

Artykuły RODO, które będą przedmiotem dyskusji w dniu 7 maja 2013 r.:		
Obecne brzmienie	Proponowana zmiana	Komentarze
<p><i>Article 1 Subject matter and objectives</i></p> <p>1. This Regulation lays down rules relating to the protection of individuals with regard to the processing of personal data and rules relating to the free movement of personal data .</p> <p>2. This Regulation protects (...) fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data.</p> <p>3. The free movement of personal data <u>between Member States</u> shall neither be restricted nor prohibited for reasons connected with the protection of individuals with regard to the processing of personal data. .</p>		<p><i>Nie zgłaszamy uwag.</i></p>
<p><i>Article 4 Definitions</i></p> <p>For the purposes of this Regulation:</p> <p>(1) <u>'personal data' means any information relating to an identified or identifiable natural person ('data subject'); an identifiable person is one who can be identified, directly or indirectly (...), in particular by</u></p>		<p>(1) Zaproponowana zmiana jest powrotem do konstrukcji z projektu Komisji Europejskiej, w której definicje 'danych osobowych' i podmiotu danych' są rozdzielone. Takie rozwiązanie wydaje się bardziej przejrzyste oraz umożliwia precyzyjne skonstruowanie obu definicji, które nie powinny być zlepione</p>

<p>reference to an identifier such as a name, an identification number, location data, online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person.</p>	<p>Article 4 (1) ‘personal data’ means any information relating to a natural person (‘data subject’); <u>an identifiable person is one</u> who can be identified or singled out, directly or indirectly by means reasonably likely to be used by the controller or by any other natural or legal person, in particular by reference to a(...) name, an identification number or other unique identifier, location data, online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person.</p> <p>If in the light of the nature of the data, the context of the processing, and possible current or future recipients of the data (including possible intruders), identification would require a disproportionate amount of time, effort or material resources on the part of either the controller or such possible future recipients, the natural living person shall not be considered identifiable.</p>	<p>w jedną całość.</p> <p>(2) Dodatkową, zasadniczą zmianą w porównaniu z projektem Komisji Europejskiej jest wprowadzenie koncepcji „wyróżnienia” (single out), jako dodatkowego kryterium przesądzającego o tym, że daną osobę można uznać za podmiot danych.</p> <p>(3) Poszerzenie definicji podmiotu danych o kryterium „wyróżnienia” jest konieczne z uwagi na rozwój technologii. Coraz częściej, szczególnie w Internecie, identyfikacja osoby nie jest już potrzebna do tego, żeby móc w istotny sposób ingerować w jej prywatność – wystarczy właśnie możliwość „wyróżnienia” jej z grona pozostałych użytkowników, np. na podstawie unikatowego profilu, nawet jeśli nie jest on połączony z żadnym trwałym ani tymczasowym identyfikatorem.</p> <p>(4) Podobne stanowisko wielokrotnie zajmowała Grupa Robocza Art. 29, m.in. w oficjalnym stanowisku na temat bieżących dyskusji nad projektem rozporządzenia o ochronie danych</p> <p>podmiot znał kod pocztowy osoby, jej płeć oraz datę urodzin (badanie przeprowadzone przez prof. Latanya Sweeney).</p> <p>(8) W tym kontekście, zaproponowane przez</p>
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		<p>Komisję Europejską kryterium ograniczające definicję danych osobowych: “by means reasonably likely to be used by the controller or by any other natural or legal person” uważamy za bardzo dobre. To mocne, a jednocześnie elastyczne ograniczenie definicji danych osobowych, uwzględniające możliwy (prawdopodobny) rozwój technologii. Prawo powinno uwzględniać fakt, że będą się pojawiać nowe środki umożliwiające identyfikację osób, a zatem informacje, które ze względu na to kryterium nie mogły być uznane za dane osobowe kilka lat temu, będą mogły uzyskać taki status w niedalekiej przyszłości. Wraz ze wzrostem możliwości identyfikacji osób, powinien zwiększać się również zakres obowiązywania standardów ochrony danych. W naszej opinii ostatnie zdanie Art. 4(1) zmierza jedynie do doprecyzowania kryterium zaproponowanego przez Komisję Europejską (tj. kiedy należy przyjąć, że środki umożliwiające identyfikację nie zostaną użyte ze względu na związane z tym trudności). Z tego względu nie sprzeciwiamy się dodaniu takiego przepisu, jednak uważamy, że takie zdanie o wiele lepiej nadaje się do preambuły.</p>
<p>(2a) <u>'pseudonymous data' means personal data processed in such a way that the data cannot be</u></p>		<p>(1) Nie sprzeciwiamy się samemu wprowadzeniu do projektu rozporządzenia</p>

attributed to a specific data subject without the use of additional information, as long as such additional information is kept separately and subject to technical and organisational measures to ensure non-attribution ;

definicji danych spseudonimizowanych. Zastrzegamy jednak, że dodanie tej definicji nie może być traktowane jako „przyczółek” do stworzenia odrębnych zasad przetwarzania tego typu danych.

(2) Nie może być wątpliwości co do tego, że dane spseudonimizowane wchodzą w zakres definicji danych osobowych, ponieważ są to po prostu dane umożliwiające pośrednią identyfikację (przy założeniu, że identyfikacja jest możliwa bez nadmiernych trudności czy nieproporcjonalnych środków). Potwierdza to nie tylko analiza autorytetów prawnych w dziedzinie danych osobowych (por. poniższy punkt), ale również liczne przykłady pokazujące, w jak łatwy sposób można odbudować połączenie pomiędzy danymi spseudonimizowanymi, a danymi bezpośrednio idetntyfikującymi daną osobę (np. wyciek danych AOL w 2007 roku czy badanie opublikowanych przez portal Netflix danych przeprowadzone przez Arvind Narayanana i Vitala Shmatikova z University of Texas).

(3) W związku z tym wszelkie poprawki, które zmierzają do wyłączenia danych spseudonimizowanych spod reżimu ochrony danych osobowych, stanowią zagrożenia dla spójności całego systemu. Taki pogląd jest

		również wyrażany w oficjalnych stanowiskach przez Europejskiego Inspektora Ochrony Danych Osobowych oraz Grupę Roboczą Art. 29.
<p>(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 ;</p> <p>(3a) <u>'restriction of processing' means the marking of stored personal data with the aim of limiting their processing in the future ;</u></p> <p>(5) (...);</p> <p>'controller' means the natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes, conditions and means of the processing of personal data; where the purposes, conditions and means of processing are determined by Union law or Member State law, the controller or the specific criteria for his nomination may be designated by Union law or by Member State law;</p> <p>(6) 'processor' means a natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller ;</p>		<p><i>W dalszej części przepisu nie zgłaszamy uwag.</i></p>

[(6a) 'third party' shall mean any natural or legal person, public authority, agency or any other body other than the data subject, the controller, the processor and the persons who, under the direct authority of the controller or the processor, are authorized to process the data;]

(7)_'recipient' means a natural or legal person, public authority, agency or any other body **other than the data subject, the data controller or the data processor** to which the personal data are disclosed; **however regulatory authorities which may receive personal data in the exercise of their functions shall not be regarded as recipients.**

(9) 'personal data breach' means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed ;

(10) 'genetic data' means all personal data relating to the genetic characteristics of an individual that have been inherited or acquired, resulting from an analysis of a biological sample from the individual in question, (...) ;

(11) 'biometric data' means any personal data resulting from specific technical processing relating to the physical, physiological or behavioural characteristics of an individual which **confirms the (...)** unique identification of that individual, such as

<p>facial images, or dactyloscopic data ;</p> <p>(12) 'data concerning health' means <u>such information related to the physical or mental health of an individual, which reveal information about (...) health status or treatments (...) of an individual ;</u></p>		
<p>(12a) <u>'profiling' means 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></p>	<p>Article 4 (12a) 'profiling' means any form of (...) processing (...) intended to <u>analyse personal aspects relating to an individual, or to analyse or predict in particular his or her performance at work, reliability, economic situation, location, health, personal preferences, behaviours and attitudes, or to take decisions concerning her or him, or to single out the individual with a view to taking decisions concerning him or her.</u></p>	<p>(1) Zaproponowane zmiany w definicji profilowania zmierzają do jej doprecyzowania oraz poszerzenia o możliwe aspekty i rodzaje tego sposobu przetwarzania danych.</p> <p>(2) W szczególności, idąc za opinią Grupy Roboczej Art. 29, proponujemy poszerzenie tej definicji o procesy, które nie opierają się wyłącznie na automatycznym przetwarzaniu danych.</p> <p>(3) Bardziej szczegółowa definicja profilowania (jako nowego pojęcia w doktrynie ochrony danych osobowych) niesie ze sobą korzyści interpretacyjne.</p> <p>(4) Proponujemy rezygnację z definicji profilu, ponieważ nie jest ona konieczna, a może generować dodatkowe wątpliwości interpretacyjne (Jak się ma definicja 'profilu' do definicji 'profilowania'?)</p>

