

INSTRUKCJA DLA PRZEDSTAWICIELA POLSKI
na posiedzenie grupy Friends of the Presidency
16 września 2013 r.

Institucja wiodąca: Ministerstwo Administracji i Cyfryzacji

Institucje współpracujące: Generalny Inspektor Ochrony Danych Osobowych, Ministerstwo Gospodarki, Ministerstwo Sprawiedliwości, Ministerstwo Spraw Wewnętrznych, Ministerstwo Pracy i Polityki Społecznej, Ministerstwo Zdrowia, Główny Urząd Statystyczny, Urząd Komunikacji Elektronicznej, Stałe Przedstawicielstwo RP przy UE, Ministerstwo Spraw Zagranicznych.

Informacje na temat przedstawicieli Polski na posiedzenie:	
Imię i nazwisko/stanowisko:	Michał Czerniawski, Główny Specjalista, Departament Społeczeństwa Informacyjnego, MAiC Joanna Harazim, Radca, Wydział Sprawiedliwość i Sprawy Wewnętrzne SP RP przy UE
Delegacja towarzysząca:	Wojciech R. Wiewiórowski, Generalny Inspektor Ochrony Danych Osobowych

PORZĄDEK OBRAD

1. Approval of the agenda

2. General Data Protection Regulation

- Chapter V

11013/13 DATAPROTECT 78 JAI 496 MI 546 DRS 119 DAPIX 88 FREMP 85

COMIX 380 CODEC 1475

12884/13 DATAPROTECT 117 JAI 689 MI 692 DRS 149 DAPIX 103 FREMP 116 COMIX 473 CODEC 1861

13440/13 DATAPROTECT 120 JAI 747 MI 736 DRS 161 DAPIX 107 FREMP 120

COMIX 489 CODEC 1974

3. Any other business

Stanowisko Polski do zaprezentowania podczas posiedzenia:

Article 41

Transfers with an adequacy decision

Ad. Article 41.1 – Poland will join footnote 309 as we are against introduction of adequacy decisions covering processing sectors. In our opinion such possibility will increase legal uncertainty and may lead to confusion regarding level of data protection on certain territory.

Ad. Article 41.2 – Polish delegate will support footnote 313, in our opinion the list should not be exhaustive.

Ad. Article 41.5 – Polish delegate will underline that in our opinion decisions regarding repealing, amending or suspending an adequacy decision shall be preceded by an opinion issued by the European Data Protection Board. Moreover, Polish delegate will support the possibility for the European Commission to adopt negative adequacy decisions. In our opinion, the risk of being subject to a negative decision might be a factor encouraging third countries to introduce higher data protection standards.

Article 42

Transfers by way of appropriate safeguards

Ad. Article 42.2.e, Article 42.2.f – Polish delegate will oppose introduction of a reference to certification mechanisms and approved codes of conduct in this article. Although Poland strongly supports the idea of self-regulation, the reference to those instruments in this place could result, in our opinion, in weakening of personal data protection in the context of data transfers. As the above mentioned instruments are not legally binding they shall not constitute basis for data transfers to third countries.

Ad. Article 42.5 – Polish delegate will emphasize the need for explanation what exactly „administrative arrangement” is, as in the Polish legal system this term has certain meaning.

Article 43

Transfers by way of binding corporate rules

Ad. Article 43.3 – Polish delegate will support provisions of Article 43.3 in its present shape. When dealing with binding corporate rules we should rely on Commission’s experience in this respect.

Article 44
Derogations for specific situations

Ad. Article 44.1.d – Polish delegate will thank the Presidency for taking into account Polish suggestion and replacing term „set of transfers” with a more clear one – „category of transfers”.

Ad. Article 44.1.h – Polish representative will support the deletion of this subparagraph (as it was already mentioned in footnote 371). In our opinion, this subparagraph decreases the level of data protection in comparison to the level of protection guaranteed by the Directive 95/46.

Ad. Article 44.2 – Poland would like to keep this subparagraph.

Article 45
International co-operation for the protection of personal data

Poland will withdraw support for footnote 379.

Article 42a
Disclosures not authorised by Union law
(as proposed in document 12884/13)

Poland is concerned about the recent media reports on the US surveillance programmes such as PRISM. Polish delegate will underline that the situation where a foreign intelligence agency has access to personal data, including sensitive data, of Polish and European citizens on a mass scale is highly alarming. These reports underline the need to ensure the provision of better protection of personal data of EU citizens.

Polish delegate will support the German proposal. He will remind the delegations that Poland was the first (during the Dapix meeting in June), to propose the need to consider the so-called art. 43a (which was in a leaked version of the draft regulation and was proposed by Mr Jan Philipp Albrecht in the LIBE committee) as a good starting point for a discussion on solutions which would better safeguard citizens against transfers of their personal data to intelligence services in third countries without a legal basis recognized by EU or Member State law. Polish delegate will point out that the issue of co-existence of two legal regimes (EU and US) can be in practice difficult to reconcile. Therefore, in our view Article 42a is a step in a right direction, but ultimately the issue of disclosures of personal data not authorised by Union law should be solved by an international agreement.

Polish delegate will mention that due to the PRISM case we can hear voices that the EU-US Safe Harbor agreement needs to be changed, as it could be a loophole for data transfers. Polish delegate will also inform the delegates that Poland is working internally on its own report evaluating the functioning of the Safe Harbor agreement. Poland will be ready to discuss the issue of transmission to third countries before the JHA Council on 7-8 October 2013.

Ad. Article 42a. 1 – Poland would like to underline that data transfers based on mutual assistance treaties or international agreements must be made in accordance with fundamental rights. Therefore, Polish delegate will propose the following change „unless this is provided for by a mutual assistance treaty or an international agreement between the requesting third country and the Union or a Member State or other legal provisions at national or Union level that respect rights, freedoms and principles as set out in the Charter of Fundamental Rights of the European Union”.

Sporządził: Michał Czerniawski, DSI MAiC (przy wykorzystaniu wkładów instytucji współpracujących) 1702 13/09/2013 r

Akceptował: Maciej Groń, Dyrektor DSI MAiC

DYREKTOR
DEPARTAMENTU SPOŁECZYSTWA INFORMACYJNEGO
MINISTERSTWA ADMINISTRACJI CYFRYZACJI

Data: 13 września 2013 r.

Maciej GRÓŃ