

Uwagi PKPP Lewiatan

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>3. <u>Subject to the provisions of this regulation</u> the free movement of personal data shall neither be restricted nor prohibited for reasons connected with the protection of individuals with regard to the processing of personal data. .</p>	<p><u>Projekt rozporządzenia (rozdział V) przewiduje sytuacje, których przetwarzanie danych będzie zgodne z prawem w odniesieniu do państw trzecich i organizacji międzynarodowych . Taki zapis jest niezgodny z ustępem 1 oraz z rozdziałem V.</u></p> <p>Usunięto: between Member States</p> <p>Sformatowano: Polski</p>

Article 4 Definitions

For the purposes of this Regulation:

(1) '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 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.

(2) (...);

(2a) 'pseudonymous data' means personal data processed in such a way that the data cannot be 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 ;

(21) '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 by the controller (...), in particular by 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. Information which do not allow for direct identification of a data subject and information which wouldn't allow for such identification without excessive costs, time or measures shall not be considered as personal data.

Konsekwentnie postulujemy wprowadzenie kryteriów ograniczających zakres tej definicji (kryterium podmiotowe i „ekonomiczne”)
Oderwanie danych osobowych od możliwości zidentyfikowania podmiotu danych przez konkretnego administratora oraz od związanych z tym nakładów spowoduje konieczność ponoszenia przez podmioty gospodarcze nieproporcjonalnych kosztów i utrudni prowadzenie działalności.

Popieramy wprowadzenie do projektu definicji danych spseudonimizowanych i zezwolenia przetwarzania takich danych w większym zakresie niż danych osobowych.

<p>(3)</p> <p>(3a)</p> <p>(4)</p> <p>(5)</p> <p>(6)</p>	<p>'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><u>'restriction of processing' means the marking of stored personal data with the aim of limiting their processing in the future ;</u></p> <p>(...);</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>'processor' means a natural or legal person,</p>		
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public authority, agency or any other body which processes personal data on behalf of the controller ;

[(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

(22) 'recipient' means a natural or legal person, public authority, agency or any other body **other than the data subject, the data controller, the data processor or third party** 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.**

Doceniamy wprowadzenie rozróżnienia na podmioty przetwarzające dane na rzecz administratora (przetwarzający), z upoważnienia i pod nadzorem administratora (pracownicy/zleceniobiorcy) oraz na podmioty wobec administratora „zewnętrzne” (odbiorców i osoby trzecie). Zaproponowane definicje dość jasno rozstrzygają tę kwestię. Wydaje się, żeby zakresy definicji strony trzeciej i odbiorcy nie pokrywały się konieczne jest wyłączenie strony trzeciej definicji odbiorcy. Zgodnie z zaproponowaną definicją strony trzeciej będzie nią w praktyce pracownik administratora przetwarzający dane pod jego nadzorem. W obecnym definicji „odbiorcy” pracownik, któremu ujawniane są dane byłby jednocześnie odbiorcą danych. Definicja powinna się odnosić do podmiotów „zewnętrznych” wobec administratora. Do nich

