

Urząd
Ochrony
Danych
Osobowych



Data protection in eastern European countries. Experiences, trends and prospects.

Krzysztof Król

Analysis and Strategy Department
Personal Data Protection Office

POLISH DATA PROTECTION LEGISLATION

BEFORE 24 MAY 2018

- CONSTITUTION (ART. 47 – principle of protection of private life
ART. 51 – principle of personal data protection)
- DATA PROTECTION ACT 1997 – GIODO
- IMPLEMENTING REGULATIONS
- SECTOR SPECIFIC LAWS

25 MAY 2018 AND BEYOND

- CONSTITUTION (ART. 47 & 51)
- GDPR
- NEW DATA PROTECTION ACT 2018 (24 May 2018) – Prezes UODO
- ACT IMPLEMENTING DIRECTIVE 2016/680 (February 2019)
- ACT AMENDING CERTAIN ACTS IN CONNECTION WITH ENSURING THE APPLICATION OF REGULATION 2016/679 (May 2019)

DATA PROTECTION ACT 2018:

- ❑ DESIGNATION OF **DPO'S** BY PUBLIC BODIES
- ❑ ACCREDITATION OF **CERTIFICATION BODIES**
- ❑ APPROVAL MODE FOR **CODES OF CONDUCT**
- ❑ **STATUS, POWERS AND PROCEDURES** BEFORE SUPERVISORY AUTHORITY (**PERSONAL DATA PROTECTION OFFICE**)
- ❑ MODE OF **EUROPEAN ADMINISTRATIVE COOPERATION**
- ❑ **CIVIL & PENAL LIABILITY + ADMINISTRATIVE FINES** (up to PLN 100,000 in the public sector)

DPA STATUS

- PRESIDENT APPOINTED BY PARLIAMENT FROM CANDIDATES SUBMITTED BY MEMBERS OF PARLIAMENT
- REQUIREMENTS OF EXPERT LEGAL KNOWLEDGE AND EXPERIENCE, INDEPENDANCE FROM POLITICAL PARTIES ETC.,
- 4-YEAR TERM AND IMMUNITY IN CONDUCTING DUTIES,
- FUNDED FROM THE YEARLY STATE BUDGET,
- ASSISTED BY UP TO 3 DEPUTIES OF HIS CHOOSING AND AN OFFICE OF HIS MAKING,
- REQUIRED TO SUBMIT YEARLY ACTIVITY REPORTS.

DPA'S INDEPENDENCE

☐ Guaranteed by:

provisions of the Act of 10 May 2018 on the Protection of Personal Data - formal confirmation of UODO's independence

1) Art. 34 para. 5

„with regard to the performance of the duties he/she shall be solely subject to the Act”

2) art. 35 oath of office

to perform the duties entrusted to me impartially

FORMAL INDEPENDENCE (ART. 34)

- appointed by the Sejm (lower chamber of the Polish Parliament) with the consent of the Senate
- Polish citizen
- higher education degree
- expert legal knowledge and experience in personal data protection
- no criminal record, full public rights
- up to two terms of 4 years in office

POLITICAL INDEPENDENCE (ART. 38)

a) Immunity

- criminal liability (only with the consent of the Sejm)
- deprivation of freedom (only with the consent of the Sejm)
- may not be detained nor arrested (only in case of *flagrante delicto* and if his/her detention is necessary to secure the due course of proceedings)
- obligation to notify the Speaker of the Sejm

POLITICAL INDEPENDENCE (2) - ART. 38

- b) Prohibitions and restrictions
 - prohibition to hold another position (exception: professor of a higher education institution)
 - prohibition to perform any professional duties not in line with duties
 - prohibition to be a member of any political party or any trade union
 - prohibition to be involved in any public activity which cannot be combined with the honor of the President's post

BUDGETARY AUTHONOMY **(ACT ON PUBLIC FINANCE)**

Preparation of a plan of income and expenses for the following fiscal year (art. 139 para. 2)



Plan included in the draft budgetary act for the next year, without influence of the Minister of Finance