		<p>Czy w skład profilu wchodzi tylko dane osobowe? Czy należy rozróżnić profil osoby od profilu kategorii osób? etc.).</p>
<p>(13) [‘main establishment’ means</p> <p>– 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 ;.</p> <p>– 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></p>	<p>Article 4 (13) ‘main establishment’ means</p> <p>- 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 <u>or the place of its establishment which exercises dominant influence over other establishments of the controller;</u> 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.</p> <p>- as regards the processor, 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;</p>	<p>(1) We welcome the definition of „main establishment“, as proposed in the draft regulation. This definition can prevent confusion about which party must be considered data controller, especially when a group of undertakings process personal data in different locations both within the EU and in third countries.</p> <p>(2) We agree that the establishment that exercises real control over the data processing must be considered data controller. The location of the main establishment will also determine which data protection authority will act as lead authority (see article 51(2)).</p> <p>(3) However, the proposal leaves corporate groups of undertakings a lot of room to choose which one of their establishments will be considered the main establishment. A group of undertakings can for example assign the power to implement data protection rules to a certain establishment by power of</p>

		<p>attorney. In practice this is likely to lead to ‘forum shopping’ by companies.</p> <p>(4) Also, as pointed by the European Data Protection Supervisor, the proposal does not address the situation of groups of undertakings, where several legal entities and their establishments in different countries may have a role in determining purposes, conditions and means of a processing activity, independently of the location of the central administration.</p> <p>(5) Having these issues in mind, we suggest to add respective clarification.</p>
<p>(14) 'representative' means any natural or legal person established in the Union who, explicitly designated by the controller, <u>represents the controller with regard to the obligations of the controller under this Regulation 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> ;</p> <p>(15) 'enterprise' means any <u>natural or legal person</u> engaged in an economic activity, irrespective of its legal form, (...) including (...) partnerships or associations regularly engaged in an</p>		<p><i>Nie zgłaszamy uwag.</i></p>

<p>economic activity;</p> <p>(16) 'group of undertakings' means a controlling undertaking and its controlled undertakings ;</p> <p>(17) 'binding corporate rules' means personal data protection policies which are adhered to by a controller or processor established on the territory of a Member State of the Union for transfers or a set of transfers of personal data to a controller or processor in one or more third countries within a group of undertakings;</p> <p>(18) ['child' means any person below the age of 18 years;]</p> <p>(19) 'supervisory authority' means a public authority which is established by a Member State pursuant to Article 46;</p> <p>(...);</p> <p>(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><u>2a. Where proportionate in relation to the processing activities, the measures referred to in</u></p>		<p><i>Nie zgłaszamy uwag.</i></p>

<p><u>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><i>Article 6 Lawfulness of processing</i></p> <p>1. Processing of personal data shall be lawful only if and to the extent that at least one of the following applies:</p> <p>(a) the data subject has given consent to the processing of their personal data for one or more specific purposes ;</p> <p>(b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;</p> <p>(c) processing is necessary for compliance with a legal obligation to which the controller is subject;</p> <p>(d) processing is necessary in order to protect the vital interests of the data subject or another person ;</p> <p>(e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;</p>	<p><i>Article 6 Lawfulness of processing</i></p> <p>1. Processing of personal data shall be lawful only if and to the extent that at least one of the following applies:</p> <p>(a) the data subject has given consent to the processing of their personal data for one or more specific purposes ;</p> <p>(b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;</p> <p>(c) processing is necessary for compliance with a legal obligation to which the controller is subject;</p> <p>(d) processing is necessary in order to protect</p>	<p>(1) Stanowczo sprzeciwamy się dodaniu w punkcie (d) frazy “or another person“, która znacząco poszerza tę podstawę przetwarzania danych i dopuszcza przetwarzanie danych bez zgody osoby, której one dotyczą, w imię interesów innej osoby. Jest to koncepcja dziwaczna i niezgodna z zasadą proporcjonalności, ani poszanowania autonomii informacyjnej.</p> <p>(2) Rozszerzenie przesłanki dotyczącej “słusznego interesu” podmiotu danych i innej osoby uznajemy za niedopuszczalne. Jest to zdecydowanie obniżenie standardu ochrony w porównaniu do obecnie obowiązującej dyrektywy 95/46/WE. Przesłanka ta rozszerza możliwości przetwarzania danych w oparciu o ważny interes każdej osoby, w tym również administratora danych. Nie zawierając jednocześnie żadnego odniesienie</p>

<p>(f) processing is necessary for the purposes of the legitimate interests pursued by <u>the controller or by a controller to which the data are disclosed</u> except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child. <u>This subparagraph shall not apply to processing carried out by public authorities in the exercise of their public duties</u> .</p> <p>2. (...) .</p> <p>3. The basis for the processing referred to in points (c) and (e) of paragraph 1 must be provided for in:</p> <p>(a) Union law, or</p> <p>(b) national law of the Member State to which the controller is subject.</p> <p><u>The purpose of the processing shall be determined in this legal basis or as regards the processing referred to in point (e) of paragraph 1, be necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the authority. Within the limits of this Regulation, the controller, processing operations and processing procedures, including measures to ensure lawful and fair processing, may be specified in this legal basis.</u></p> <p>3a. In order to ascertain whether a purpose of further processing is compatible with the one for which the data are initially collected, the controller</p>	<p>the vital interests of the data subject (...);</p> <p>(e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;</p> <p>(f) processing is necessary for the purposes of the legitimate interests pursued by a controller (...), except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject</p>	<p>dotyczącego ważenia interesów daje właściwie nieograniczone możliwości przetwarzania, idąc zarazem dalej niż przesłanka uzasadnionego interesu administratora danych.</p> <p>(3) Pojęcie „słusznego interesu“ jest terminem niejasnym, pozostawiającym duże pole do interpretacji. Jego interpretacja może różnić się w poszczególnych państwach członkowskich, podważając tym samym zasadę jednolitego rynku i wprowadzając niepewność co do zakresu i legalności niektórych form przetwarzania.</p> <p>(4) „Słuszny interes“ jest furtką dla administratorów, którzy mogą stosować tę podstawę praktycznie w nieograniczonej ilości przypadków. Ta klauzula może być również pretekstem dla omińnięcia istniejących gwarancji ochrony danych i „skrócenia drogi“, która w przypadku pozostałych podstaw przetwarzania danych jest bardziej wymagająca.</p> <p>(5) Zastosowanie gwarancji w postaci konieczności „zważenia interesów“ nie jest dostateczną gwarancją ochrony praw podmiotu, ponieważ o wyniku tego „ważenia“ w autonomiczny sposób ma decydować podmiot mający interes w</p>
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<p><u>shall take into account:</u></p> <p><u>(a) any link between the purposes for which the data have been collected and the purposes of the intended further processing;</u></p> <p><u>(b) the context in which the data have been collected (...);</u></p> <p><u>(c) the nature of the personal data;</u></p> <p><u>(d) the possible consequences of the intended further processing for data subjects (...);(e) appropriate safeguards.</u></p>	<p>is a child. This legal ground shall not apply to processing carried out by public authorities in the exercise of their public duties. <u>It shall also not apply to processing that can also be based on one or several of the other grounds in this paragraph.</u></p> <p><i>W dalszej części przepisu nie zgłaszamy uwag.</i></p>	<p>przetwarzaniu danych.</p> <p>(4) Doświadczenie i obserwacje istniejących praktyk rynkowych każą przyjąć, że w przypadku gdy w grę wchodzi masowe przetwarzanie danych, interes użytkowników zawsze przegrywa z interesem administratora. Administratorzy danych w naturalny sposób będą przykładać więcej wagi do własnych interesów, niż do interesów tych, których dane dotyczą.</p> <p>(5) Stosowanie przesłanki uzasadnionego interesu sprawia, że przetwarzanie danych staje się nietransparentne z perspektywy osób, których dane dotyczą – skutecznie prowadząc do erozji zaufania między podmiotem i administratorem.</p> <p>(5) Z powyższych względów zaproponowana zmiana zmierza do zawężenia klauzuli „słusznego interesu”, w szczególności poprzez usunięcie możliwości wykorzystywania tej podstawy prawnej przez „podmioty trzecie“. Taką konstrukcję uważamy za szczególnie niepożądaną i niebezpieczną – przekreśla ona zasadę autonomii informacyjnej oraz celowości przetwarzania danych. Osoba, której dane dotyczą, nie ma bowiem żadnej realnej kontroli nad tym, przez kogo, w jakim zakresie i w jakim celu jej dane są</p>
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		<p>przetwarzane przez „osoby trzecie“.</p> <p>(6) W celu ograniczenia możliwości nadużyć, proponujemy również dodanie dodatkowego warunku w postaci braku innych podstaw przetwarzania danych. Skorzystanie z klauzuli “słusznego interesu” powinno być/ traktowane jako ostateczne wyjście.</p>
<p>Article 6. 4. Where the purpose of further processing is incompatible with the one for which the personal data have been collected, the <u>further</u> processing must have a legal basis at least in one of the grounds referred to in points (a) to (e) of paragraph 1 . .</p> <p>5. (...) .</p>	<p>Article 6.4 (...) or</p> <p>Where the purpose of further processing is incompatible with the one for which the personal data have been collected, the (...) processing must have a legal basis at least in one of the grounds referred to in points (a) to (e) of paragraph 1. <u>This shall in particular apply to any change of terms and general conditions of a contract. This shall only apply to any change of terms and general conditions of a contract.</u></p> <p>5. (...) .</p>	<p>(1) Zaproponowane przez Komisję Europejską brzmienie tego przepisu osłabia fundamentalne zasady leżące u podstaw projektu rozporządzenia (szczególnie zasadę celowości),stwarzając możliwość wykorzystywania danych osobowych w celu niezgodnym z pierwotnym celem gromadzenia danych, i to zarówno przez sektor publiczny, jak i prywatny. Wysoce niepożądane skutki mogą pojawić się szczególnie wtedy, gdy dalsze przetwarzanie danych, które zostały pozyskane w oparciu o zgodę osoby, której dane dotyczą, będzie oparte o wykonywanie umowy lub interes publiczny (czyli poza wszelką kontrolą osoby, której dane dotyczą).</p> <p>(2) Nawet w relacjach komercyjnych nie można przecież wykluczyć sytuacji, w której osoba w konkretnym kontekście podaje dane (np. na potrzeby uzyskania karty</p>

