or Member State law to which the processor is subject–;</p> <p>(b) (...) ;</p> <p>(c) take all (...) measures required pursuant to Article 30 ;</p> <p>(d) <u>determine the conditions for enlisting another processor (...)</u> ;</p> <p>(e) as far as (...) possible, <u>taking into account</u> the nature of the processing, <u>assist the controller in responding</u> to requests for exercising the data subject’s rights laid down in Chapter III;</p> <p>(f) <u>determine the extent to which– the controller is to be assisted in ensuring compliance with the obligations pursuant to Articles 30 to 34;</u></p> <p>(g) (...) not process the personal data <u>further after the completion of the processing specified in the contract or other legal act, unless there is a requirement to store the data under Union or Member State law to which the processor is subject;</u></p> <p>(h) make available to the controller (...) all information necessary to <u>demonstrate compliance with the obligations laid down</u></p>	<p>processing, the type of data and categories of data subjects or other legal act binding the processor to the controller and stipulating in particular that the processor shall:</p> <p>(a) process the personal data only on instructions from the controller, unless required to do so by Union or Member State law to which the processor is subject ;</p> <p>(b) (...) ;</p> <p>(c) take all measures required pursuant to Article 30 ;</p> <p>(d) determine the conditions for enlisting another processor ;</p> <p>(e) as far as possible, taking into account the nature of the processing, assist the controller in responding to requests for exercising the data subject’s rights laid down in Chapter III;</p> <p>(f) determine the extent to which the controller is to be assisted in ensuring compliance with the obligations pursuant to Articles 30 to 34;</p> <p>(g) not process the personal data further after the completion of the processing specified in the contract or other legal act, unless there is a requirement to store the data under Union or Member State law to which the processor is subject;</p> <p>(h) make available to the controller all information necessary to demonstrate compliance with the obligations laid down in</p>	
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in this Article.	this Article. <u>(i) take into account the principle of data protection by design.</u>	
3. The controller and the processor shall <u>retain in writing or in an equivalent form</u> the controller's instructions and the processor's obligations referred to in paragraph 2 .		
4. (...) .		<i>Nie zgłaszamy uwag, choć konsekwencje usunięcia tego przepisu nie są dla nas do końca jasne. Zakładamy, że w przypadku przetwarzania danych wykraczającego poza umowę o przetwarzaniu danych w grę wejdą odpowiednie przepisy rozporządzenia traktujące o przetwarzaniu danych bez podstawy prawnej (w tym sankcje). Jeśli miałyby być inaczej, ta zmiana wymaga rewizji.</i>
4a. <u>The processor shall inform the controller if the processor considers that an instruction by the controller would breach the Regulation .</u>		<i>Nie zgłaszamy uwag. Tę poprawkę oceniamy bardzo pozytywnie.</i>
5. (...) .		<i>Nie zgłaszamy uwag</i>