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<p>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, (...) ;</p> <p>(11) 'biometric data' means any <u>personal data resulting from specific technical processing</u> relating to the physical, physiological or behavioural characteristics of an individual which confirms the (...) unique identification of <u>that individual</u>, such as 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</u>' means <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> ;</p> <p>(13) ['main establishment' means</p>		<p><u>Article 4 (13) 'main establishment' means</u></p>	<p><u>powinien się odnosić obowiązek poinformowania podmiotów danych o odbiorcach, którym dane będą udostępniane (art. 14) oraz obowiązek poinformowania odbiorców o skorzystaniu z prawa do usunięcia danych zgodnie z art. 17 ust. 2.</u></p> <p><i><u>Dla firm, których główna siedziba znajduje się poza UE albo w odniesieniu do których trudno jest</u></i></p>
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<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><u>the place of establishment in the European Union as determined by the controller or processor on the basis of the following transparent and objective criteria, arranged in order of priority:</u></p> <p><u>a) the location of the group's European headquarters;</u></p> <p><u>b) location of the company within the group with delegated data protection responsibilities,</u></p> <p><u>c) the location of the company which is best placed (in terms of management function, administrative capability etc) to address and enforce the rules as set out in this Regulation,</u></p> <p><u>d) the place where the main decisions as to the conditions purposes and means of processing are taken for the controller or processor:</u></p>	<p><i><u>jednoznacznej wskazać miejsce głównej siedziby proponujemy wprowadzenie tych samych kryteriów, które – zgodnie z zaleceniem Grupy Roboczej artykułu 29- powinny być przez takie firmy przy wybieraniu organu właściwego do zatwierdzenia Wiążących Reguł Korporacyjnych. Propozycja pochodzi bezpośrednio z opinii numer 108 (14 z kwietnia 2005 roku).</u></i></p> <p><i><u>Ponadto, zasadne jest wskazanie tych samych kryteriów wyznaczania głównej siedziby dla administratora i przetwarzającego. Pozwoli to uniknąć sytuacji, w której ten sam podmiot miałby główną siedzibę w dwóch państwach członkowskich, jeżeli - w konkretnych sytuacjach- pełni on obowiązki administratora i przetwarzającego. Pokreślić należy, że jest to bardzo częsta sytuacja, więc w praktyce zastosowanie różnych kryteriów dla administartora i prztwarzającego podważy funkcjonowanie zasady one stop shop.</u></i></p>
<p>(14) 'representative' means any natural or legal person established in the Union who, explicitly designated by the controller, <u>represents</u> the controller with regard to the obligations of the controller under this Regulation <u>and may be</u></p>		<p>(23) 'representative' means any natural or legal person established in the Union who, explicitly designated by the controller, <u>represents</u> the controller with regard to the obligations of the controller under this Regulation <u>and may be</u></p>	

addressed, in addition to or instead of the controller, by the supervisory authorities for the purposes of ensuring compliance with this Regulation ;

(15) 'enterprise' means any natural or legal person engaged in an economic activity, irrespective of its legal form, (...) including (...) partnerships or associations regularly engaged in an economic activity;

(16) 'group of undertakings' means a controlling undertaking and its controlled undertakings ;

(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;

(18) ['child' means any person below the age of 18 years;]

(19) 'supervisory authority' means a public authority which is established by a Member State pursuant to Article 46;

addressed, in addition to or instead of the controller, by the supervisory authorities competent under article 51 point 2 for the purposes of ensuring compliance with this Regulation ;

Popieramy. Ze względu na szczególną sytuację w Polsce dotyczącą osób fizycznych prowadzących działalność gospodarczą proponujemy także następujące zmiany:

Artykuł 2. ustęp 5. (Nowy)

Dane podlegające zgodnie z prawem krajowym ujawnieniu w rejestrach gospodarczych nie podlegają ochronie wynikającej z niniejszego rozporządzenia w zakresie, w jakim identyfikują w obrocie gospodarczym przedsiębiorstwo w rozumieniu artykułu 4 pkt. 15

(12) The protection afforded by this Regulation concerns natural persons, whatever their nationality or place of residence, in relation to the processing of personal data. With regard to the processing of data which concern enterprise including the name, the legal form, and the contact details of the enterprise, the protection of the Regulation should not be claimed by a person. This should also apply where the name of the legal person contains the names of one or more natural persons.

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Usunięto: and in particular undertakings established as legal persons,

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<p>(...);</p> <p>(20)</p>	<p>'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 .</p>		<p><i>Bez względu na to czy definicja usług społeczeństwa informacyjnego zostanie powtórzona w tekście projektu czy nie (na podstawie dyrektywy 2000/31 o handlu elektronicznym i dyrektywy 98/34/EC) będzie ona stosowana dla zdefiniowania tych usług. Kluczową kwestią jest to, czy w projekcie znajdują się szczegółowe rozwiązania obowiązujące w odniesieniu do tej kategorii usług.</i></p>
<p>2a.</p>	<p>Where proportionate in relation to the processing activities , the measures referred to in paragraph 1 shall include the implementation of:</p> <p>(a) appropriate data protection policies by the controller ;</p> <p>(b) mechanisms to ensure that the time limits established for the erasure and restriction of personal data are observed .</p>		<p><u>?</u></p>

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Article 6 Lawfulness of processing