		<p>lojalnościowej lub specyficznej usługi związanej ze zdrowiem), których nie zdecyduje się podać w innej relacji lub innym kontekście (np. umowy ubezpieczenia). Dopuszczenie takiego mechanizmu naruszałoby zasadę kontekstowej ochrony danych, którą aktualnie wydaje się wspierać polski rząd.</p> <p>(3) Podczas gdy wykorzystanie danych w innym celu, niż pierwotnie deklarowany, w niektórych sytuacjach może być dopuszczalne dla organów publicznych (np. w celach związanych z bezpieczeństwem publicznym), dla takich sytuacji nie ma potrzeby tworzenia dodatkowych przepisów. Projekt rozporządzenia przewiduje bowiem bardzo szerokie wyłączenia dla organów publicznych, działających w ważnym interesie społecznym.</p> <p>(4) Grupa Robocza Art. 29 oraz Europejski Inspektor Ochrony Danych w swoich opiniach podkreślają, że przepisy dotyczące przetwarzania danych w innym celu stoją w sprzeczności z zasadą celowości, która jest kluczowym pojęciem w europejskim systemie ochrony danych. Grupa Robocza Art. 29 zapowiedziała nawet wydanie kolejnej opinii poświęconej tylko tej problematyce.</p>
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		<p>(5) Warto mieć na uwadze, że aż 70% Europejczyków obawia się, że ich dane osobowe będące w posiadaniu przedsiębiorstw mogą zostać wykorzystane w celu innym niż cel, w którym je zgromadzono (badanie specjalne Eurobarometru: „Postawy wobec ochrony danych oraz tożsamości elektronicznej w Unii Europejskiej“).</p> <p>(6) Z powyższych względów uważamy, że należy usunąć przepis dający podstawy do dalszego przetwarzania danych w innym celu.</p> <p>(7) Jeśli takie rozwiązanie okazałoby się nieosiągalne, proponujemy przynajmniej istotne zawężenie tego faktycznego odstępstwa od ogólnych zasad przetwarzania danych do sytuacji zmiany ogólnych warunków umów.</p>
<p><i>Article 8 Processing of personal data of a child</i></p> <p>1. (...) Where Article 6 (1)(a) applies, in relation to the offering of information society services directly to a child, the processing of personal data of a child below the age of 13 years shall only be lawful if and to the extent that such consent is given or authorised by the child's parent or <u>guardian</u>.</p> <p>The controller shall make reasonable efforts to verify in</p>		<p><i>Nie zgłaszamy uwag.</i></p>

<p><u>such cases that</u> consent is given <u>or authorised by the child's parent or guardian</u>, taking into consideration available technology.</p> <p>2. Paragraph 1 shall not affect the general contract law of Member States such as the rules on the validity, formation or effect of a contract in relation to a child .</p> <p>3. [The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for the methods to obtain verifiable consent referred to in paragraph 1(...).]</p> <p>4. The Commission may lay down standard forms for specific methods to obtain verifiable consent referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2)] .</p>		
<p><i>Article 9 Processing of special categories of personal data</i></p> <p>1. The processing of personal data, revealing <u>racial</u> or ethnic origin, political opinions, religion or <u>philosophical</u> beliefs, trade-union membership, and the processing of genetic data or data concerning health or sex life or criminal convictions <u>and offences</u> or related security measures shall be prohibited.</p> <p>2. Paragraph 1 shall not apply if one of the following applies:</p>		<p><i>Nie zgłaszamy uwag</i></p>

<p>.....</p> <p>(b) processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller in the field of employment law in so far as it is authorised by Union law or Member State law providing for adequate safeguards ; or</p> <p>(c) processing is necessary to protect the vital interests of the data subject or of another person where the data subject is physically or legally incapable of giving consent; or</p> <p>(d) processing is carried out in the course of its legitimate activities with appropriate safeguards by a foundation, association or any other non-profit-seeking body with a political, philosophical, religious or trade-union aim and on condition that the processing relates solely to the members or to former members of the body or to persons who have regular contact with it in connection with its purposes and that the data are not disclosed outside that body without the consent of the data subjects; or</p> <p>(e) the processing relates to personal data which are manifestly made public by the data subject; or</p> <p>(f) processing is necessary for the establishment, exercise or defence of legal claims ; or</p> <p>(g) processing is necessary for the performance of a task carried out <u>for reasons of important</u> public interest, on the basis of Union law or Member State law</p>		
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<p>which shall provide for suitable measures to safeguard the data subject's legitimate interests ;</p> <p>(h) processing of data concerning health is necessary for health purposes and subject to the conditions and safeguards referred to in Article 81 ; or</p> <p>(i) processing is necessary for historical, statistical or scientific (...) purposes subject to the conditions and safeguards referred to in Article 83.</p> <p>(j) (...)</p> <p><i>2a Processing of data relating to criminal convictions <u>and offences</u> or related security measures may be carried out either under the control of official authority or when the processing is necessary for compliance with a legal or regulatory obligation to which a controller is subject, or for the performance of a task carried out for reasons of important public interest (...), and in so far as authorised by Union law or Member State law providing for adequate safeguards for the rights and freedoms of data subjects . A complete register of criminal convictions may be kept only under the control of official authority.</i></p> <p>3. (...)</p>		
<p><i>Article 10 Processing not <u>requiring identification</u></i></p> <p>1. If the purposes for which a controller processes <u>personal</u> data do not <u>require</u> the identification of a data subject <u>by the controller</u>, the controller shall not be</p>	<p><i>Article 10 Processing not <u>requiring identification</u></i></p> <p>1. If the purposes for which a controller processes personal data do not require the identification of a</p>	<p>(1) Zaproponowane zmiany zmierzają do doprecyzowania przepisu i uniknięcia wątpliwości interpretacyjnych.</p> <p>(2) W ustępie pierwszym proponujemy</p>

