

Privacy by design for surveillance technologies, including ICT systems – DPA’s perspective

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„Tools and methodologies, definitions and strategies
for privacy by design for surveillance technologies,
including ICY systems”

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- Constitutional Framework in Poland as a basis for Privacy by Design implementation
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POLISH DATA PROTECTION AUTHORITY - INSPECTOR GENERAL FOR PERSONAL DATA PROTECTION

Single independent body established in 1998
(assisted by the Bureau of the Inspector General
for Personal Data Protection)

Appointed and dismissed by the Sejm of the
Republic of Poland with the consent of the
Senate

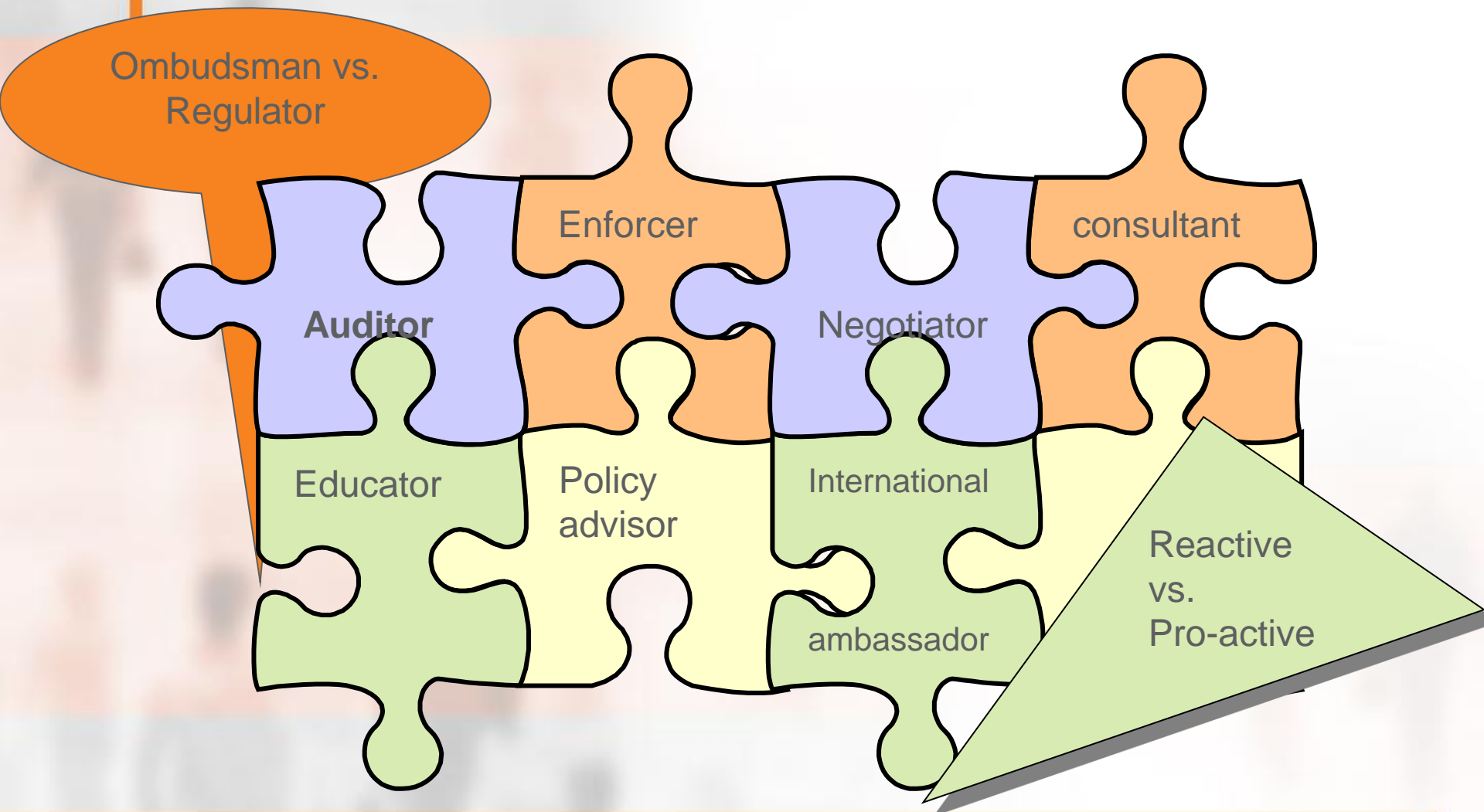
4 years' term of office (renewable)

