

Artykuły RODO, które będą przedmiotem dyskusji w dniu 9 kwietnia 2013 r.:		
Obecne brzmienie	Proponowana zmiana	Komentarze
Article 4 (3) 'processing' means any operation or set of operations which is performed upon personal data or sets of personal data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, or erasure;		
<u>Article 4 (3a) 'restriction of processing' means limiting the processing of personal data to their storage;</u>		Bez wiedzy na temat konsekwencji przyjęcia takiej definicji, trudno ocenić jej zasadność lub poprawność.
Article 4 (7) 'recipient' means a natural or legal person, public authority, agency or any other body to which the personal data are disclosed [; however, authorities which may receive data in the framework of a particular inquiry shall not be regarded as recipients];	(7) 'recipient' means a natural or legal person, public authority, agency or any other body to which the personal data are disclosed; <b>except for:</b> <ul style="list-style-type: none"> <li>- data subjects</li> <li>- persons who, under the direct authority of the controller or the processor, are authorized to process the data;</li> <li>- data processors</li> <li>- representative of the administrator not established in the EU</li> <li>- public authorities to which data are</li> </ul>	W celu uniknięcia wątpliwości związanych, chociażby z realizacją obowiązków, ciążących na administratorze pojęcie „odbiorcy” powinno być zawężone do osób trzecich, które muszą legitymować się własną przesłanką przetwarzania danych. Definicja ta nie powinna dotyczyć również organów administracji publicznej.

	<b>transferred with regard to official proceedings</b>	
<p>Article 4 (13) 'main establishment' means</p> <ul style="list-style-type: none"> <li>- as regards the controller, the place of its establishment in the Union where the main decisions as to the purposes, conditions and means of the processing of personal data are taken; if no decisions as to the purposes, conditions and means of the processing of personal data are taken in the Union, (...) the place where the main processing activities in the context of the activities of an establishment of a controller in the Union take place;</li> <li>- as regards the processor, <u>the place of its central administration in the European Union, and, if it has no central administration in the European Union, the place where the main processing activities take place;</u></li> </ul>		
<p>Article 4 (14) 'representative' means any natural or legal person established in the Union who, explicitly designated by the controller, <b><u>represents</u></b> the controller, with regard to the obligations of the controller under this Regulation <b><u>and may be addressed, in addition to or instead of the controller, by the supervisory authorities for the purposes of ensuring compliance with this Regulation;</u></b></p>		
<p>Article 4 (15) 'enterprise' means any <b><u>natural</u></b></p>	<b>Proponujemy dodanie przepisu o</b>	Proponujemy również wyłączenie z zakresu

<p><b>or legal person</b> engaged in an economic activity, irrespective of its legal form, (...) including (...) partnerships or associations regularly engaged in an economic activity;</p>	<p><b>następującej treści:</b>  <b>Article 2 (5) This Regulation shall not apply to data, which have been made public in the commercial registers, in accordance with the laws of Members States and where such data identifies a natural person, who is an enterprise.</b></p>	<p>Rozporządzenia danych osobowych osób fizycznych prowadzących działalność gospodarczą. Takie wyłączenie dotyczyłoby jedynie danych ujawnianych w rejestrach publicznych. Trudno znaleźć uzasadnienie, czemu osobie fizycznej decydującej się na rozpoczęcie działalności gospodarczej, powinna przysługiwać taka sama ochrona, jak konsumentowi a nie innym uczestnikom rynku.</p>
<p>Article 4 (20) <u>'Information Society service' means any service as defined by Article 1 (2) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services.</u></p>		<p>Bez wiedzy na temat konsekwencji przyjęcia takiej definicji, trudno ocenić jej zasadność lub poprawność.</p>
<p>Article 5  Personal data must be:</p> <p>(a) processed lawfully, fairly and in a transparent manner in relation to the data subject;</p> <p>(b) collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes; <u>further processing of data for historical, statistical or scientific purposes shall not be considered as</u></p>		