<p>obliged to acquire (...) additional information in order to identify the data subject for the sole purpose of complying with (...) this Regulation. .</p> <p><u>2. Where, in such cases the controller does not know the identity of the data subject, articles 15, 16, 17, 17a, 17b, 18 and 19 do not apply except where the data subject, for the purpose of exercising his or her rights under these articles, provides additional information allowing his or her identification .</u></p>	<p>data subject by the controller, the controller shall not (...) acquire additional information in order to identify the data subject for the sole purpose of complying with this Regulation.</p> <p>2. If (...) <u>personal data processed do not enable the controller for direct or indirect identification of the data subject</u> (...), articles 15, 16, 17, 17a, 17b, 18 and 19 do not apply except where the data subject, for the purpose of exercising his or her rights under these articles, provides additional information allowing his or her identification .</p>	<p>zmianę wyrażenia z „ shall not be obliged to acquire” na „ shall not acquire”, aby było jasne, że administrator danych nie tylko nie ma obowiązku, ale wręcz nie powinien zbierać dodatkowych, zbędnych z jego perspektywy, danych.</p> <p>(3) W ustępie drugim proponujemy głęboką zmianę języka przepisu, ponieważ w brzmienie zaproponowane przez członków grupy DAPIX odwołuje się do niejasnej na gruncie rozporządzenia sytuacji, w której administrator danych „nie zna tożsamości podmiotu danych”. Wydaje się, że można uniknąć wielu wątpliwości interpretacyjnych odwołując się do niemożności połączenia (przez administratora) danych z możliwą do zidentyfikowania osobą.</p>
<p><i>Article 11 Transparent information and communication</i></p> <p>1. (...)</p> <p>2. (...).</p>		<p><i>Nie zgłaszamy uwag</i></p>
<p><i>Article 12 <u>Transparent information, communication and modalities for exercising the rights of the data</u></i></p>	<p>Article 12 Transparent information, communication and modalities for exercising the rights of the data</p>	<p>(1) Nie sprzeciwiamy się przeniesieniu przepisów pierwotnie zawartych w artykule 11 do artykułu 12.</p>

<p>subject</p> <p>1. The controller shall <u>take appropriate measures to provide any information referred to in Articles 14, 14a and 20(4) and any communication under Articles 15 to 19 and 32 relating to the processing of personal data to the data subject in an intelligible and easily accessible form, using clear and plain language (...)</u> . <u>The information shall be provided in writing, or where appropriate, electronically or by other means.</u></p> <p>1a . The controller shall <u>facilitate the exercise of data subject rights under Articles 15 to 19 (...).</u> (...).</p> <p>2. The controller shall <u>provide the information referred to in Articles 15 and 20(4) and information on action taken on a request under Articles 16 to 19 to the data subject without undue delay and at the latest within one month of receipt of the request (...).</u> This period may be <u>extended for a further two months when necessary, taking into account the complexity of the request and the number of requests. Where the extended period applies, the data subject shall be informed within one month of receipt of the request of the reasons for the delay.</u></p> <p>3. If the controller <u>does not take action on the request of the data subject, the controller shall inform the data subject without delay and at the latest within one month of receipt of the request of the reasons for not taking action</u> and on the <u>possibility of lodging a complaint to a supervisory authority (...).</u></p>	<p>subject</p> <p><u>1. The controller shall have transparent and easily accessible policies with regard to the processing of personal data and for the exercise of data subjects' rights.</u></p> <p>1a. The controller shall (...) <u>provide any information referred to in</u> Article 14, 14 a and 20(4) and any communication under Articles 15 to 19 and 32 relating to the processing of personal data to the data subject in an intelligible and easily accessible form, using clear and plain language. The information shall be provided in writing, or where appropriate, electronically or by other means.</p> <p><u>1b. The controller shall establish procedures for providing the information referred to in Article 14 and for the exercise of the rights of data subjects referred to in Article 13 and Articles 15 to 19. (...). Where personal data are processed by automated means, the controller shall also provide means for requests to be made electronically.</u></p> <p>2. The controller shall provide the information referred to in Articles 15 and 20(4) and</p>	<p>(2) Nie możemy się jednak zgodzić na zupełną rezygnację z obowiązku opracowywania i publikowania polityk przetwarzania danych, które z perspektywy podmiotu danych są podstawowym źródłem informacji o zasadach przetwarzania danych i poziomie ochrony prywatności. Tej roli nie spełni przekazywana jednorazowo lub na żądanie informacja.</p> <p>(3) Zaproponowana treść Artykułu 12 ust. 1 jest bardzo korzystna z perspektywy zagwarantowania praw podmiotów danych. Proponujemy jednak usunięcie frazy “take appropriate measures”, która może być interpretowana jako osłabienie wyraźnego obowiązku udzielenia informacji. Wyrażenie ”provide information” wydaje się w tym kontekście o wiele właściwsze, a przede wszystkim bardziej jednoznaczne. Poza wyłączeniami przewidzianymi w art. 14, trudno wyobrazić sobie sytuację, w której administrator danych nie będzie w stanie skutecznie udzielić informacji podmiotowi, którego dane dotyczą – a to sugeruje wprowadzenie do artykułu</p>
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<p>4. <u>Information provided under Articles 14 and 14a (...) and any communication under Articles 16 to 19 and 32 shall be provided free of charge</u> . Where requests from a data subject are (...) <u>manifestly unfounded or excessive</u>, in particular because of their repetitive character, the controller (...) may refuse to act on the request. In that case, the controller shall bear the burden of <u>demonstrating the manifestly unfounded or excessive character of the request</u>.</p> <p>4a. <u>Where the controller has reasonable doubts concerning the identity of the individual making the request referred to in Articles 15 to 19, the controller may request the provision of additional information necessary to confirm the identity of the data subject</u>.</p> <p>5. (...).</p> <p>6. (...).</p>	<p>information on action taken on a request under Articles 16 to 19 to the data subject without undue delay and at the latest within one month of receipt of the request. This period may be extended for a further two months when necessary, taking into account the complexity of the request and the number of requests. Where the extended period applies, the data subject shall be informed within one month of receipt of the request of the reasons for the delay.</p> <p>3. If the controller does not take action on the request of the data subject, the controller shall inform the data subject without delay and at the latest within one month of receipt of the request of the reasons for not taking action and on the possibility of lodging a complaint to a supervisory authority.</p> <p>4. Information provided under Articles 14, 14a and 20(4) and any communication under Articles 15 to 19 and 32 shall be provided free of charge. Where requests from a data subject are manifestly (...) excessive, in particular because of their repetitive character, the controller may (...) <u>charge a fee for providing the information or taking the action requested or decline the request</u>. In that case, the controller shall bear the burden of demonstrating the manifestly (...) excessive character of the request.</p>	<p>12 frazy odwołującej się do podejmowanych środków, a nie oczekiwanych efektów.</p> <p>(4) Rezygnacja z obowiązku ustanowienia procedur, które umożliwiają praktyczną realizację uprawnień podmiotu danych, stanowi osłabienie tych uprawnień. Przy braku konkretnych procedur podmiot danych może zostać faktycznie pozbawiony możliwości zrealizowania swoich uprawnień.</p> <p>(5) W kontekście rozwoju technologii oraz modeli biznesowych, które umożliwiają świadczenie usług z dowolnego miejsca na świecie, jest szczególnie ważne, aby podmiot danych miał zapewnioną możliwość skorzystania ze swoich uprawnień za pośrednictwem środków komunikacji elektronicznej. W przeciwnym razie realizacja jego uprawnień może napotkać bardzo konkretne ograniczenia (np. w postaci dodatkowych kosztów).</p> <p>(6) Proponujemy także przywrócenie wymogu udzielenia informacji na piśmie lub w formie elektronicznej. Ma on zasadnicze znaczenie z perspektywy skuteczności przekazania informacji podmiotowi danych oraz dla celów</p>
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	<p>4a. Where the controller has reasonable doubts concerning the identity of the individual making the request referred to in Articles 15 to 19, the controller may request the provision of additional information necessary to confirm the identity of the data subject.</p> <p>5. (...).</p> <p>6. (...).</p>	<p>dowodowych</p> <p>(7) Sprzeciwiamy się wprowadzeniu w ustępie 4 kolejnego kryterium ocennego w postaci określenia “unfounded”. W praktyce trudno sobie wyobrazić bezpodstawne żądanie ze strony podmiotu danych, który zawsze powinien mieć prawo sprawdzenia, czy dany administrator nie przetwarza jego danych. Administrator danych zawsze może odpowiedzieć na takie żądanie, informując, że nie przetwarza danych.</p> <p>(8) Sugerujemy przywrócenie możliwości pobrania opłaty w przypadku nadmiarowych żądań, jako alternatywy dla odmowy ich realizacji. Takie rozwiązanie zwiększa zakres możliwości zarówno po stronie podmiotu danych (który może chcieć ponieść taki koszt), jak i administratora danych (który może chcieć skorzystać z tej alternatywy).</p>
<p><i>Article 13 Rights in relation to recipients</i></p> <p>(...)</p>		<p><i>Nie zgłaszamy uwag</i></p>

Article 14

Information to be provided where the data are collected from the data subject

1. Where personal data relating to a data subject are collected from the data subject, the controller shall (...), at the time when personal data are obtained, provide the data subject with the following information:

(a) the identity and the contact details of the controller and, if any, of the controller's representative; the controller may also include the contact details of the data protection officer, if any;

(b) the purposes of the processing for which the personal data are intended (...);

1a. In addition to the information referred to in paragraph 1, the controller shall provide the data subject with any further information necessary to ensure fair and transparent processing in respect of the data subject, having regard to the specific circumstances and context in which the personal data are processed (...):

(a) (...);

(b) where the processing is based on point (f) of Article 6(1), the legitimate interests pursued by the controller;

Article 14

Information to the data subject where the data are collected from the data subject

1. Where personal data relating to a data subject are collected from the data subject, the controller shall, at the time when personal data are obtained, provide the data subject with the following information:

(a) the identity and the contact details of the controller and, if any, of the controller's representative; the controller **shall** also include the contact details of the data protection officer, if any;

(b) the **specific** purposes of the processing for which the personal data are intended **as well as information regarding the actual processing of personal data, including the contract terms and general conditions where the processing is based on point (b) of Article 6(1) and the legitimate interests pursued by the controller, as well as the reasons why the controller thinks that this interest overrides the interests or fundamental rights and freedoms of the data subject, where**

(1) Udzielenie informacji, o których mowa w tym przepisie, nie może być traktowane jako fakultatywne ani uzależnione od oceny administratora danych.