Guaranties of independence provided for by law

The Act on Personal Data Protection – passed on 29 August 1997, entered
into force on 30 April 1998

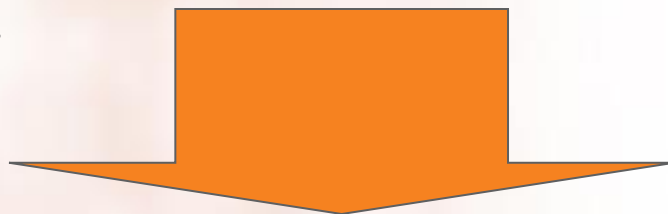
Three law enforcement provisions (Regulations)

THE ROLES OF DATA PROTECTION AUTHORITY



INSPECTOR GENERAL FOR PERSONAL DATA PROTECTION - DUTIES (ART. 12.5 DATA PROTECTION ACT)

- The duties entrusted to the Inspector General comprise, in particular initiating and undertaking activities to improve the protection of personal data.



- Wide range of possibilities inter alia:

Means: Training courses and workshops; publications; competitions; best practices / codes of conduct; academic co-operation; e-learning etc.

CONSTITUTION OF THE REPUBLIC OF POLAND (Art. 47 and 51)

Article 47 of the Constitution clearly guarantees a right to privacy. The Constitution also regulates the right to data protection, also referred to as information autonomy, guaranteed by Article 51.

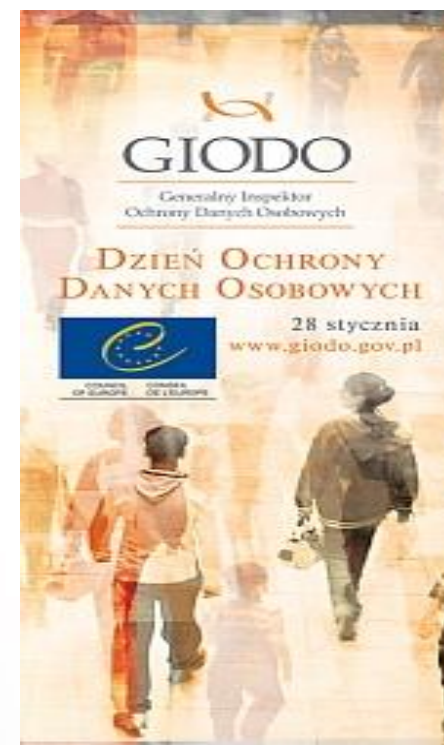
Privacy in the light of the jurisprudence of the Constitutional Court equals the autonomy of citizens.

”Right to data protection is a specialized means of protecting the same values which are protected by the right to privacy”.

The current interpretation of the private sphere with regard to others leads to the protection of all personal data, regardless of its content – including the information which may be used to humiliate the data subject, but also those absolutely indifferent from the point of view of morality or good manners.