1. Processing of personal data shall be lawful only if and to the extent that at least one of the following applies:

- (a) the data subject has given consent to the processing of their personal data for one or more specific purposes ;
- (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;
- (c) processing is necessary for compliance with a legal obligation to which the controller is subject;
- (d) processing is necessary in order to protect the vital interests of the data subject **or another person** ;
- (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;
- (f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by a

c. processing is necessary for compliance with a legal obligation to which the controller is subject or for exercising rights of the controller.

c. Rozporządzenie powinno wprost zezwolić administratorowi na przetwarzanie danych jeśli jest to konieczne do realizacji przyznanych mu przez przepisy praw np. w sytuacji dochodzenia roszczeń z umowy zawartej z podmiotem danych, dla umożliwienia skorzystania przez administratora danych ze zwolnienia z obowiązku opłacania składek na Fundusz Pracy i Fundusz Gwarantowanych Świadczeń Pracowniczych za zatrudnionych pracowników

controller to which the data are disclosed 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. This subparagraph shall not apply to processing carried out by public authorities in the exercise of their public duties .

2. (...)

3. The basis for the processing referred to in points (c) and (e) of paragraph 1 must be provided for in:

(a) Union law, or

(b) **national** law of the Member State to which the controller is subject.

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

1a. Following purposes shall be *inter alia* considered as legitimate interests pursued by controller:

- a. promoting of controller's goods and services**
- b. enforcement of the controller's claims**
- c. ensuring the security of the system, network and information**
- ci. fraud monitoring and prevention purposes and to ensure the security and reliability of a service provided by the controller;**

powracających z urlopu macierzyńskiego, dodatkowego urlopu macierzyńskiego lub urlopu wychowawczego w okresie 36 miesięcy począwszy od pierwszego miesiąca po powrocie z urlopu¹.

1a Dla zapewnienie jednolitości stosowania Projektu i zapewnienia niezakłóconego funkcjonowania jednolito rynku korzystne byłoby wskazanie jakie działania administratorów uważa się za słuszny interes. Szereg operacji na danych ma istotne znaczenie dla rozwoju gospodarczego oraz dla bezpieczeństwa obywateli i projekt rozporządzenia powinien uznać ich zastosowanie za dozwolone. Marketing bezpośredni umożliwia firmom rozwijanie działalności i tworzy wiele miejsc pracy, pozwala także klientom na uzyskanie bardziej interesujących ofert. Przetwarzanie danych pozwala zapewnić bezpieczeństwo i wiarygodności usług świadczonych przez administratora bądź podmiot przetwarzający dane. Ponadto często okazuje się niezbędne do celów prewencyjnych i w związku z

¹ (zgodnie z art. 104 a ustawy z dnia 20 kwietnia 2004 r. o promocji zatrudnienia i instytucjach rynku pracy (Dz. U. z 2008 r. Nr 69, poz. 415 z późn. zm) i art. 9 a ustawy z dnia 13 lipca 2006 r. o ochronie roszczeń pracowniczych w razie niewypłacalności pracodawcy (Dz. U. Nr 158, poz. 1211 z późn. zm).

processing procedures, including measures to ensure lawful and fair processing, may be specified in this legal basis.

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 shall take into account:

(a) any link between the purposes for which the data have been collected and the purposes of the intended further processing;

(b) the context in which the data have been collected (...);

(c) the nature of the personal data;

(d) the possible consequences of the intended further processing for data subjects (...);

(e) appropriate safeguards .

4. Where the purpose of further processing is incompatible with the one for which the personal data have been collected, the further processing must have a legal basis

3a. Proponujemy wykreślenie całego ustępu 3 a albo co najmniej punktów c-e. Są one niejasne i zbędne. W praktyce administrator powinien sprawdzić czy cel dalszego przetwarzania jest zbieżny z celem, dla którego dane zostały zebrane oraz kontekst ich zebrania. W tym kontekście zbędne jest rozważanie natury (?) danych albo konsekwencji.

uzasadnionym podejrzeniem popełnienia przestępstwa dokonywanych na szkodę administratora, w szczególności banków, instytucji kredytowych, oraz instytucji finansowych i ich klientów.

Zabezpieczeniem przed nadużywaniem tego prawa przed administratorów jest przyznane podmiotowi danych prawo sprzeciwu (bezwartunkowego w odniesieniu do marketingu bezpośredniego oraz „ważonego” z uzasadnionym interesem administratora w pozostałych przypadkach- art. 19 projektu).