(2) Część z tych informacji powinna być dostępna zawsze – np. trudno wyobrazić sobie, że administrator danych nie jest w stanie, nawet w przybliżeniu, określić czasu przetwarzania danych czy określić odbiorców danych, z którymi łączy go relacja umowna.

(3) Jest natomiast oczywiste, że informacje, które odnoszą się do specyficznych podstaw lub okoliczności przetwarzania danych, powinny być udostępniane tylko, jeśli takie podstawy lub okoliczności występują. Temu służą odpowiednie zastrzeżenia (“where applicable” etc.).

(4) Poza osłabieniem gwarancji, jakie przysługują podmiotom danych, nie ma innego powodu przemawiającego za uzależnieniem zakresu obowiązków informacyjnych od oceny administratora danych.

(5) Z uwagi na potrzebę zachowania spójności w tym, jak obowiązek informacyjny jest realizowany, Komisja Europejska powinna mieć obowiązek

<p>(c) the recipients or categories of recipients of the personal data ;</p> <p>(d) where applicable, that the controller intends to transfer <u>personal data to a recipient in a third country or international organisation</u>;</p> <p>(e) the existence of the right to request from the controller access to and rectification or erasure of the personal data <u>or restriction of processing of personal data</u> concerning the data subject and to object to the processing of such personal data, <u>[including for direct marketing purposes]</u>;</p> <p>(f) the right to lodge a complaint to a supervisory authority (...);</p> <p>(...)</p> <p>(g) <u>whether the provision of personal data is a statutory or contractual requirement, or a requirement necessary to enter into a contract, as well as the possible consequences of failure to provide such data</u> ; and</p> <p><i>(h) the existence of profiling referred to in Article 20(1) and (3) and information concerning the logic involved in the profiling, as well as the significance and the envisaged consequences of such profiling of the data subject.</i></p> <p>2. (...).</p> <p>3. (...).</p>	<p><u>the processing is based on point (f) of Article 6(1);</u></p> <p><u>(c) the envisaged period for which the personal data will be stored;</u></p> <p><u>(d) the existence of the right to request from the controller access to and rectification or erasure of the personal data concerning the data subject or to object to the processing of such personal data;</u></p> <p><u>(e) the right to lodge a complaint to the supervisory authority and the contact details of the supervisory authority;</u></p> <p><u>(f) the recipients of the personal data, with whom the data controller has a contractual relationship;</u></p> <p><u>(g) where applicable, that the controller intends to transfer to a third country or international organisation and on the level of protection afforded by that third country or international organisation by reference to an adequacy decision by the Commission;</u></p> <p><u>(g a) where the controller processes personal data as described in Article 20(1), information about the existence of processing for a measure of the kind referred to in Article 20(1) and the intended effects of such processing on the data subject;</u></p> <p><u>(g b) information regarding specific security</u></p>	<p>opracowania standardowego formularza.</p>
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<p>4. (...).</p> <p>5. Paragraphs 1 and <u>1a</u> shall not apply where <u>and insofar</u> as the data subject already has the information (...).</p> <p>6. (...).</p> <p>7. (...).</p> <p>8. (...).</p>	<p><u>measures taken to protect personal data;</u></p> <p><u>(g c) whether the provision of personal data is a statutory or contractual requirement, or a requirement necessary to enter into a contract, as well as the possible consequences of failure to provide such data.</u></p> <p><u>(h) any further information necessary to guarantee fair processing in respect of the data subject, having regard to the specific circumstances in which the personal data are collected.</u></p> <p>1a (...)</p> <p>2. (...).</p> <p>3. (...).</p> <p>4. (...).</p> <p>5. Paragraph 1 (...) shall not apply where and insofar as the data subject already has the information (...).</p> <p>6. (...).</p> <p>7. (...).</p>	
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	<p><u>8. The Commission shall lay down standard forms for providing the information referred to in paragraphs 1 to 3, taking into account the specific characteristics and needs of various sectors and data processing situations where necessary, as well as the needs of the relevant stakeholders, including the possible use of layered notices. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).</u></p>	
<p><i><u>Article 14 a Information to be provided where the data have not been obtained from the data subject</u></i></p> <p>1. <u>Where personal data have not been obtained from the data subject</u>, the controller shall provide the data subject with the following information:</p> <p>(a) the identity and the contact details of the controller and, if any, of the controller's representative; <u>the controller may also include the contact details</u> of the data protection officer, if any;</p> <p>(b) the purposes of the processing for which the personal data are intended.</p> <p>2. <u>In addition to the information referred to in paragraph 1</u>, the controller shall provide the data subject with any further information necessary to ensure fair and transparent processing in respect of the data subject.</p>	<p><i>Article 14a Information to be provided where the data have not been obtained from the data subject</i></p> <p>1. Where personal data have not been obtained from the data subject, the controller shall <u>inform</u> the data subject, <u>in addition to the information referred to in Article 14 paragraph 1, about the origin of the personal data (...)</u></p> <p><u>(...)</u></p>	<p>(1) Nie widzimy powodu, dla którego zakres obowiązków informacyjnych w przypadku danych pozyskanych nie od osoby, które dane dotyczą, powinien być mniejszy. Taka sytuacja wiąże się z większym ryzykiem nieuprawnionego przetwarzania danych, a zatem muszą w niej obowiązywać przynajmniej takie same gwarancje, jak w sytuacji pozyskiwania danych bezpośrednio od osoby, której one dotyczą.</p> <p>(2) Pojęcie “publically available sources” nie zostało zdefiniowane w projekcie rozporządzenia i poprzez swoje niejasne granice stwarza ryzyko nadużyć lub interpretacji niekorzystnej dla podmiotów danych. Na przykład można sobie wyobrazić sytuację, w której dane opublikowane w</p>