<p><u>incompatible subject to the conditions and safeguards referred to in Article 83;</u></p> <p>(c) adequate, relevant, and limited to the minimum necessary in relation to the purposes for which they are processed (...);</p> <p>(d) accurate and, <u>where necessary</u>, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay;</p> <p>(e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the data will be processed (...) for historical, statistical or scientific (...) purposes <b><u>pursuant to</u></b> Article 83 (...);</p> <p><b><u>(ee) processed in a manner that ensures appropriate security of the personal data and confidentiality of the processing;</u></b></p> <p>(f) processed under the responsibility (...) of the controller (...).</p>	<p>(c) <del>adequate</del>,—relevant, and limited to the minimum necessary in relation to the purposes for which they are processed (...);</p> <p>(ee) <u>processed in a manner that ensures appropriate security of the personal data and confidentiality of manner in which the processing takes place;</u></p>	<p>Trudno wskazać praktyczną różnicę pomiędzy „adequate” i „relevant”. Z tego względu jedno z tych określeń powinno zostać usunięta.</p> <p>W polskiej wersji Projektu zwrot “adequate” został przetłumaczony jako „prawidłowe” co nie wydaje się trafnym rozwiązaniem mając na uwadze treść art. 5 c).</p> <p>Zakładamy, że to nie sam fakt przetwarzania powinien być niejawnym sposobem, w jaki się ono odbywa.</p>
<p><b>PROFILING</b></p>		

<p>Recital 58 Every <b><u>data subject</u></b> should have the right not to be subject to a <b><u>decision</u></b> which is based on profiling (...). However, such measure should be allowed when expressly authorised by <b><u>Union or Member State</u></b> law, including for <b><u>fraud monitoring and prevention purposes and to ensure the security and reliability of a service provided by the controller, or</u></b> carried out in the course of entering or performance of a contract <b><u>between the data subject and a controller,</u></b> or when the data subject has given his consent. In any case, such processing should be subject to suitable safeguards, including specific information of the data subject and the right to obtain human intervention (...). <b><u>Profiling for direct marketing purposes or based on special categories of personal data should only be allowed under specific conditions.</u></b></p>	<p><b><u>Profiling for direct marketing purposes or based on special categories of personal data should only be allowed under specific conditions.</u></b></p>	<p>Trudno znaleźć uzasadnienie dla dlaczego właśnie „profilowanie” w celu marketingu bezpośredniego powinno być uzależnione od spełnienia dodatkowych kryteriów. Ta forma przetwarzania danych nie niesie ze sobą większych ryzy niż inne jego rodzaje. Dodatkowo należy wskazać, że zgodnie z proponowanym rozwiązaniem samo profilowanie nie jest zabronione, a jedynie skorzystanie z jego wyników wymaga spełnienia dodatkowych obowiązków. Natomiast w tym miejscu wprowadza się jeszcze dalej idące ograniczenie dotyczące już samej czynności profilowania. Tak dalece posunięty wyjątek od zasady ogólnej jest dopuszczalny wyłącznie w wyjątkowych</p>
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<p>Article 4 (12a) 'profiling' means <b><u>any form of automated processing of personal data intended to create or use a personal profile by evaluating personal aspects relating to a natural person, in particular the analysis and prediction of aspects concerning performance at work, economic situation, health, personal preferences, or interests, reliability or behaviour, location or movements;</u></b></p>	<p>Article 4 (12a) 'profiling' means any form of automated processing of personal, <b>which produces legal effects concerning this natural person or significantly adversely affects this natural person</b>, data intended to create or use a personal profile by evaluating personal aspects relating to a natural person, in particular the analysis and prediction of aspects concerning performance at work, economic situation, health, personal preferences, or interests, reliability or behaviour, location or movements;</p>	<p>przypadkach. Szczególnym rygorom powinno być poddane wyłącznie profilowanie, które ma fatycznie istotny niekorzystny wpływ na podmiot danych lub które wywołuje skutki prawne.</p>
<p>Article 20 (1) Every data subject shall have the right not to be subject <b><u>to a decision based on profiling concerning him or her</u></b> which produces legal effects (...) or <b><u>adversely affects</u></b> (...) <b><u>him or her unless such</u></b> processing: (a) is carried out in the course of the entering into, or performance of, a contract <b><u>between the data subject and a data controller (...)</u></b>and suitable measures to safeguard the data subject's legitimate interests have been adduced, such as the rights <b><u>of the data subject</u></b> to obtain human intervention <b><u>on the part of the controller to express his or her point of view and to contest the decision;</u></b> or (b) is (...) authorized by Union or Member State law <b><u>to which the controller is subject and</u></b> which also lays down suitable measures to safeguard the data subject's legitimate</p>	<p>Article 20 (1) Every data subject shall have the right not to be subject to a decision based on profiling concerning him or her which produces legal effects (...) or adversely affects (...) him or her unless such processing: (a) is carried out in the course of the entering into, or performance of, a contract between the data subject and a data controller (...)and suitable measures to safeguard the data subject's legitimate interests have been adduced, such as the rights of the data subject to obtain human intervention on the part of the controller to express his or her point of view and to contest the decision; or (b) is (...) authorized by Union or Member State law to which the controller is subject and which also lays down suitable measures to safeguard the data subject's legitimate interests; or</p>	<p>Treść tego przepisu budzi wątpliwości już od dnia opublikowania jego pierwszej wersji. W pierwszej kolejności, trudno jednoznacznie wskazać, jaka jest jego hipoteza. Czy kreuje on nowe prawo podmiotowe dla osób, których dane są przetwarzane, polegające na możliwości uchylecia się od skutków decyzji podjętej w oparciu o profilowanie, czy też wprowadza zakaz podejmowania takich decyzji. Taki zakaz nie obowiązywałby wyłącznie określonych przypadkach. Opowiadamy się za przyjęciem pierwszego stanowiska, zaznaczając jednocześnie, że administratorzy danych są zobowiązani do przestrzegania wszelkich przepisów Rozporządzenia, które będą miały zastosowanie, w tym w szczególności zapewnienie podmiotom danych pełnej informacji, zgodnie z art. 20 ust. 4.</p>