<p><i>Article 27 Processing under the authority of the controller and processor</i> (...)</p>		<p><i>Nie zgłaszamy uwag. Zakładamy, że zasada, o której była mowa w usuniętym przepisie, wynika z samej istoty umowy pomiędzy administratorem danych i przetwarzającym. Jeśli jest inaczej, ta zmiana wymaga rewizji.</i></p>
<p><i>Article 28 <u>Records of categories of processing activities</u></i> 1. Each controller (...) and, if any, the controller's representative, shall maintain <u>a record regarding all categories of processing activities</u> under its responsibility—. <u>This record</u> shall contain (...) the following information: (a) the name and contact details of the controller <u>and</u> any joint controller (...), <u>controller's representative and data protection officer</u>, if any; (b) (...); (c) the purposes of the processing (...); (d) a description of categories of data subjects and of the categories of personal data relating to them; (e) the (...) <u>regular</u> categories of recipients of the personal data (...); (f) where applicable, <u>the categories of transfers of personal data to a third country or an international organisation, (...) [and, in case of transfers referred to in point (h) of Article 44(1), the details of appropriate safeguards]</u>—;</p>	<p><i>Article 28 Records of categories of processing activities</i> 1. Each controller and, if any, the controller's representative, shall maintain a record regarding all categories of processing activities under its responsibility. This record shall contain the following information: (a) the name and contact details of the controller and any joint controller, controller's representative and data protection officer, if any; (b) (...); (c) the purposes of the processing <u>including the legitimate interests pursued by the controller where the processing is based on point (f) of Article 6(1)</u>; (d) a description of categories of data subjects and of the categories of personal data relating to them; (e) the (...) categories of recipients of the personal data (...); (f) where applicable, the categories of transfers of personal data to a third country or an international organisation,</p>	<p>(1) Zaproponowane zmiany zmierzają do przywrócenia wymogów, jakie pojawiły się w projekcie Komisji Europejskiej, w tych miejscach, które uważamy za kluczowe z perspektywy ochrony interesów podmiotów danych. Zarówno informacja o tym, jaki uzasadniony interes jest realizowany przez administratora danych, jak i wskazanie kraju trzeciego lub organizacji międzynarodowej, do którego/której przekazywane są dane osobowe, powinny znaleźć się w standardowej dokumentacji prowadzonej przez administratora danych, aby ułatwić organowi nadzorcemu kontrolę w tym zakresie.</p> <p>(2) Jednocześnie zgadzamy się na złagodzenie innych wymogów, w szczególności obowiązku udokumentowania każdej operacji na danych, co faktycznie wydaje się nadmiarowe, a wręcz mogłoby utrudniać efektywną kontrolę tych operacji.</p> <p>(3) Propozycja przywrócenia punktu (h) jest związana ze zmianami zaproponowanymi w</p>

<p>(g) a general indication of the time limits for erasure of the different categories of data ;</p> <p>(h) (...)-.</p>	<p><u>including the identification of that third country or international organisation</u> [and, in case of transfers referred to in point (h) of Article 44(1), the details of appropriate safeguards] ;</p> <p>(g) a general indication of the time limits for erasure of the different categories of data ;</p> <p>(h) <u>the description of the mechanisms referred to in Article 22(3).</u></p>	<p>artykule 22 (3).</p> <p>(4) Zwracamy również uwagę na pewną niespójność w numeracji tego artykułu: w nowej redakcji brakuje ustępu 2.</p>
<p><u>2a. Each processor shall maintain a record of all categories of processing activities carried out on behalf of a controller, containing:</u></p> <p><u>(a) the name and contact details of the processor and of each controller on behalf of which the processor is acting, and of the controller's representative, if any;</u></p> <p><u>(b) the name and contact details of the data protection officer, if any;</u></p> <p><u>(c) the categories of processing carried out on behalf of each controller;</u></p> <p><u>(d) where applicable, the categories of transfers of personal data to a third country or an international organisation and, in case of transfers referred to in point (h) of Article 44(1), the documentation of</u></p>		<p><i>Nie zgłaszamy uwag</i></p>

<p><u>appropriate safeguards.</u></p>		
<p>3. <u>On request</u>, the controller and the processor and, if any, the controller's representative, shall make the <u>record</u> available (...) to the supervisory authority.</p>		<p><i>Nie zgłaszamy uwag</i></p>
<p>4. The obligations referred to in paragraphs 1, (...) <u>to 3</u> shall not apply to:</p> <p>(a) (...) <u>high</u> risks for , the rights and freedoms of data subjects</p> <p>(b) an enterprise or a body employing fewer than 250 persons that is processing personal data only as an activity ancillary to its main activities ; or</p> <p>(c) <u>categories of processing activities which by virtue of the nature, scope or purposes of the processing</u> are unlikely to represent <u>high</u> risks for , the rights and freedoms of data subjects</p>	<p>4. The obligations referred to in paragraphs 1 to 3 shall not apply to (...) an enterprise or a body <u>processing personal data relating to fewer than 250 data subjects unless the processing it carries out involves high risks for the rights and freedoms of data subjects, having regard to the nature, scope and purposes of the processing.</u></p> <p>(...)</p>	<p>(1) Zaproponowana zmiana jest analogiczna do zmiany w artykule 25 (por. uzasadnienie). Ma przede wszystkim na celu ujednoczenie podejścia do obowiązków administratora danych z uwagi na poziom ryzyka (por. artykuł 25). W naszej opinii nie jest uzasadnione przyjęcie niższego standardu w odniesieniu do obowiązku prowadzenia dokumentacji, którego uciążliwość wydaje się niższa, niż obowiązku ustanowienia przedstawiciela w UE.</p> <p>(2) Kryterium zaproponowane w punkcie (c) uważamy za szczególnie uznaniowe i otwierające szerokie pole do nadużyć, nawet przy przyjęciu ogólnego podejścia opartego na ryzyku. Dlatego postulujemy jego wykreślenie.</p>
<p>5. (...)</p>		<p><i>Nie zgłaszamy uwag</i></p>
<p>6. (...)</p>		<p><i>Nie zgłaszamy uwag</i></p>