<p><u>having regard to the specific circumstances and context in which the personal data are processed, (...):</u></p> <p>(a) <u>the categories of personal data concerned;</u></p> <p>(b) <u>(...)</u></p> <p>(c) <u>where the processing is based on point (f) of Article 6(1), the legitimate interests pursued by the controller;</u></p> <p>(d) the recipients or categories of recipients of the personal data;</p> <p>(e) the existence of the right to request from the controller access to and rectification or erasure of the personal data concerning the data subject and to object to the processing of such personal data[, <u>including for direct marketing purposes</u>];</p> <p>(f) the right to lodge a complaint to a supervisory authority (...);</p> <p>(g) <u>the origin of the personal data, unless the data originate from publicly accessible sources ;</u></p> <p><i>(h) the existence of profiling referred to in Article 20(1) and (3) and information concerning the logic involved in the profiling, as well as the significance and the envisaged consequences of such profiling of the data subject.</i></p> <p>3. The controller shall provide the information referred to in paragraphs 1 and 2:</p>	<p>2. (...)</p> <p>2. The controller shall provide the information referred to in paragraph 1 (...):</p> <p>(a) <u>at the time of the recording or</u> within a</p>	<p>Interne w konkretnym kontekście są zbierane i przetwarzane w zupełnie innym celu, niezgodnym z uzasadnionym interesem podmiotu danych. Dlatego proponujemy usunięcie tego wyłączenia od obowiązku informacyjnego.</p> <p>(3) Ponadto, sprzeciwiamy się usunięciu możliwości spełnienia obowiązku informacyjnego wobec osoby, której dane dotyczą, w momencie pozyskania danych. Projekt przewiduje tę możliwość jedynie jako alternatywę. Jeśli spełnienie obowiązku w tym terminie nie będzie możliwe, administrator danych może skorzystać z podstawy zawartej w dalszej części tego przepisu. Usunięcie części pierwszej, w której mowa o natychmiastowym spełnieniu obowiązku informacyjnego, sprawi, że administratorzy nie będą mieli żadnej motywacji do podejmowania takich starań.</p>
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<p>(a) (...) <u>within a reasonable period after obtaining the data, having regard to the specific circumstances in which the data are processed, or</u></p> <p>(b) if a disclosure to another recipient is envisaged, at the latest when the data are first disclosed.</p> <p>4. Paragraphs 1 to <u>3</u> shall not apply where <u>and insofar as</u>:</p> <p>(a) the data subject already has the information; or</p> <p>(b) the provision of such information <u>in particular when processing personal data for historical, statistical or scientific purposes</u> <u>proves impossible or would involve a disproportionate effort</u> <u>or is likely to render impossible or to seriously impair the achievement of such purposes;</u> <u>in such cases the controller shall take appropriate measures to protect the data subject's legitimate interests, for example by using pseudonymous data</u>; or</p> <p>(c) <u>obtaining or disclosure is expressly laid down by Union or Member State law to which the controller is subject, which provides appropriate measures to protect the data subject's legitimate interests;</u> or</p> <p>(d) <u>where the data originate from publicly available sources</u>; or</p> <p>(e) <u>where the data must remain confidential in accordance with a legal provision or because of the overriding legitimate interests of another person</u>.</p>	<p>reasonable period after the <u>collection,</u> having regard to the specific circumstances in which the data are processed, or</p> <p>(b) if a disclosure to another recipient is envisaged, at the latest when the data are first disclosed.</p> <p>3. Paragraphs 1 to <u>2</u> shall not apply where and insofar as:</p> <p>(a) the data subject already has the information; or</p> <p>(b) the provision of such information in particular when processing personal data for historical, statistical or scientific purposes the provision of such information proves impossible or would involve a disproportionate effort or is likely to render impossible or to seriously impair the achievement of such purposes; in such cases the controller shall take appropriate measures to protect the data subject's legitimate interests, for example by using pseudonymous data; or</p> <p>(c) obtaining or disclosure is expressly laid down by Union or Member State law to which the controller is subject, which provides appropriate measures to protect the data subject's legitimate interests; or</p> <p><u>d) (...)</u></p>	
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<p>5. (...).</p> <p>6. (...).</p>	<p>(e) where the data must remain confidential in accordance with a legal provision or because of the overriding legitimate interests of another person .</p> <p>5. (...)</p> <p>6. (...)</p>	
<p><i>Article 15 Right of access for the data subject</i></p> <p>1. The data subject shall have the right to obtain from the controller at <u>reasonable intervals</u>, on request, <u>and without an excessive charge</u>, confirmation as to whether or not personal data <u>concerning him or her</u> are being processed. Where such personal data are being processed, the controller shall <u>provide a copy of the personal data undergoing processing</u> and the following information <u>to the data subject</u>:</p> <p>(a) the purposes of the processing ;</p> <p>(b) (...)</p> <p>(c) the recipients or categories of recipients to whom the personal data have been <u>or will</u> be disclosed, in particular to recipients in third countries;</p> <p>(d) <u>where possible</u>, the <u>envisaged</u> period for which the personal data will be stored;</p> <p>(e) the existence of the right to request from the controller rectification or erasure of personal data</p>	<p><i>Article 15 Right of access for the data subject</i></p> <p>1. The data subject shall have the right to obtain from the controller at reasonable intervals, on request, <u>in clear and plain language</u>, (...), confirmation as to whether or not personal data <u>relating to the data subject are being processed, and as to whether the controller takes measures in respect of the data subject that are based on profiles as referred to in Article 20(1). This shall also apply to data which only permit singling out, where the data subject can verifiably authenticate him/herself</u>. Where such personal data are being processed, <u>and/or such measures are taken</u>, the controller shall provide (...) the following information to the data subject:</p>	<p>(1) The proposed amendment strengthens data subjects' right of access in relation to measures based on profiling, similar to the provisions in the current Directive 95/46/EC.</p> <p>(2) While the proposed amendment to Article 4 already clarifies that data permitting 'singling out', but not linked to a natural person, should be considered personal data, and thus should be covered under the right of access, this amendment specifies once again that access should also be given to such data, where the data subject can identify herself reliably. This helps to reinforce the right of access especially in an online context. An example would be the case where a data subject obtains verification from her ISP that she used a certain IP address at a given time and then uses this information to request access to data collected by a controller on the internet, who else would not be able to</p>

<p>concerning the data subject or to object to the processing of such personal data;</p> <p>(f) the right to lodge a complaint to a supervisory authority (...);</p> <p>(g) <u>where the personal data are not collected from the data subject</u>, any available information as to their source;</p> <p>(h) <u>in the case of decisions referred to in Article 20, knowledge of the logic involved in any automated data processing as well as the significance and envisaged consequences of such processing</u>.</p> <p>1a. <u>Where personal data are transferred to a third country, the data subject shall have the right to obtain a copy of the appropriate safeguards relating to the transfer</u>;</p> <p>2. (...) <u>Where personal data supplied by the data subject are processed by automated means and in a structured and commonly used format, the controller shall on request provide a copy of the data concerning the data subject in that format to the data subject</u>.</p> <p>3. (...).</p> <p>4. (...).</p> <p>5. <u>[The rights provided for in this Article do not apply when data are processed only for historical, statistical, or scientific purposes and the conditions in Article 83(1a) are met]</u>.</p>	<p>(a) the purposes of the processing;</p> <p>(b) the categories of personal data concerned;</p> <p>(c) the recipients or categories of recipients to whom the personal data have been or will be disclosed, in particular to recipients in third countries;</p> <p>(d) (...) the envisaged period for which the personal data will be stored</p> <p>(e) the existence of the right to request from the controller rectification or erasure of personal data concerning the data subject or to object to the processing of such personal data;</p> <p>(f) the right to lodge a complaint to a supervisory authority <u>and the contact details of the supervisory authority</u>;</p> <p>(g) where the personal data are not collected from the data subject, any available information as to their source;</p> <p><u>(h) the significance and envisaged consequences of such processing, in particular in the case of measures referred to in Article 20.</u></p> <p>(h a) in the case of decisions referred to in Article 20, <u>meaningful information</u> about the logic</p>	<p>answer the request.</p> <p>(3) Removing the possibility to just provide “categories of recipients” prevents controller from supplying information with useless categories such as “carefully selected third parties”.</p>
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	<p>involved in any automated data processing;</p> <p>1a. Where personal data are transferred to a third country, the data subject shall have the right to obtain <u>information about</u> appropriate safeguards relating to the transfer ;</p> <p>2. (...) Where personal data supplied by the data subject are processed by automated means and in a structured and commonly used format, the controller shall on request provide a copy of the data concerning the data subject in that format to the data subject .</p> <p>3. (...).</p> <p>4. (...).</p> <p>5. [The rights provided for in this Article do not apply when data are processed only for historical, statistical, or scientific purposes and the conditions in Article 83(1a) are met] .</p>	<p>(4) It should always be possible to give, at least an estimated period for which the personal data will be stored</p> <p>(5) We are not convinced that a copy of appropriate safeguards relating to the transfer to the third countries is needed. Information about them should be sufficient.</p>
<p><i>Article 16 Right to rectification</i></p> <p>1. (...) The data subject shall have the right— to obtain from the controller the rectification of personal data <u>concerning him or her</u> which are inaccurate. <u>Having regard to the purposes for which data were processed,</u> the data subject shall have the right to obtain completion of incomplete personal data, including by <u>means of providing a</u> supplementary</p>		<p><i>Nie zgłaszamy uwag</i></p>

<p>(...) statement.</p> <p>2. <u>[The rights provided for in this Article do not apply when data are processed only for historical, statistical, or scientific purposes and the conditions in Article 83(1a) are met.]</u></p>		
<p><i>Article 17 Right to be forgotten and to erasure</i></p> <p>1. The (...) controller shall have the obligation to erase personal data <u>without undue delay (...) and the data subject shall have the right to obtain the erasure of personal data without undue delay (...)</u> where one of the following grounds applies:</p> <p>(a) the data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;</p> <p>(b) the data subject withdraws consent on which the processing is based according to point (a) of Article 6(1) (...) and (...) there is no other legal ground for the processing of the data;</p> <p>(c) the data subject objects to the processing of personal data and <u>there are no overriding legitimate grounds for the processing pursuant to Article 19(1) or the data subject objects to the processing of personal data pursuant to Article 19(2);</u></p> <p>(d) <u>the data have been unlawfully processed;</u></p> <p>(e) <u>the data have to be erased for compliance with a</u></p>		<p><i>Nie zgłaszamy uwag</i></p>