4. Wylączenie słusznego interesu administratora jako podstawy przetwarzania danych po zmianie celu przetwarzania uniemożliwi m.in. prowadzenie badań poziomu

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<p>at least in paragraph 1 . . .</p> <p>5. (...) .</p>	<p>one of the grounds referred to in points (a) to (e) of</p>	<p>4. Where the purpose of further processing is not compatible 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. This shall in particular apply to any change of terms and general conditions of a contract.</p>	<p><i>satysfakcji ze świadczonych usług czy też wykorzystania tych danych dla stworzenia innowacyjnych usług. Ma to duże znaczenie dla możliwości przechowywania dla celów dowodowych albo w sytuacji rozpatrywania reklama zgłoszonej po zakończeniu stosun umowne</i></p> <p><i>W naszej ocenie i zgodnie z ugruntowanym w doktrynie² poglądem wszystkie podstawy przetwarzania powinny być traktowane jako równoprawne. Zasada adekwatności przetwarzanych danych, obowiązek informacyjny i prawo zgłoszenia sprzeciwu w sposób wystarczający zabezpieczają interesy podmiotu danych. Nie ma więc powodu, żeby pozbawiać amidnstartora danych możliwości przetwarzania danych w celu realizacji jego uzasadnionych interesów.</i></p>
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Article 8 Processing of personal data of a child

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 guardian.

The controller shall make reasonable efforts to **verify in such cases that** consent is given **or authorised by the child's parent or guardian** , taking into consideration available technology.

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 .

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(...).]

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) .

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Article 9 Processing of special categories of personal data

1. The processing of personal data, revealing racial or ethnic origin, political opinions, religion or philosophical beliefs, trade-union membership, and the processing of genetic data or data concerning health or sex life or criminal convictions and offences or related security measures shall be prohibited.

2. Paragraph 1 shall not apply if one of the following applies:

.....

(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

(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

(d) processing is carried out in the course of its legitimate

<p>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 for reasons of important public interest, on the basis of Union law or Member State law 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><u>e. przetwarzanie dotyczy danych osobowych, które zostały wyraźnie podane do publicznej wiadomości przez podmiot danych lub dobrowolnie i na wniosek podmiotu danych przekazane administratorowi danych w konkretnym, wskazanym przez siebie celu, a przetwarzanie to odbywa się w interesie podmiotu danych,</u>.....</p>	<p><u>Konieczne jest zapewnienie podstawy prawnej do przetwarzania danych, w sytuacji gdy podmiot danych wyraźnie zwraca się do administratora z prośbą o podjęcie określonych działań,....</u></p> <p><u>gdz zwraca się o umorzenie kredytu z powodów osobistych, opisując jednocześnie trudną sytuację rodzinną. W takich sytuacjach wymóg uzyskiwania przez administratora dodatkowej zgody byłby nadmiernie obciążający. Interes podmiotu i fakt, iż wnioskuje on o takie działania powinien być wystarczającą podstawą do przetwarzania danych do tego celu. Wskazany problem odczuwalny jest przez wszystkie branże, w sytuacji prowadzenia działalności windykacyjnej. Przewidziany w art. 9 ust 1 e wyjątek od zakazu przetwarzania nie daje obecnie podstaw do realizacji ww. wniosków podmiotów danych, co odbija się</u></p>
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<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>2a <i>Processing of data relating to criminal convictions and offences 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 <u>for the rights and freedoms of data subjects . A complete register of criminal convictions may be kept only under the control of official authority.</u></i></p> <p>3. (...)</p>		<p><i>niekorzystnie zarówno na administratorze jak i na osobie zwracającej się o umorzenie długu.</i></p>
<p><i>Article 10 Processing not requiring identification</i></p> <p>1. <u>If the purposes for which</u> a controller processes <u>personal data</u> do not <u>require</u> the identification of a data subject <u>by the controller</u>, the controller shall not be obliged to acquire</p>		

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(...) additional information in order to identify the data subject for the sole purpose of complying with (...) this Regulation. .

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 .

2. wykreślić

Podważa to sens artykułu 10 ust 1 i pseudonimizacji i de facto obliuguje administratora spełnienia wskazanych w tym artykule obowiązków.

