

Projekt przepisu	Propozycja zmian:	Uwagi:
<p><i>Article 4</i></p> <p>Article 4 (12a) '<u>profiling</u>' means an <u>automated</u> processing technique that consists of applying a 'profile' to an individual, particularly in order to take decisions concerning her or him or for analysing or predicting her or his personal preferences, behaviours and attitudes; a profile being a set of personal data characterising a category of individual;</p>	<p><i>Article 4</i></p> <p>(12a) '<u>profiling</u>' means an <u>automated</u> processing technique that consists of categorizing <u>applying a 'profile' to a individual, data subject, (OR categorizing an individual on the basis of his or her personal data)</u> particularly in order to take decisions concerning her or him or for analysing or predicting her or his personal preferences, behaviours and attitudes; a <u>profile being a set of personal data characterising a category of individual</u></p>	<p>Zaproponowana definicja bylaby proba definicji techniki, a nie regulacja zastosowania techniki zgodnie z wymogami ochrony danych osobowych z rozporzadzenia. Glownymi elementami profilowania sa:</p> <ul style="list-style-type: none"> - zautomatyzowane przetwarzanie - zeby byc objete rozporzadzeniem, musi to byc zautomatyzowane przetwarzanie ograniczone do przetwarzania danych osobowych (wlacznie z danymi spseudonimizowanymi) - jego celem jest dokonanie kategoryzacji jednostek w celu analizy lub prognozowania zachowań lub preferencji. <p>Jesli chodzi o zasady jakie powinny stosowac sie do profilowania, to powinny one zostac okreslone w odrebnym przepisie. Natomiast tutaj definicja profilowania powinna pozostac w pelni neutralna.</p>

<p><i>Article 20</i></p> <p><i>Decisions based on profiling</i></p> <p>1. Every <u>data subject</u> shall have the right not to be subject <u>to a decision based on profiling concerning him or her</u> which produces legal effects (...) or <u>adversely affects</u> (...) <u>him or her unless such</u> processing:</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> (...) <u>and</u> suitable measures to safeguard the data subject's legitimate interests have been adduced, such as the <u>rights of the data subject</u> to obtain human intervention <u>on the part of the controller to express his or her point of view and to contest the decision</u>; or</p>	<p><i>Article 20</i></p> <p><i>Decisions based on profiling</i></p> <p>1. Every <u>data subject</u> shall have the right not to be subject <u>to a decision based on profiling concerning him or her</u> which produces legal effects (...) or <u>adversely affects</u> (...) <u>him or her unless such</u> processing:</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> (...) <u>and</u> suitable measures to safeguard the data subject's legitimate interests have been adduced, such as the <u>rights of the data subject</u> to obtain human intervention <u>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 law <u>to which the controller is subject and which also lays down</u></p>	<p>1. Ust 1Pkt (a) W niektórych przypadkach przetwarzanie wykonywane jest w wyniku umowy, ktora nie zostala zawarta pomiedzy podmiotem danych I administratorem. O ile podmiot danych mam mozliwosc wyrazenia opinii I sprzeciwienia sie decyzji, taka mozliwosc powinna byc dopuszczona (np. Umowy ubezpieczenia). W innym przypadku zostaje zagrozony model uslug b2b2c.</p> <p>2. Ust 1 Pkt (b) proponowane jest skreslenie tekstu, poniewaz implikuje on ze właściwe prawo UE czy prawo krajowe powinny zawierac odniesienia do kwestii ochrony danych osobowych. To nie jest konieczne, skoro Rozporządzenie znajdzie bezpośrednie zastosowanie.</p> <p>3. Ust. 3. Jest niejasne jak proponowany zakaz ma sie do punktu 1. Blankietowy zakaz marketing bezposredniego jest nieuzasadniony, skoro marketing bezpośredni moze i powinien byc oparty na jednej z przewidzianych w art. 6 podstaw przetwarzania. Przepis ust. 3a pozostaje w sprzeczności z podejsciem znanym z art 20.1, zgodnie z którym zakazane sa tylko określone rodzaje profilowania, chyba ze zachodza szczególne okoliczności. Oczywiście, jest uzasadnione zakazanie profilowania w oparciu o dane wrażliwe o ile nie zostana zapewnione adekwatne</p>
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(b)	is (...) authorized by Union or Member State 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	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 (...).	(c) is based on the data subject's consent, subject to the conditions laid down in Article 7 (...).
2.	(...)	2. (...)
3.	<u>Profiling shall not be carried out:</u>	<u>3. Profiling shall not be carried out:</u>
	<u>(a) for direct marketing purposes unless pseudonymous data are processed and the data subject has not objected to the processing pursuant Article 19(2);</u>	<u>(a) for direct marketing purposes unless pseudonymous data are processed and the data subject has not objected to the processing pursuant Article 19(2);</u>
	<u>(b) on special categories of personal data referred to in Article 9(1), unless the safeguards of Article 9(2) can be adduced.</u>	<u>(b) on special categories of personal data referred to in Article 9(1), unless the safeguards of Article 9(2) can be adduced.</u>
		<u>applies and subject to suitable measures to safeguard the data subject's legitimate interests.</u>
4.		4. (...) <u>The information to be provided by the controller under</u>
		zabezpieczenia, tak jak ma to miejsce w ogole przy przetwarzaniu danych osobowych.
		4. Ust. 4. Proponowane przepisy bylyby niezwykle uciazliwe, a jednoczesnie pokrywa sie z istniejacymi juz rozwiazaniami. Tam gdzie profilowanie jest zakazane co do zasady, przepisy juz zapewniaja zabezpieczenia dla podmiotu danych (nie ograniczone do informacji).

<p><u>Article 9(2) applies and subject to suitable measures to safeguard the data subject's legitimate interests.</u></p> <p>4. (...) The information to be provided by the controller under Articles 14 and 14a shall include information as to the existence of profiling referred to in paragraphs 1 and 3 and information concerning the logic involved in the profiling, as well as the significance and the envisaged consequences of such profiling of the data subject.</p> <p>5. (...)</p>	<p><u>Articles 14 and 14a shall include information as to the existence of profiling referred to in paragraphs 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.</u></p> <p>5. (...)</p>	
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