<p>Article 29 Co-operation with the supervisory authority (...)</p>	<p>Article 29 Co-operation with the supervisory authority</p> <p><u>1. The controller and the processor and, if any, the representative of the controller, shall co-operate, on request, with the supervisory authority in the performance of its duties, in particular by providing the information referred to in point (a) of Article 53(2) and by granting access as provided in point (b) of that paragraph.</u></p> <p><u>2. In response to the supervisory authority's exercise of its powers under Article 53(2), the controller and the processor shall reply to the supervisory authority within a reasonable period to be specified by the supervisory authority. The reply shall include a description of the measures taken and the results achieved, in response to the remarks of the supervisory authority.</u></p>	<p>Cel usunięcia w całości artykułu 29 nie jest dla nas jasny. W naszej ocenie zawiera on konkretne i istotne obowiązki wyznaczające standard współpracy administratora danych oraz przetwarzającego dane z organem nadzorczym. Postulujemy zatem jego przywrócenie.</p>
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<p><i>Article 33 Data protection impact assessment</i></p> <p>1. Where the processing, taking into account the nature, scope or purposes of the processing, is likely to present specific risks for the rights and freedoms of data subjects, the controller or processor shall, prior to the processing—, carry out an assessment of the impact of the envisaged processing operations on the protection of personal data. <u>(...)</u>.</p> <p>2. The following processing operations (...) present specific risks referred to in paragraph 1:</p> <p>(a) a systematic and extensive evaluation (...) of personal aspects relating to (...) natural persons (...), which is based on automated processing and on which <u>decisions</u> are based that produce legal effects concerning (...) <u>data subjects</u> or adversly affect <u>data subjects</u>;</p> <p>(b) information on sex life, health, race and ethnic origin (...), where the data are processed for taking (...) decisions regarding specific individuals on a large scale ;</p> <p>(c) monitoring publicly accessible areas, especially when using optic-electronic devices (...) on a large scale ;</p>	<p><i>Article 33 Data protection impact assessment</i></p> <p>1. Where the processing, taking into account the nature, scope or purposes of the processing, is likely to present specific risks for the rights and freedoms of data subjects, the controller or processor shall, prior to the processing , carry out an assessment of the impact of the envisaged processing operations on the protection of personal data.</p> <p>2. The following processing operations present specific risks referred to in paragraph 1:</p> <p>(a) a systematic and extensive evaluation of personal aspects relating to natural persons <u>or for analysing or predicting in particular the natural person's economic situation, location, health, personal preferences, reliability or behaviour</u>, which is based on automated processing and on which decisions are based that produce legal effects concerning data subjects or (...) <u>significantly</u> affect data subjects, <u>including any further processing operation of the kind referred to in Article 20(1)</u>.</p> <p>(b) information on sex life, health, race and ethnic origin, where the data are processed for taking decisions regarding</p>	<p>(1) In the interest of clarity and consistency, this article should demands a data protection impact assessment for all profiling operations, as determined by article 20. There is no reason to differentiate between various kinds of profiling operations. Other changes are related to changes proposed in Article 20.</p> <p>(2) In line with the EDPS opinion, we advocate removing the limitation to processing “on a large scale”.</p>
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<p>(d) personal data in large scale processing systems containing genetic data or biometric data ;</p> <p>(e) other <u>operations where (...) the competent supervisory authority considers that the processing is likely to present specific risks for the fundamental rights and freedoms of data subjects .</u></p>	<p>specific individuals (...);</p> <p>(c) monitoring publicly accessible areas, especially when using optic-electronic devices (...);</p> <p>(d) personal data in (...) processing systems containing genetic data or biometric data ;</p> <p>(e) other operations where the competent supervisory authority considers that the processing is likely to present specific risks for the fundamental rights and freedoms of data subjects .</p>	
<p><u>2a. The supervisory authority shall establish and make public a list of the kind of processing which are subject to the requirement for a data protection impact assessment pursuant to point (e) of paragraph 2. The supervisory authority shall communicate those lists to the European Data Protection Board.</u></p>		<p><i>Nie zgłaszamy uwag</i></p>
<p><u>2b. Prior to the adoption of the list the supervisory authority shall apply the consistency mechanism referred to in Article 57 where the list provided for in paragraph 2a involves processing activities which are related to the offering of goods or services to data subjects in several Member States, or to the monitoring of their behaviour, or may substantially affect the free movement of</u></p>		