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<p>Article 11 Transparent information and communication</p> <p>1. (...)</p> <p>2. (...).</p>		
<p>Article 12 <u>Transparent information, communication and modalities for exercising the rights of the data subject</u></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</u></p>	<p><u>1. The controller shall take appropriate measures to provide any information referred to in 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, (...)in particular where addressed specifically to a child. The information shall be provided in writing, electronically or where appropriate, by other means;</u></p>	<p><u>Nie powinno się wprowadzać zasady udzielania informacji w formie pisemnej.</u></p> <p><u>Lepiej,</u></p>

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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.

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 (...).

4. Information provided under Articles 14 and 14a (...) and any communication under Articles **16 to 19** and 32 shall be provided free of charge. Where requests from a data subject are (...) *manifestly unfounded or excessive*, 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 demonstrating the manifestly unfounded or excessive character of the request.

Popieramy wykreślenie z tego katalogu art 15.

<p><u>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.</u></p> <p>5. (...).</p> <p>6. (...).</p>		
<p><i>Article 13 Rights in relation to recipients</i></p> <p>(...)</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;

(c) the recipients or categories of recipients of the personal data ;

(d) where applicable, that the controller intends to transfer personal data to a recipient in a third country or international organisation;

(e) the existence of the right to request from the controller access to and rectification or erasure of the personal data **or restriction of processing of personal data** concerning the data subject and to object to the processing of such personal data, [including for direct marketing purposes];

(f) the right to lodge a complaint to a supervisory authority (...);

(...)

(g) 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 ; and

e) the existence of rights specified in articles 15, 16, 19

Ad pkt. e
Poza prawem sprzeciwu wobec przetwarzania danych osobowych do celów marketingu bezpośredniego (19 ustęp 2), żadne z tych praw nie jest prawem bezwarunkowym. Przepis nie powinien sprawiać wrażenia, że podmiot danych może w każdej sytuacji domagać się usunięcia jego danych. Nie jest to możliwe np. jeśli podstawą przetwarzania jest przepis prawa lub jeżeli uzasadniony interes administratora (inny niż marketing bezpośredni) przeważa nad interesem podmiotu danych. W niektórych sytuacjach administrator jest zobowiązany do przechowywania danych przez przepisy i usunięcie ich na żądanie

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<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>4. (...).</p> <p>5. Paragraphs 1 and 1a shall not apply where <u>and insofar as</u> the data subject already has the information (...).</p> <p>6. (...).</p> <p>7. (...).</p> <p>8. (...).</p>	<p><i><u>the existence of profiling referred to in Article 20(1) and (3) and information concerning the data involved in the profiling, as well as the significance and the envisaged consequences of such profiling of the data subject.</u></i></p>	<p><u>podmiotu danych mogłoby go narazić na odpowiedzialność.</u></p>
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Article 14 a Information to be provided where the data have not been obtained from the data subject

1. Where personal data have not been obtained from the data subject, the controller shall 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.

2. 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) the categories of personal data concerned;

(b) (...)

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

(d) the recipients or categories of recipients of the personal data;

(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[, including for direct marketing purposes];

(f) the right to lodge a complaint to a supervisory authority (...);

(g) the origin of the personal data, unless the data originate from publicly accessible sources ;

(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.

3. The controller shall provide the information referred to in paragraphs 1 and 2-:

(a) (...) within a reasonable period after obtaining the data, having regard to the specific circumstances in which the

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, as specified in articles 16 ... (w zależności od finalnej numeracji artykułów).....

(g) W takich sytuacjach obowiązek informacyjny powinien zostać wyłączony (tak słusznie stanowi ust. 4 pkt d)

Ad pkt. e
Poza prawem sprzeciwu wobec przetwarzania danych osobowych do celów marketingu bezpośredniego (19 ustęp 2 projektu KE), żadne z tych praw nie jest prawem bezwarunkowym. Przepis nie powinien sprawiać wrażenia, że podmiot danych może w każdej sytuacji domagać się usunięcia jego danych. Nie jest to możliwe np. jeśli podstawa przetwarzania jest przepisem prawa lub jeżeli uzasadniony interes administratora (inny niż marketing bezpośredni) przeważa nad interesem podmiotu danych. W niektórych sytuacjach administrator jest zobowiązany do przechowywania danych przez przepisy i usunięcie ich na żądanie podmiotu danych mogłoby go narazić na odpowiedzialność.