<p><u>legal obligation to which the controller is subject .</u></p> <p>2. (...).</p> <p>2a. <i>Where the controller (...) has made the personal data public <u>and is obliged pursuant to paragraph 1 to erase the data, the controller, taking account of available technology, shall take (...) reasonable steps , including technical measures, (...) to inform controllers which are processing the data, that a data subject requests them to erase any links to, or copy or replication of that personal data .</u></i></p> <p>3. <u>Paragraphs 1 and 2a shall not apply</u> to the extent that (...) <u>processing</u> of the personal data is necessary:</p> <p>(a) for exercising the right of freedom of expression in accordance with Article 80 ;</p> <p>(b) <i>for compliance with_a legal obligation to <u>process</u> the personal data by Union or Member State law to which the controller is subject or for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller ;</i></p> <p>(c) for reasons of public interest in the area of public health in accordance with Article 81 ;</p> <p>(d) for historical, statistical and scientific (...) purposes in accordance with Article 83;</p> <p>(e) (...);</p>		
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<p>(f) (...);</p> <p>(g) <u>for the establishment, exercise or defence of legal claims</u> .</p> <p>4. (...).</p> <p>5. (...).</p>		
<p><u>Article 17a Right to restriction of processing</u></p> <p>1. The data subject shall have the right to obtain from the controller the restriction of the processing of personal data where:</p> <p>(a) the accuracy <u>of the data</u> is contested by the data subject, for a period enabling the controller to verify the accuracy of the data ;</p> <p>(b) the controller no longer needs the personal data for the <u>purposes of the processing</u>, but they <u>are required by the data subject for the establishment, exercise or defence of legal claims</u>;</p> <p>(c) <u>he or she has objected to processing pursuant to Article 19(1) pending the verification whether the legitimate grounds of the controller override those of the data subject</u>;</p> <p>2. (...)</p> <p>3. Where <u>processing of personal data has been restricted under paragraph 1</u>, such data may, with the exception of storage, only be processed <u>with the data</u></p>		<p><i>Nie zgłaszamy uwag</i></p>

<p><u>subject's consent</u> or for <u>the establishment, exercise or defence of legal claims</u> (...) or for the protection of the rights of another natural or legal person or for <u>reasons of important</u> public interest .</p> <p>4. <u>A data subject who obtained the restriction of processing pursuant to paragraph 1(a) or (c) shall be informed by the controller before the restriction of processing is lifted . (...)</u></p> <p>5. (...).</p> <p><u>5a. [The rights provided for in this Article do not apply when data are processed only for historical, statistical, or scientific purposes and the conditions in Article 83(1a) are met.] .</u></p>		
<p><i>Article 17b <u>Notification obligation regarding rectification or erasure</u></i></p> <p>The controller shall communicate any rectification, erasure <u>or restriction of processing</u> carried out in accordance with Articles 16, 17(1) and 17a to each recipient to whom the data have been disclosed, unless this proves impossible or involves a disproportionate effort.</p>		<p><i>Nie zgłaszamy uwag</i></p>
<p><i>Article 18 Right to data portability</i></p> <p>1. (...).</p>		<p><i>Nie zgłaszamy uwag</i></p>

<p>2. Where the data subject has provided personal data and the processing (...) based on consent or on a contract, <u>is carried on in an automated processing system,</u> the data subject shall have the right to <u>withdraw these data in a form which permits the data subject to transmit them into another automated processing system without hinderance from the controller from whom the personal data are withdrawn.</u></p> <p>2a. <u>The right referred to in paragraph 2 shall be without prejudice to intellectual property rights.</u></p> <p>[3. The Commission may specify (...) the technical standards, modalities and procedures for the transmission of personal data pursuant to paragraph 2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).]</p> <p>4. <u>[The rights provided for in Article 18 do not apply when data are processed only for historical, statistical, or scientific purposes and the conditions in Article 83(1A) are met.] .</u></p>		
<p><i>Article 19 Right to object</i></p> <p>1. The data subject shall have the right to object, on <u>reasoned</u> grounds relating to <u>his or her</u> particular situation, at any time to the processing of personal data</p>	<p><i>Article 19 Right to object</i></p> <p>1. The data subject shall have the right to object <u>(...)</u> at any time to the processing of</p>	<p>(1) Data subject rights are indispensable for empowering data subjects to take the protection of their data into their own hands and enforce their rights against controllers.</p>

<p><u>concerning him or her</u> which is based on points (e) and (f) of Article 6(1) ; the personal data shall no longer be processed unless the controller demonstrates (...) legitimate grounds for the processing which override the interests or (...) rights and freedoms of the data subject .</p> <p>1a. (...) Where an objection is upheld pursuant to paragraph 1 (...), the controller shall no longer (...) process the personal data concerned <u>except for the establishment, exercise or defence of legal claims</u> .</p> <p>2. Where personal data are processed for direct marketing purposes, the data subject shall have the right to object free of charge <u>at any time</u> to the processing of personal data <u>concerning him or her</u> for such marketing. This right shall be explicitly <u>brought to the attention of the data subject (...)</u> and <u>shall be presented clearly and separately from any</u> other information .</p> <p><u>2a. Where the data subject objects to the processing for direct marketing purposes, the personal data shall no longer be processed for such purposes</u> .</p> <p>3. (...).</p> <p><u>4. [The rights provided for in this Article do not apply to personal data which are processed only for historical, statistical, or scientific purposes and the conditions in Article 83(1A) are met]</u>.</p>	<p>personal data concerning him or her which is based on points (d) and (f) of Article 6(1); the personal data shall no longer be processed unless the controller demonstrates compelling legitimate grounds for the processing which override the interests or fundamental rights and freedoms of the data subject.</p> <p>1a. Where an objection is upheld pursuant to paragraph 1, the controller shall no longer process the personal data concerned except for the establishment, exercise or defence of legal claims .</p> <p>2. Where personal data are processed for direct marketing purposes or where processing is based on Article 6(1)(f), the data subject shall have the right to object free of charge at any time to the processing of their personal data concerning him or her for such marketing. This right shall be explicitly offered to the data subject in an intelligible manner, using clear and plain language, adapted to the data subject, in particular for any information addressed specifically to a child, and shall be clearly distinguishable from any other information.</p>	<p>They are one of the main levers to hold controllers accountable.</p> <p>(2) For this reason, the rights to information, access, rectification, deletion, and data portability should be strengthened to allow users to understand what happens to their data and to exercise control over it. Exceptions and exemptions should be very limited.</p> <p>(3) It is also important to ensure that the right to object to processing is based on Article 6(1)(f) is unconditional and cannot be waived by the demonstration of any “compelling legitimate grounds”.</p>
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	<p>2a. Where the data subject objects to the processing for direct marketing purposes, the personal data shall no longer be processed for such purposes .</p> <p>3. (...).</p> <p>4. [The rights provided for in this Article do not apply to personal data which are processed only for historical, statistical, or scientific purposes and the conditions in Article 83(1A) are met].</p>	
<p><i>Article 20 Decisions based on profiling</i></p> <p>1. Every <u>data subject</u> shall have the right not to be subject to a <u>decision based solely on profiling which produces legal effects concerning him or her (...)</u> or <u>adversely affects (...)</u> <u>him or her unless such processing:</u></p> <p>(a) is carried out in the course of the entering into, or performance of, a contract <u>between the data subject and a data controller (...)</u> and suitable measures to safeguard the data subject's legitimate interests have been adduced, such as the <u>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</u> ; or</p> <p>(b) is (...) authorized by Union or Member State</p>	<p><i>Article 20 Decisions based on profiling</i></p> <p>1. Every data subject shall have the right, both off-line and online, not to be subject to a decision based on (...) profiling which produces legal effects concerning him or her or (...) affects him or her unless such processing:</p> <p>(a) is necessary for 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 right 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, including an explanation of the decision</p>	<p>(1) Prawo do niepodlegania środkom opartym na profilowaniu powinno dotyczyć wszelkich jego rodzajów, zarówno online, jak i offline. Ta gwarancja ma duże znaczenie w kontekście rosnącej popularności tej metody analizy danych.</p> <p>(2) W kontekście powszechnego wykorzystywania profilowania w różnych sektorach, trzeba mieć na uwadze poważne zagrożenia i ryzyka z nim związane. Profilowanie opiera się na korelacjach statystycznych, a zatem z zasady jest obarczone istotnym marginesem błędu. Z perspektywy podmiotu przetwarzającego dane ten margines może być nieznaczny, jednak z</p>

