



# DATA PROTECTION AUTHORITY IN POLAND

Urszula Góral

The Cardinal Wyszyński University in Warsaw

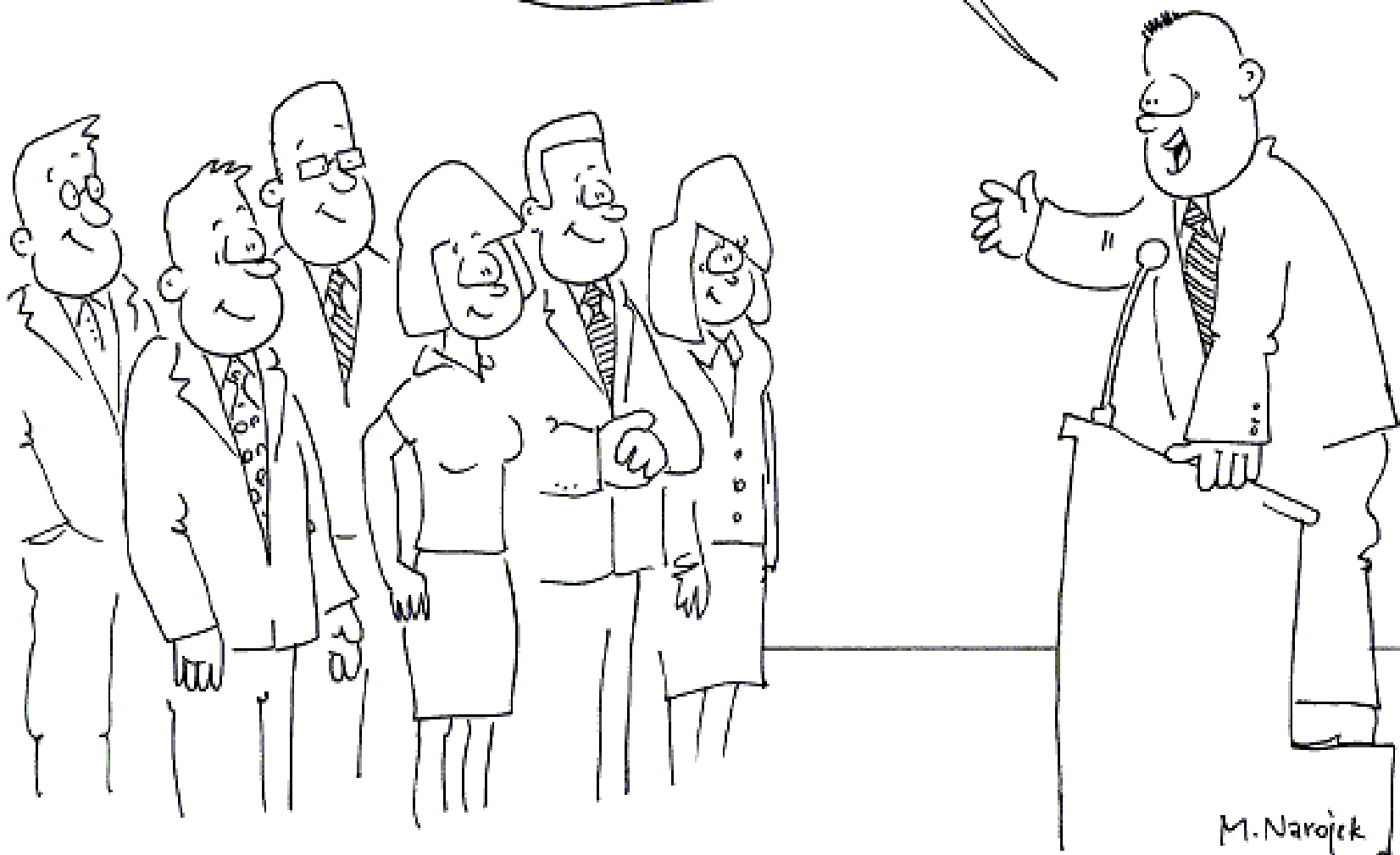
Bureau of the Inspector General for Personal Data Protection, Poland

Generalny Inspektor  
Ochrony Danych Osobowych  
ul. Stawki 2, 00-193 Warszawa  
[www.giodo.gov.pl](http://www.giodo.gov.pl)  
[kancelaria@giodo.gov.pl](mailto:kancelaria@giodo.gov.pl)

## CONTENT

- Legal basis of data protection in Poland
- Basic principles of data protection
- Data Protection Authority

LADIES AND GENTLEMEN,  
DEAR DATA SUBJECTS...