ACADEMIC COOPERATION

- University of Cardinal Stefan Wyszyński in Warsaw,
- Leon Koźmiński Academy,
- University of Silesia in Katowice
- others



PRIVACY by DESIGN GENERAL OVERVIEW

- ‘Privacy by Design’ means that privacy and data protection are embedded throughout the entire life cycle of technologies, from the early design stage to their deployment, use and ultimate disposal
- PbD resolution adopted by 32 International Data Protection and Privacy Commissioners Conference in Jerusalem 2010
- Commission Communication on ‘A Digital Agenda for Europe’ COM(2010) 245
- Commission Communication ‘A comprehensive approach on personal data protection in the European Union’ COM (2010) 609

PRIVACY by DESIGN GENERAL OVERVIEW

- From „theory to practice” – the need for translation of legal requirements into real data protection measures
- Beyond strict technical compliance
- Data minimization concept
- Wider meaning: ‘ Trylogy’ - not only information technologies, but also business practices, physical design and networked infrastructure - linked to the Accountability principle
- Accountability puts emphasis on showing: How responsibility is exercised and making this verifiable (Accountability based mechanism does not change the substantive data protection principles)
- Privacy by Re Design – a new concept of transformative process (Rethinking, Redesigning, Reviving)

THE EUROPEAN COMMISSION WILL EXAMINE THE FOLLOWING ELEMENTS TO ENHANCE DATA CONTROLLERS' RESPONSIBILITY:
(COM (2010) 609 FINAL)

- including in the legal framework an obligation for data controllers to carry out a **data protection impact assessment** in specific cases, for instance, when sensitive data are being processed, or when the type of processing otherwise involves specific risks, in particular when using specific technologies, mechanisms or procedures, including profiling or video surveillance;
- further promoting the use of PETs and the possibilities for the concrete implementation of the concept of **'Privacy by Design'**;
- examine means of **further encouraging self-regulatory initiatives**, including the active promotion of Codes of Conduct;
- explore the feasibility of establishing **EU certification schemes** in the field of privacy and data protection

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PRIVACY by DESIGN

The 7 Foundational principles

- **Proactive** not Reactive; **Preventive** not Remedial
PbD comes before-the-fact, not after
- Privacy as the **Default**
- Privacy **Embedded** into Design
Privacy is integral to the system, without diminishing functionality
- **Full** Functionality – **Positive - Sum**, not Zero – Sum
PbD avoids the pretense of false dichotomies, such as privacy vs. Security, demonstrating that it is possible to have both. PBD seeks to accomodate all legitimate interests and objectives in a positive „win – win” manner
- End – to – End Security – **Lifecycle Protection**
- **Visibility and Transparency**
PbD seeks to assure all stakeholders that the business practise, it is in fact, operating according to the stated promises and objectives, subject to independent verification.
- **Respect** for user Privacy – Keep it user - centric

POSSIBLE APPROACHES

- **ORGANIZATIONAL**
PRIVACY IMPACT ASSESSMENTS (PIAs)
AUDITS
SEALS AND CERTIFICATION PROGRAMES
- **REGULATORY**
OMNIBUS REGULATION
SECTORAL LAWS
SELF – REGULATION / CO-REGULATION

Privacy Impact Assessment

- *Privacy Impact Assessments (PIAs) are used to identify the potential privacy risks of new processing operations, IT systems etc.*



Australian Government

Office of the Australian Information Commissioner



European Privacy Seal

- *Certifying IT products and IT-based services privacy compliance with European data protection regulations*
- *The privacy certificate aims to facilitate an **increase of market transparency** for privacy relevant products and an **enlargement of the market** for Privacy Enhancing Technologies and finally an **increase of trust in IT**.*
- *www.european-privacy-seal.eu*



PRIVACY by DESIGN AND SURVEILLANCE TECHNOLOGIES

- Technology is neutral,
- Win-win scenario?
- Eg.: CCTV, network monitoring, device location tracking, body scanners, RFID, Biometrics,
- Adoption of PETs
- Necessity and proportionality test?
- Transparency and Promoting Trust

PRIVACY by DESIGN

Our expectations

- **Interdisciplinary approach**
- **Theoretical framework**
- **Examination of tools**
- **Public awareness**

THANK YOU FOR YOUR
ATTENTION !