<u>personal data within the Union.</u>		
<p>3. The assessment shall contain at least a general description of the envisaged processing operations, an assessment of the risks <u>for</u> rights and freedoms of data subjects, the measures envisaged to address the risks , safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate compliance with this Regulation , taking into account the rights and legitimate interests of data subjects and other persons concerned .</p>	<p>3. The assessment shall contain at least a general description of the envisaged processing operations, an assessment of the risks for rights and freedoms of data subjects, <u>including in particular the risk of discrimination being embedded in or reinforced by the operation</u>, the measures envisaged to address the risks, safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate compliance with this Regulation, taking into account the rights and legitimate interests of data subjects and other persons concerned.</p>	<p>The proposed change is aimed at addressing particular risk of discrimination related to profiling operations.</p>
<p>4. (...)</p>		
<p>5. Where a controllers is a public authority or body— and where the processing pursuant to point (c) <u>or (e)</u> of Article 6(1) <u>has a legal basis in Union law or the law of the Member State to which the controller is subject</u>, paragraphs 1 to 3 shall not apply, unless Member States deem it necessary to carry out such assessment prior to the processing activities.</p>	<p>5. Where a controllers is a public authority or body and where the processing pursuant to point (c) or (e) of Article 6(1) has a legal basis in Union law or the law of the Member State to which the controller is subject, paragraphs 1 to 3 shall not apply, <u>if</u> Member States deem it necessary to carry out such assessment <u>during the legislative process leading to the legal obligation on the controller</u>.</p>	<p>It should be clarified that the exemption from having to do a data protection impact assessment in paragraph (5) only applies if an equivalent assessment has been carried out during the legislative process leading to the legal obligation on the controller.</p>
<p>[6. The Commission shall be empowered to adopt delegated acts in accordance with</p>		

<p>Article 86 for the purpose of further specifying the criteria and conditions for the processing operations likely to present specific risks referred to in paragraphs 1 and 2 and the requirements for the assessment referred to in paragraph 3, including conditions for scalability, verification and auditability. In doing so, the Commission shall consider specific measures for micro, small and medium-sized enterprises.</p>		
<p>7. The Commission may specify standards and procedures for carrying out and verifying and auditing the assessment referred to in paragraph 3. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2) .]</p>	<p>7. <u>Subject to the previous provisions, within six months of the coming into force of this Regulation,</u> the Commission <u>shall</u> specify standards and procedures for carrying out and verifying and auditing the assessment referred to in paragraph 3. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).</p>	<p>Due to the importance of standards and procedures for carrying out and verifying and auditing the privacy impact assessment, it is necessary to clarify when they will be specified and make sure that the Commission will specify them.</p>
<p><i>Article 34 Prior (...) consultation</i> 1. (...)</p>	<p><i>Article 34 Prior authorisation and prior consultation</i></p> <p><u>1. The controller or the processor as the case may be shall obtain an authorisation from the supervisory authority prior to the processing of personal data, in order to ensure the compliance of the intended processing with this Regulation and in particular to mitigate the risks involved for</u></p>	<p>Cel, jakiemu ma służyć całkowita rezygnacja z obowiązku uzyskania uprzedniej autoryzacji organu nadzorczego w przypadku szczególnie ryzykownych operacji na danych, nie jest dla nas jasny. Uważamy, że należy przywrócić ten obowiązek.</p>