M. Narojek

# CONSTITUTION OF THE REPUBLIC OF POLAND (art. 47)

Everyone shall have the right to legal protection of his private life and family life, of his honour and good reputation and to make decisions about his personal life.

# CONSTITUTION OF THE REPUBLIC OF POLAND (art. 51)

- No one may be obliged, except on the basis of statute, to disclose information concerning his person.
- Public authorities shall not acquire, collect or make accessible information on citizens other than that which is necessary in a democratic state ruled by law.
- Everyone shall have a right of access to official documents and data collections concerning him. Limitations upon such rights may be established by statute.
- Everyone shall have the right to demand the correction or deletion of untrue or incomplete information, or information acquired by means contrary to statute.
- Principles and procedures for collection of and access to information shall be specified by statute

## POLISH DATA PROTECTION LEGISLATION

- The Act on Personal Data Protection – passed on 29 August 1997, entered into force on 30 April 1998
- Several law enforcement provisions (Regulations)



# DATA PROTECTION AUTHORITY – POSSIBLE MODELS



- One person or commission
- One or more in the country
- Public or private sector
- Only data protection or other issues

## VARIOUS ROLES OF DPAs

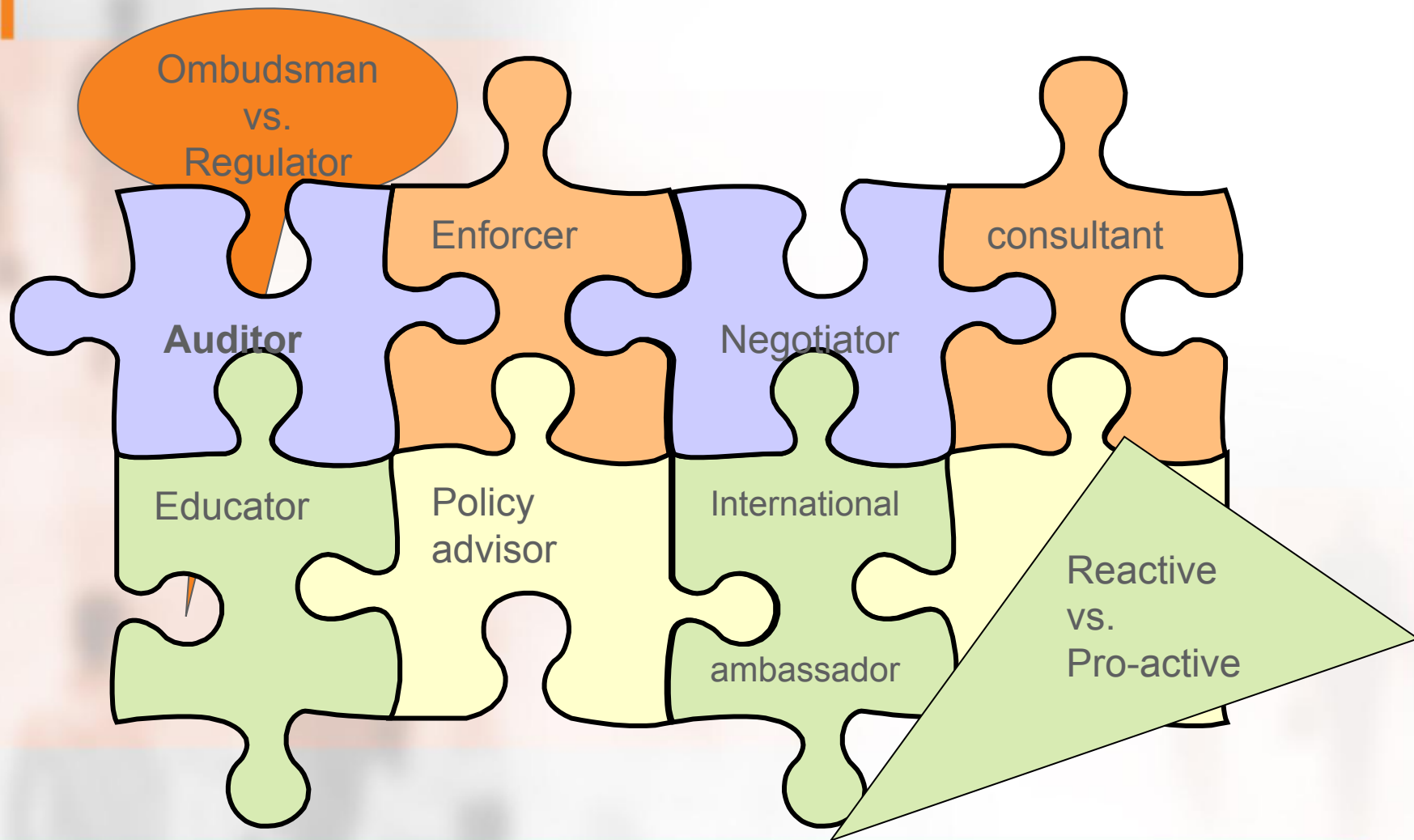
### Seven roles of DPAs:

- Ombudsmen
- Auditors
- Consultants
- Educators
- Policy Advisers
- Negotiators
- Enforcers

C.Bennett, Ch. D. Raab, The Governance of Privacy: Policy Instruments in Global Perspective, Ashgate, 2003, pp. 107-116.



# THE ROLES OF DATA PROTECTION AUTHORITY



## “PRIVACY ENFORCEMENT AUTHORITY” ???

**A better term? ‘Data Privacy Agency’ (DPA) or ‘Privacy enforcement authority’ (PEA)**

Lee Bygrave proposes to change of terminology from ‘Data Protection Authority’ (in 2002) to ‘Data Privacy Agency’ (in 2014).

The OECD Recommendation on Cross-border Co-operation in the Enforcement of Laws Protecting Privacy (2007) uses the term ‘privacy enforcement authority’ (PEA), which “means any public body, as determined by each Member country, that is responsible for enforcing Laws Protecting Privacy, and that has powers to conduct investigations or pursue enforcement proceedings.”

The APEC ‘Cooperation Arrangement Cross-border Privacy Enforcement’ (2010)<sup>17</sup> and the OECD ‘Global Privacy Enforcement Network’ (GPEN) use the same term. During the first PHAEDRA workshop, Blair Stewart put that this definition is “similar to the narrower enforcement oriented definition of supervisory authority in [...] [Convention 108] and

Strasbourg, June 19, 2014 [Directive] 95/46/EC”, and that “[i]n addition to specialist privacy authorities, a PEA may include a general enforcer of, say, consumer or

# POLISH DATA PROTECTION AUTHORITY

## Inspector General for Personal Data Protection (GIODO)

- Single independent body established in 1998
- Assisted by the Bureau of the Inspector General for Personal Data Protection
- Appointed and dismissed by the Parliament
- 4 years' term of office (renewable)
- Guaranties of independence provided for by law

## GIODO AS AN INDEPENDENT SUPERVISORY AUTHORITY

Independence of the Inspector General for Personal Data Protection shall be guaranteed by:

- provisions of the Act of 29 August 1997 on the Protection of Personal Data - formal declaration of GIODO's independence – Art. 8 para. 4
- specific provisions, e.g. GIODO's budget – Act of 27 August 2009 on Public Finance

## TYPES OF GIODO'S INDEPENDENCE

### I. FORMAL

a) GIODO's appointment mode regulated by the provisions of law  
*Art. 8 para. 2-4 of the Act on Personal Data Protection*

- s/he is appointed by the Sejm (lower chamber of the Polish Parliament) with the consent of the Senate
- s/he is Polish citizen permanently residing in Poland
- s/he is known for outstanding moral principles
- s/he has a degree in law and a proper professional experience
- s/he has no criminal record
- with regard to the performance of the duties he/she shall be solely subject to the Act
- the term of office – 4 years (not more than two terms)

# TYPES OF GIODO'S INDEPENDENCE

## I. FORMAL cont.

b) specified reasons for expiry of term of office and dismissal of GIODO

### **dismissal before his/her term of office has expired:**

- his/her resignation
- becoming permanently unable to perform his/her duties due to an illness
- violating his/her oath
- being sentenced pursuant to a valid court judgment for committing a crime
- Sejm with the consent of the Senate

***Art. 8 para. 8 of the Act on Personal Data Protection***

### **expiry of term of office:**

- dismissal
- death
- loss of the Polish citizenship

***Art. 8 para. 7 of the Act on Personal Data Protection***

# TYPES OF GIODO'S INDEPENDENCE

## II. POLITICAL

### a) Immunity

- criminal liability (only with the consent of the Sejm)
- deprivation of freedom (only with the consent of the Sejm)
- s/he 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

### ***Art. 11 of the Act on Personal Data Protection***

### b) Prohibitions and restrictions

- prohibition to hold another position
- prohibition to perform any other professional 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 Inspector General's post

### ***Art. 10 of the Act on Personal Data Protection***

# TYPES OF GIODO'S INDEPENDENCE

## III. BUDGETARY AUTONOMY

### Independence

Preparation of a plan of income and expenses for the next fiscal year – Art. 139 para. 2 of the Act on Public Finance