<p>interests; or (c) is based on the data subject's consent, subject to the conditions laid down in Article 7 (...).</p>	<p>(c) is based on the data subject's consent, subject to the conditions laid down in Article 7; <b>(e) takes place for the purpose of the legitimate interest pursued by the data controller, pursuant to Article 6 paragraph 1 point f;</b> <b>(f) involves only pseudonymous data.</b></p>	<p>Natomiast w przypadkach wskazanych w art. 20 ust. 1, podmiot danych nie mógłby żądać uchylenia się od skutków takiej decyzji. Jest to rozwiązanie analogiczne jak obowiązujące w Dyrektywie 95/46.</p>
<p>Article 20 (2) (...)</p>		
<p><b><u>Article 20 (3) Profiling shall not be carried out:</u></b> <b><u>(a) for direct marketing purposes unless pseudonymous data are processed and the data subject has not objected to the processing pursuant Article 19(2);</u></b> <b><u>(b) on special categories of personal data referred to in Article 9(1), unless Article 9(2) applies and subject to suitable measures to safeguard the data subject's legitimate interests.</u></b></p>	<p><b><u>Article 20 (3) Profiling shall not be carried out:</u></b> <b><u>(a) for direct marketing purposes unless pseudonymous data are processed and the data subject has not objected to the processing pursuant Article 19(2);</u></b></p>	<p>Komentarz taki jak przy Recital 58.</p>
<p>Article 20 (4) (...) The information to be provided by the controller under Articles 14 and 14a shall include information as to the existence of <b><u>profiling referred to in paragraphs 1 and 3</u></b> and <b><u>information concerning the logic involved in the profiling, as well as the significance and the envisaged consequences</u></b> of such <b><u>profiling</u></b> of the data subject.</p>	<p>Article 20 (4) (...) The information to be provided by the controller under Articles 14 and 14a shall include information as to the existence of profiling referred to in paragraphs 1 and 3 and information concerning <del>the logic involved in the profiling</del> <b>factors taken into consideration</b>, as well as the significance and the envisaged consequences of such profiling of the data subject.</p>	<p>Nie ulega wątpliwości, że osoba, której dotyczy decyzja oparta o profilowanie ma prawo wiedzieć, jakiego rodzaju dane są wykorzystywane w tym procesie. Natomiast, w przypadku większości branż, sam sposób oceny tych kryteriów stanowi tajemnicę przedsiębiorstwa, stanowiącą o przewadze konkurencyjnej.</p>

Article 20 (5) (...)		
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