Changes – Members of Parliament in the course of the procedure of passing the budgetary act

INDEPENDENCE - SUMMARY

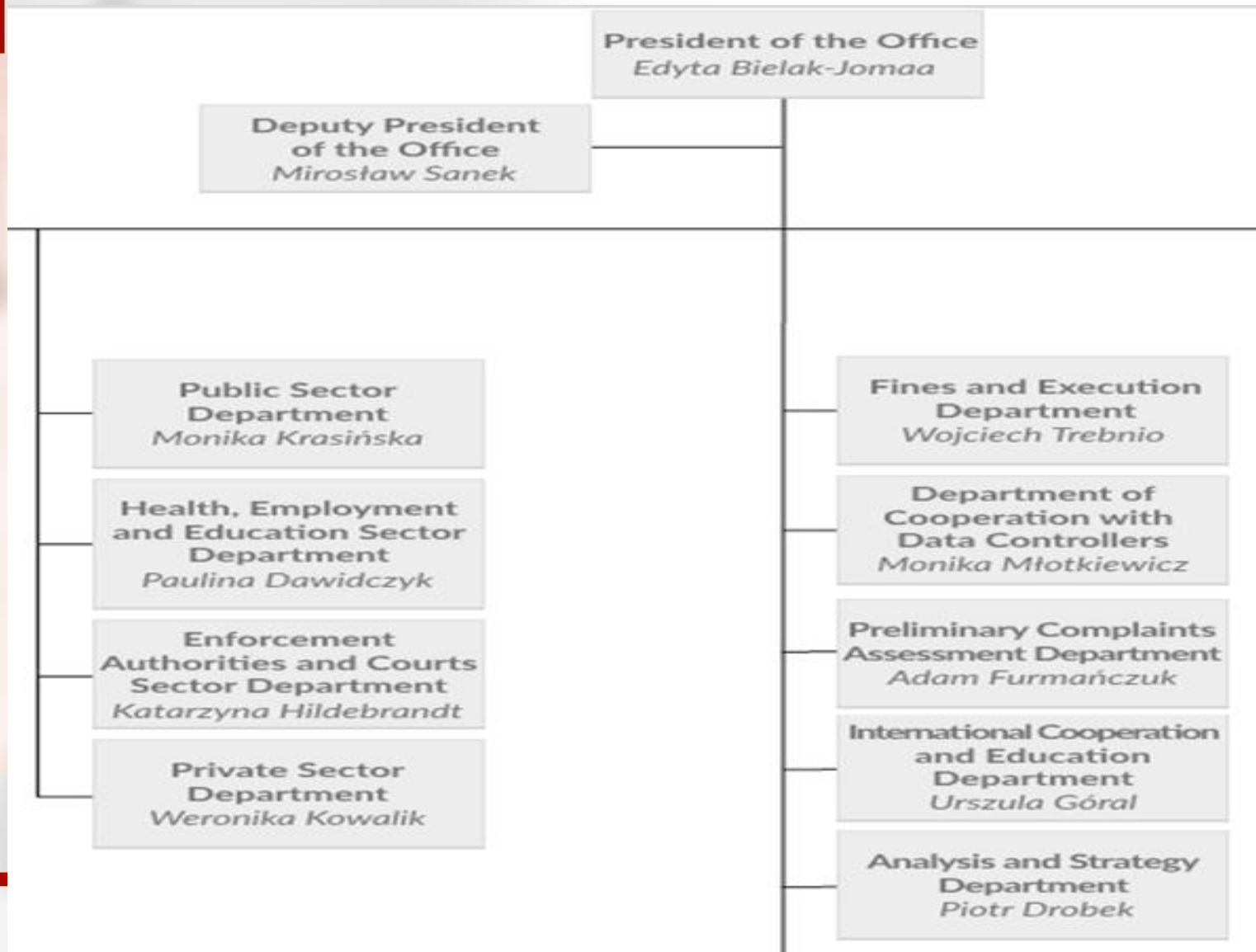
President:

- not subordinate or dependent in any way (in organisational or administrative terms) to other authorities or entities;
- not bound by resolutions, guidelines, standpoints or decisions of other authorities;
- autonomous in resolving the cases considered by it;
- in administrative proceedings a remedy of **appeal against the President's decision to the administrative court.**

PERSONAL DATA PROTECTION OFFICE

- PRESIDENT ASSISTED BY UP TO 3 DEPUTIES OF HIS CHOOSING,
- DEPUTIES TASKS DETERMINED BY ORDERS OF THE PRESIDENT,
- OFFICE ORGANISED BY ORDERS OF THE PRESIDENT ,
- PRESIDENT AND PERSONEL REQUIRED TO KEEP ANY INFORMATION CONFIDENTIAL
- YEARLY ACTIVITY REPORTS SUBMITTED TO
 - Sejm, Council of Ministers, Prosecutor General
 - Commissioner for Human Rights and Ombudsperson for Children,
 - the general public via Office website.

ORGANISATIONAL STRUCTURE



TASKS OF SECTORAL DEPARTMENTS

- Complaints handling (including EU cases),
- Inspections,
- Review of legislative proposals,
- Questions from data subjects and controllers
- Participation in international activities.

ENFORCEMENT, REMEDIES AND SANCTIONS

POWERS OF SUPERVISORY AUTHORITIES

- ADDRESS TO CONTROLLERS WITH REPLY IN 30 DAYS
- INSPECTIONS WITH POLICE ASSISTANCE and/or PARTICIPATION OF A PERSON WITH SPECIALIZED KNOWLEDGE
- OBSTRUCTION OF THE INSPECTION MAY BE A CRIME
- STATUTORY LIMITATIONS (scope, duration, procedures etc.)

POWERS OF SA BEFORE CIVIL COURTS

- ESSENTIAL OPINION OF THE SA IN THE CASE (PUBLIC INTEREST)
- INITIATING THE PROCEDURE BEFORE THE COURT (DATA SUBJECT'S CONSENT REQUIRED)
- JOINING THE PROCEDURE BEFORE THE COURT (DATA SUBJECT'S CONSENT REQUIRED)

ENFORCEMENT IN PRACTICE

In the months since the application of the GDPR:

30 April:

- **8092 complaints,**
- **7768 notifications of personal data breaches**

- 31 October
- over **2500 legal questions,**
- over **30 inspections**

EDUCATIONAL/INFORMATIONAL ACTIVITIES

- SECTORAL TRAININGS (public administration, higher education, medical sector, judiciary, banking sector, foundations and associations, social assistance centers and nursing homes, schools and kindergartens, housing sector...) – with streaming and recording events
- PARTICIPATION IN EXTERNAL CONFERENCES AND TRAININGS
- „YOUR DATA- YOUR CASE” (NATIONWIDE EDUCATIONAL PROGRAM)

GUIDELINES AND RECOMENDATIONS ADOPTED BY GIODO/ PERSONAL DATA PROTECTION OFFICE

- How to understand and implement, **risk based approach'** (05/2018)
- Video surveillance** (06/2018)
- Personal data protection in **schools and educational institutions** (08/2018)
- Protection of personal data in the **election campaign** (08/2018)
- Protection of personal data at workplace (in **employment**) (10/2018)
- ...

PUBLICATION

- INFORMATION REGARDING DECISIONS (WIDE RANGE)
- LIST OF OPERATIONS REQUIRING DPIA
- CRITERIA OF ACCREDITATION (MONITORING AND CERTIFICATION BODIES)
- APPROVED CODES OF CONDUCT
- ADOPTED STANDARD CONTRACTUAL CLAUSES
- RECOMMENDATIONS

Urząd
Ochrony
Danych
Osobowych



k_krol@uodo.gov.pl

Generalny Inspektor
Ochrony Danych Osobowych
ul. Stawki 2, 00-193 Warszawa
www.giodo.gov.pl
kancelaria@giodo.gov.pl