Inclusion of this plan in the draft budgetary act for the next year without prior agreeing theron – Minister of Finance



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



# GIODO AS AN INDEPENDENT SUPERVISORY AUTHORITY

## Consequence of GIODO's independence:

- it is not in any way subordinate (in organisational or administrative terms) to other authorities or entities;
- it is not bound by resolutions, guidelines, standpoints or decisions of other authorities;
- it is autonomous in resolving the cases considered by it;
- in administrative proceedings it is reflected in the fact that any party not satisfied with the Inspector General's decision may exclusively – as a remedy - **apply to the Inspector General for reconsidering the case, and then appeal against the decision to the administrative court.** (*Art. 21 of the Act on Personal Data Protection*).

# POLISH DATA PROTECTION AUTHORITY (DUTIES)

1. Supervision over personal data processing (both public and private sector)
2. Issuing Administrative Decisions
3. Considering complaints
4. Keeping the register of data filing systems
5. Keeping the register of DPO's
6. Issuing opinions on bills and regulations
7. Activities to improve data protection
8. International co-operation

# THE STATISTICS: ENQUIRIES CONCERNING THE INTERPRETATION OF THE ACT

Year	2011	2012	2013	2014	2015
Number of enquiries sent to DPA	3935	4258	4911	4575	3962