	<p><u>the data subjects</u></p> <p><u>(a) where a controller performs any processing operation of the kind referred to in Article 20(1) of this Regulation in relation to minors;</u></p> <p><u>(b) where a controller or processor adopts contractual clauses as provided for in point (d) of Article 42(2)</u></p> <p><u>(c) where a controller does not provide for the appropriate safeguards in a legally binding instrument as referred to in Article 42(5) for the transfer of personal data to a third country or an international organisation.</u></p> <p><u>(d) where a controller or processor transfers personal to a third country or an international organisation based on the derogations in Article 44.</u></p> <p><u>(e) where a controller performs processing operations referred to in Article 81(3) or Article 83(3).</u></p>	
<p>2. The controller or processor shall consult the supervisory authority prior to the processing of personal data where a</p>	<p>2. The controller or processor shall consult the supervisory authority prior to the processing of personal data where a data</p>	<p><i>Por. uzasadnienie do artykułu 33 (7)</i></p>

<p>data protection impact assessment as provided for in Article 33 indicates that <u>the processing is</u> likely to present a high degree of specific risks . (...)</p>	<p>protection impact assessment as provided for in Article 33 indicates that <u>the processing is</u> likely to present a high degree of specific risks, <u>including in particular the risk that the operations may have a discriminatory impact.</u></p>	
<p>3. Where the supervisory authority is of the opinion that the intended processing referred to in paragraph 2 <u>would</u> not comply with this Regulation, in particular where risks are insufficiently identified or mitigated, it shall <u>within a maximum period of 6 weeks following the request for consultation</u> (...) make appropriate <u>recommendations to the data controller or processor. This period may be extended for a further month, taking into account the complexity of the intended processing. Where the extended period applies, the controller or processor shall be informed within one month of receipt of the request of the reasons for the delay .</u></p>		<p><i>Nie zgłaszamy uwag</i></p>
<p><u>3a. During the period referred to in paragraph 3, the controller [or processor] shall not commence processing activities .</u></p>		<p><i>Nie zgłaszamy uwag</i></p>
	<p><u>3b. Where the supervisory authority is of the opinion that the intended processing may pose a risk of discriminatory treatment of data subjects, it shall order</u></p>	<p>Zaproponowana zmiana doprecyzowuje uprawnienia organów nadzorczych w przypadku stwierdzenia istotnego ryzyka</p>

	<u>that the actual effects of the processing shall be monitored for such effects, and that it shall be provided with all the necessary information to assess this, at regular intervals.</u>	dyskryminacji w związku z przetwarzaniem danych osobowych. Ma ona związek z wcześniejszymi zmianami, w tym do artykułu 33.
4. (...)		<i>Nie zgłaszamy uwag</i>
5. (...) 6. <u>When consulting the supervisory authority pursuant to paragraph 2,</u> the controller or processor shall provide the supervisory authority, on request, with the data protection impact assessment provided for in Article 33 and any (...) information <u>requested by</u> the supervisory authority <u>(...)</u> .		<i>Nie zgłaszamy uwag</i>
7. Member States shall consult the supervisory authority during the preparation— of (...) legislative <u>or regulatory measures which provide for the processing of personal data and which may significantly affect categories of data subjects by virtue of the nature, scope or purposes of such processing (...).</u>	7. Member States shall consult the supervisory authority in the preparation of legislative measures <u>to be adopted by the national parliament or of a measure based on such a legislative measure, which defines the nature of the processing, in order to ensure the compliance of the intended processing with this Regulation and in particular to mitigate the risks involved for the data subjects.</u>	Proponujemy przywrócenie szerszego obowiązku konsultowania z organami nadzorczymi przepisów, które mogą wpłynąć na standardy ochrony danych osobowych. To organ nadzorczy, a nie legislator, powinien decydować o tym, czy dane przepisy prawa mogą w istotny sposób wpłynąć na określone kategorie podmiotów danych.
[8. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements		<i>Nie zgłaszamy uwag</i>

for determining the high degree of specific risk referred to in point (a) of paragraph 2.].		
9. (...)		