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data are processed, or

(b) if a disclosure to another recipient is envisaged, at the latest when the data are first disclosed.

4. Paragraphs 1 to 3 shall not apply where and insofar as:

(a) the data subject already has the information; or

(b) the provision of such information in particular when processing personal data for historical, statistical or scientific purposes __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

(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

(d) where the data originate from publicly available sources ; or

<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>5. (...).</p> <p>6. (...).</p>		
<p><i>Article 15</i> <i>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 and the following information 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><u>Popieramy. Alternatywna propozycja.</u></p> <p><u>Right of access for the data subject</u></p> <p>1. <u>The data subject shall have the right to obtain from the controller on request, submitted at most once in 6 months, confirmation as to whether or not personal data concerning him or her are being processed. Where such personal data are being processed, the controller shall communicate the personal data undergoing processing and the following information to the data subject:</u></p>	<p><u>W związku z zakazem pobierania opłat przewidzianym w artykule 12 ustęp 4, konieczne jest realne zabezpieczenie admistratoów przed kosztami zwiazanymi z nieuzasadnionymi lub zbyt częstymi wnioskami. Proponujemy, żeby w treści rozproządzenia doprecyzować, jaka częstotliwość realizacji prawa dostępu do informacji powinna być uznana za rozsądną. Propozycja jest inspirowana rozwiązaniem polskiej ustawy o ochronie danych osobowych, która stanowi, że podmiot danych może skorzystać z prawa do informacji, nie częściej niż raz na sześć miesięcy (art. 32 ustęp 1 pkt 5).</u></p>

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(d) **where possible**, the envisaged period for which the personal data will be stored;

(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;

(f) the right to lodge a complaint to a supervisory authority (...);

(g) where the personal data are not collected from the data subject, any available information as to their source;

(h) 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.

1a. 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

;

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**

(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, as specified in articles 16, ... (w zależności od finalnej numeracji odpowiednich artykułów)

(h) in the case of decisions referred to in Article 20, knowledge of the data involved in any automated data processing as well as the significance and envisaged consequences of such processing.

Where personal data are transferred to a third country, the data subject shall have the right to obtain information about the appropriate safeguards relating to the transfer ;

Wykreślić.

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provide a copy of the data **concerning the data subject** in that format to the data subject .

3. (...).

4. (...).

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].

*Article 16 **Right to rectification***

1. (...) The data subject shall have the right— to obtain from the controller the rectification of personal data concerning him or her which are inaccurate.

Having regard to the purposes for which data were processed, the data subject shall have the right to obtain completion of incomplete personal data, including by means of providing a supplementary (...) statement.

2. [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.]

*Article 17 **Right to be forgotten and to erasure***

1. The (...) controller shall have the obligation to erase personal data without **undue** delay (...) and the data subject shall have the right to obtain the erasure of personal data without **undue** delay (...) where one of the following grounds applies:

(a) the data are no longer necessary in relation to the

purposes for which they were collected or otherwise processed;

(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;

(c) the data subject objects to the processing of personal data and 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);

(d) the data have been unlawfully processed;

(e) the data have to be erased for compliance with a legal obligation to which the controller is subject .

2. (...).

2a. *Where the controller (...) has made the personal data public 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***

Wykreślić ustęp 2a

Nawet w takiej postaci prawo bycia zapomnianym jest nierealne. Administrator, który dane upublicznił nie ma możliwości ustalenia jacy kontrolerzy, którzy mieli dostęp do upublicznionych danych

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processing **the** data, that a data subject requests them to erase any links to, or copy or replication of that personal data .

3. Paragraphs 1 and 2a shall not apply to the extent that (...) processing of the personal data is necessary:

(a) for exercising the right of freedom of expression in accordance with Article 80 ;

(b) for compliance with a legal obligation to process 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 ;**

(c) for reasons of public interest in the area of public health in accordance with Article 81 ;

(d) for historical, statistical and scientific (...) purposes in accordance with Article 83;

(e) (...);

(f) (...);

(g) **for the establishment, exercise or**

przetwarzają te dane ani możliwości wymuszenia na nich wykreślenia danych.
Administrator mógłby wpłynąć jedynie na tych administratorów, którym dane udostępnił (bez ich upublicznia tzn. udostępnienia w taki sposób, aby każdy mógł się z nimi zapoznać).