<p>law <u>to which the controller is subject and</u> which also lays down suitable measures to safeguard the data subject's legitimate interests; or</p> <p>(c) is based on the data subject's consent, subject to the conditions laid down in Article 7 (...).</p> <p>2. (...).</p> <p>3. <u>Profiling shall not (...):</u></p> <p>(a) <u>be carried on for direct marketing purposes unless suitable measures to safeguard the data subject's legitimate interests, such as the processing of pseudonymous data, (...) are in place and the data subject has not objected to the processing pursuant Article 19(2) ;</u></p> <p>(b) <u>be based on special categories of personal data referred to in Article 9(1), unless Article 9(2) applies and (...) suitable measures to safeguard the data subject's legitimate interests are in place.</u></p> <p>4. (...).</p> <p>5. (...).</p>	<p><u>reached after such intervention, and the right to be provided with meaningful information about the logic used in the profiling;</u> or</p> <p>(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 <u>and which protects the data subjects against possible discrimination resulting from measures described in paragraph 1;</u> or</p> <p>(c) is based on the data subject's consent, subject to the conditions laid down in Article 7.</p> <p>2. (...)</p> <p>3. Profiling shall not <u>(...) include or generate any data that fall under the</u> 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 (...).</p> <p>3a. Profiling that (whether intentionally or otherwise) has the effect of discriminating against individuals on the basis of race or ethnic origin, political opinions, religion or beliefs, trade union membership, or sexual orientation, or that (whether intentionally or otherwise) result in measures which have such</p>	<p>perspektywy osoby, która się w nim mieści, taki błąd ma zasadnicze znaczenie – może np. prowadzić do dyskryminacji na tle rasowym, wykluczenia z dostępu do istotnej usługi, dyskryminacji cenowej, naruszenia prywatności i innych negatywnych skutków.</p> <p>(3) Jak pokazują prowadzone badania, profilowanie często opiera się na stereotypach, tym samym zwiększając ich siłę rażenia i dyskryminacyjny potencjał. Trzeba mieć również na uwadze, że profilowanie staje się beużytecznym narzędziem w odniesieniu do tworzenia rzadkich charakterystyk, ze względu na niski stopień ich wiarygodności. W związku z tym rodzi się poważne ryzyko stosowania niewiarygodnych (i w efekcie dyskryminacyjnych) profilów, w odniesieniu do sytuacji mających duże znaczenie zarówno dla grup, jak i indywidualnych osób. Dlatego proponujemy zmiany, które mają na celu ochronę podmiotów danych przed dyskryminacją. W związku z tym, powinno się również ograniczyć możliwość wykorzystywania danych</p>
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	<p>effect, shall be prohibited.</p> <p><u>4. Within six months of the coming into force of this Regulation, the Commission shall adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and conditions for suitable measures to safeguard the data subjects' legitimate interests referred to in paragraph 2. The Commission shall consult representatives of data subjects and the Data Protection Board on its proposals before issuing them.</u></p>	<p>wrażliwych przy generowaniu profili oraz profilowania generującego takie dane.</p> <p>(4) Utworzone profile mogą być trudne lub wręcz niemożliwe do zweryfikowania, ponieważ opierają się na złożonych, dynamicznych algorytmach, które stale ewoluują. Często algorytmy wykorzystywane w tym procesie są kwalifikowane jako tajemnica handlowa, wobec czego osoby, których dane dotyczą, nie otrzymują na ich temat informacji. W tym kontekście bardzo duże znaczenie mają gwarancje zwiększające transparentność tego procesu z perspektywy podmiotu danych.</p> <p>(5) Z perspektywy interesów podmiotów danych, fundamentalne znaczenie ma szczelna regulacja, która – nie zakazując takich praktyk – podda kontroli i odpowiednim gwarancjom każdy przypadek zastosowania środków opartych o profilowanie, które wywierają wpływ na podmioty danych. Uzależnienie samego zastosowania projektowanych przepisów od tego, jaki skutek wywiera środek oparty na profilowaniu, tworzy istotny</p>
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		<p>wyłom w regulacji i <i>de facto</i> uzależnia standard ochrony podmiotów danych od oceny i dobrej woli administratora danych. W związku z tym proponujemy odpowiednie zmiany w punkcie 1 art. 20.</p> <p>(6) Podobne zastrzeżenia i uwagi zgłaszała także Grupa Robocza Art. 29 w swojej opinii do projektu rozporządzenia.</p>
<p><i>Article 21 Restrictions</i></p> <p>1. Union or Member State law <u>to which the data controller or processor is subject</u> may restrict by way of a legislative measure the scope of the obligations and rights provided for in points (a) to (e) of Article 5 and Articles 11 to 20 and Article 32, when such a restriction constitutes a necessary and proportionate measure in a democratic society to safeguard :</p> <p>(aa) national security;</p> <p>(ab) <u>defence</u>;</p> <p>(a) public security;</p> <p>(b) the prevention, investigation, detection and prosecution of criminal offences;</p> <p>(c) other <u>important objectives of general</u> public interests of the Union or of a Member State , in</p>	<p><i>Article 21 Restrictions</i></p> <p>1. Union or Member State law to which the data controller or processor is subject may restrict by way of a legislative measure the scope of the obligations and rights provided for in points (a) to (e) of Article 5 and Articles 11 to 19 and Article 32, when such a restriction constitutes a necessary and proportionate measure in a democratic society to safeguard:</p> <p>(aa) (...);</p> <p>(ab) (...);</p>	<p>(1) Data subject rights are indispensable for empowering data subjects to take the protection of their data into their own hands and enforce their rights against controllers. They are one of the main levers to hold controllers accountable. For this reason, the rights to information, access, rectification, deletion, and data portability should be strengthened to allow users to understand what happens to their data and to exercise control over it. Exceptions and exemptions should be very limited.</p> <p>(2) Point (e) of paragraph 1 is unduly wide; legitimate derogations are already covered by points (a) to (d).</p> <p>(3) The other suggested changes bring the possible restrictions more in line with the</p>

<p>particular an important economic or financial interest of the Union or of a Member State, including monetary, budgetary and taxation matters and the protection of market stability and integrity;</p> <p>(d) the prevention, investigation, detection and prosecution of breaches of ethics for regulated professions;</p> <p>(e) a monitoring, inspection or regulatory function connected, even occasionally, with the exercise of official authority in cases referred to in (a), (b), (c) and (d);</p> <p>(f) the protection of the data subject or the rights and freedoms of others .</p> <p>2. Any legislative measure referred to in paragraph 1 shall contain specific provisions at least as to <u>the purposes of the processing or categories of processing, the scope of the restrictions introduced, the specification of the controller or categories of controllers and the applicable safeguards taking into account of the nature, scope and purposes of the processing and the risks for the rights and freedoms of data subjects.</u></p>	<p>(a) public security;</p> <p>(b) the prevention, investigation, detection and prosecution of criminal offences;</p> <p>(c) other important objectives of general public interests of the Union or of a Member State, in particular an important economic or financial interest of the Union or of a Member State, including monetary, budgetary and taxation matters and (...);</p> <p>(d) the prevention, investigation, detection and prosecution of breaches of ethics for regulated professions;</p> <p>(e) (...)</p> <p>(f) the protection of the data subject or the rights and freedoms of others .</p> <p>2. Any legislative measure referred to in paragraph 1 <u>must comply with the standards of necessity and proportionality and</u> shall contain specific provisions at least as to (...):</p> <p><u>(a) the objectives to be pursued by the processing;</u></p> <p><u>(b) the determination of the controller;</u></p> <p><u>(c) the specific purposes and means of processing;</u></p> <p><u>(d) the categories of persons authorised to</u></p>	<p>current restrictions permissible under Directive 95/46/EC.</p> <p>(4) For the additional safeguards in paragraph 2 and the new paragraph 3 see also the EDPS opinion on the data protection reform package, points 159-165.</p>
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	<p><u>process the data;</u> <u>(e) the procedure to be followed for the processing;</u> <u>(f) the safeguards against any arbitrary interferences by public authorities;</u> <u>(g) the right of data subjects to be informed about the restriction.</u> <u>(h) the risks for the rights and freedoms of data subjects.</u></p>	
	<p><u>Article 2 a. Legislative measures referred to in paragraph 1 shall not impose obligations on private controllers to retain data additional to those strictly necessary for the original purpose.</u></p>	<p>Bardzo ważne ograniczenie, zapobiegające wprowadzaniu kolejnych mechanizmów obowiązkowej retencji danych.</p>
	<p><u>Article 2 b. Legislative measures referred to in paragraph 1 shall be notified to the European Data Protection Board for opinion. If the European Data Protection Board considers that the notified measure does not comply with the requirements of paragraph 2, it shall inform the Commission. The Commission shall then consider launching the procedure established under Article 258 of the</u></p>	<p>Dodatkowy obowiązek notyfikacji, którego celem jest poddanie wyłączeń wynikających z przepisów krajowych (przynajmniej formalnej) kontroli European Data Protection Board.</p>

	<u>Treaty on the Functioning of the</u>	
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