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<p><u>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 are required by the data subject for the establishment, exercise or defence of legal <u>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>		

3. Where processing of personal data has been restricted under paragraph 1, such data may, with the exception of storage, only be processed with the data subject's consent or for the establishment, exercise or defence of legal claims (...) or for the protection of the rights of another natural or legal person or for reasons of important public interest .

4. **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 .(...)**

5. (...).

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.] .

*Article 17b **Notification obligation regarding rectification or erasure***

<p>The controller shall communicate any rectification, erasure or restriction of processing 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>Article 18</i> Right to data portability</p> <p>1. (...).</p> <p>2. Where the data subject has provided personal data and the processing, (...) based on consent or on a contract, is carried on in an automated processing system, the data subject shall have the right to withdraw these data in a form which permits the data subject to transmit them into another automated processing system without hinderance from the contrller from whom the personal data are withdrawn.</p> <p>2a. The right referred to in paragraph 2 shall be without prejudice to intellectual property rights.</p> <p>[3. The Commission may specify (...) the technical standards, modalities and procedures for the transmission of</p>	<p><u>Wykreślić.</u></p>	<p><u>Rozporządzenie o ochronie danych osobowych nie jest aktem prawnym, w którym ta kwestia powinna być regulowana. Przenoszalność danych dotyka zagadnień prawa konkurencji, przepisów o ochronie konsumentów, o których nie powinno się rozstrzygać w przepisach dotyczących ochrony prywatności.</u></p>

personal data pursuant to paragraph 2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).]

4. [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.] .

*Article 19 **Right to object***

1. The data subject shall have the right to object, on reasoned grounds relating to his or her particular situation, at any time to the processing of personal data concerning him or her 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 .

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 .

2. Where personal data are processed for direct marketing purposes, the data subject shall have the right to object free of charge at any time to the processing of personal data concerning him or her for such marketing. This right shall be explicitly brought to the attention of the data subject (...) and shall be presented clearly and separately from any other information .

2a. Where the data subject objects to the processing for direct marketing purposes, the personal data shall no longer be processed for such purposes .

3. (...).

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].

Article 20 **Decisions based on profiling**

1. Every data subject shall have the right not to be subject to a decision based solely on profiling *which produces legal effects concerning him or her (...)* 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

(c) is based on the data subject's consent, subject to the conditions laid down in Article 7 (...).

2. (...).

3.	Profiling shall not (...):
(a)	<i>be carried on</i> 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) ;
(b)	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.
4.	(...) .
5.	(...).

Ad 3. (a) Zdecydowanie sprzeciwiamy się takiemu wyłączeniu. ▲

Ad 3 (a)

Konfederacja..... Lewiatan:.....arty
faktycznie zakazuje jakiegokolwiek automatycznego przetwarzania (nie tylko skutkującego wydaniem decyzji albo negatywnie wpływającego na podmiot danych, jak w ustępie 1) do celów marketingu bezpośredniego w oparciu o inne dane niż dane spseudonimizowane.

Takie podejście będzie niekorzystne dla podmiotów danych i administratorów. Jak szczegółowo wskazano poniżej profilowanie dla celów marketingowych ma korzystny skutek dla odbiorców reklam, ponieważ trafiają do nich dopasowane komunikaty, których będzie mniej, niż gdyby każdej osobie wyświetlać taką samą reklamę. Profilowanie jest również korzystne dla reklamodawców, którzy dzięki temu będą mogli ograniczyć koszty marketingu, z uwagi na precyzyjne docieranie do osób zainteresowanych ich produktami, co ma korzystny wpływ na gospodarkę.

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Article 21 Restrictions

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 20 and Article 32, when such a restriction constitutes a necessary and proportionate measure in a democratic society to safeguard :

- (aa) national security;
- (ab) defence;
- (a) public security;
- (b) the prevention, investigation, detection and prosecution of criminal offences;
- (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 the protection of market stability and integrity;
- (d) the prevention, investigation, detection and

prosecution of breaches of ethics for regulated professions;

(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);

(f) the protection of the data subject or the rights and freedoms of others .

2. Any legislative measure referred to in paragraph 1 shall contain specific provisions at least as to 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.