## THE STATISTICS: COMPLAINTS

Year	2011	2012	2013	2014	2015
Number of complaints	1272	1593	1879	2472	2256

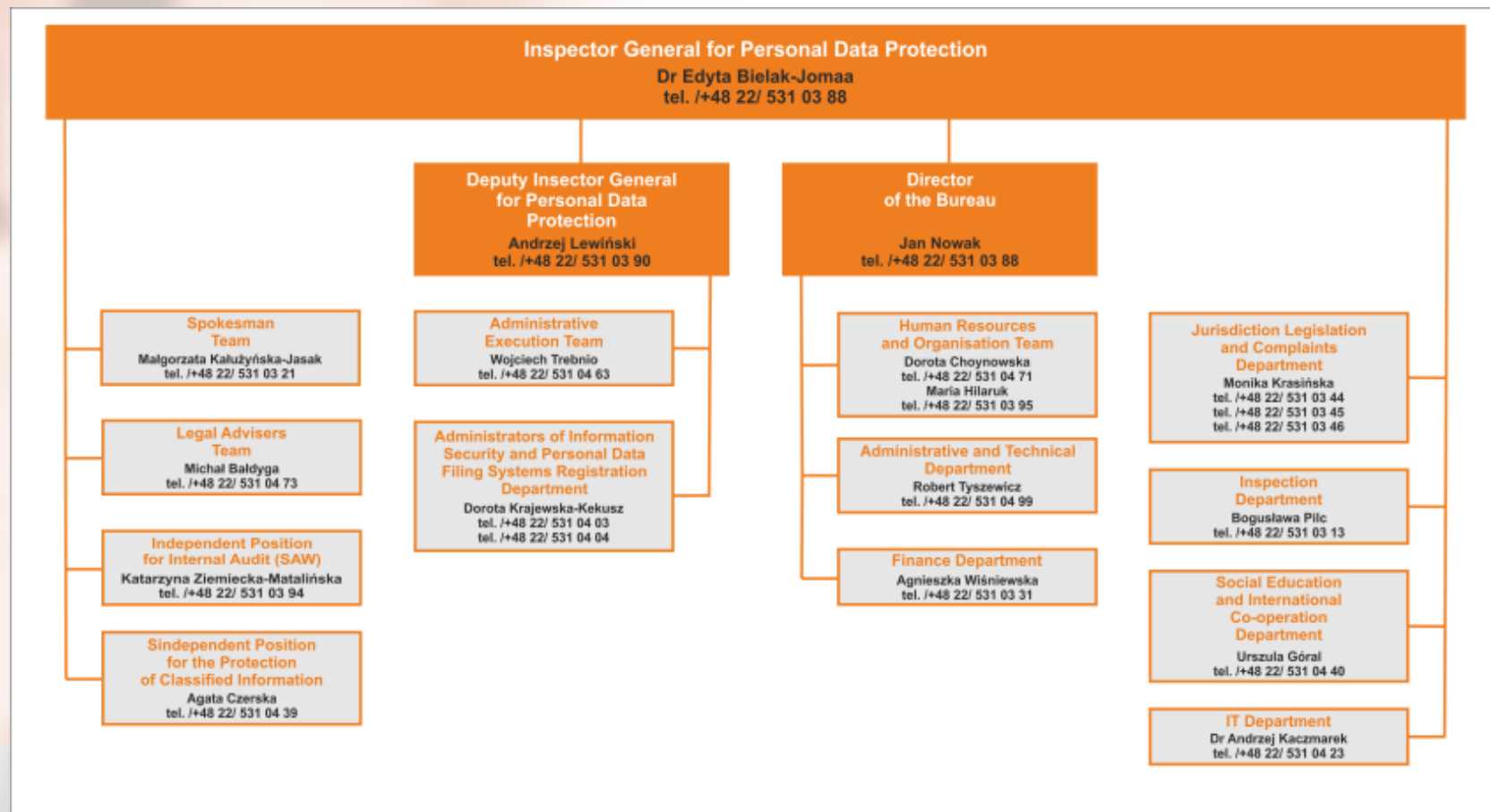
## THE STATISTICS: INSPECTIONS

Year	2011	2012	2013	2014	2015
Number of inspections	199	165	173	175	175

## THE STATISTICS: DATA FILING SYSTEMS NOTIFIED TO REGISTRATION

Year	2011	2012	2013	2014	2015
Number of files notified to registration	15643	21580	28264	43300	31501
Number of files registered	11845	16267	16866	16870	10737

# ORGANISATIONAL STRUCTURE



## JURISDICTION, LEGISLATION AND COMPLAINTS DEPARTMENT

- replying to questions related to the provisions on personal data protection,
- preparing draft addresses of the Inspector General to public and private sector entities regarding the compliance with the provisions on personal data protection,
- drawing up positions on doctrine and legislation of the Supreme Court, general and administrative courts, Constitutional Tribunal in cases related to personal data protection,



## JURISDICTION, LEGISLATION AND COMPLAINTS DEPARTMENT

- accepting and handling complaints and requests concerning realisation of the Act on Personal Data Protection
- issuing opinions on bills and regulations with respect to the protection of personal data,
- participating in the work of the Government, Parliament in connection with handling draft legal acts referred,
- drawing up draft notifications of commission of crime and requests for initiating

## SOCIAL EDUCATION AND INTERNATIONAL COOPERATION DEPARTMENT

- promoting knowledge on personal data protection,
- organising training courses, conferences and seminars,
- handling requests for transfer of personal data to third countries,
- contact with government authorities, NGOs and other institutions in order to exchange experience as regards personal data protection and the right to privacy,
- organising international cooperation (international cooperation programme, international visits, conferences, special focus on EU cooperation),
- publishing materials promoting the knowledge on personal data protection and other publications.

## INSPECTION DEPARTMENT

- conducting supervision over ensuring the compliance of data processing with the provisions on the protection of personal data,
- requesting the Inspector General for authorisation to conduct inspections,
- instituting and conducting administrative proceedings as a result of irregularities found in the course of the inspection,
- drawing up draft decisions, provisions and other letters of the Inspector General issued as a result of the inspections conducted,
- requesting, on the basis of the findings from the inspection, appropriate proceedings to be instituted against persons responsible for the irregularities which occurred,
- drawing up draft notifications of commission of crime and requests for initiating disciplinary proceeding or other proceedings provided for by the law.

## PERSONAL DATA FILING SYSTEMS REGISTRATION DEPARTMENT

- keeping a national, open register of personal data filing systems,
- performing tasks connected with the provision of information on the filing systems registered (certificates),
- keeping the register of Data Protection Officers.

## IT DEPARTMENT

- analysis and opinions regarding the draft legislation concerning new technologies,
- analysis within the privacy impact assessment,
- providing ad hoc assistance as regards the use of computer hardware and software (help desk),
- performing tasks related to the security of the computer systems.

# SUPERVISION OVER PERSONAL DATA PROCESSING

- both public and private sector
- service identity card
- inspection team – one lawyer and one IT expert
- authorization containing in particular the scope of the inspection and its time
- controller subject to the inspection is obliged to enable the inspector to perform the inspection



## EMPOWERMENTS OF THE INSPECTORS

- 1) enter, from 6 a.m. to 10 p.m., upon presentation of a document of personal authorization and service identity card, any premises where the data filing systems are being kept and premises where data are processed outside from the data filing system, and to perform necessary examination or other inspection activities to assess the compliance of the data processing activities with the Act,
- 2) demand written or oral explanations, and to summon and question any person within the scope necessary to determine the facts of the case,
- 3) consult any documents and data directly related to the subject of the inspection, and to make a copy of these documents,
- 4) perform inspection of any devices, data carriers, and computer systems used for data processing,
- 5) commission expertise and opinions to be prepared.

## VARIOUS MODELS OF INSPECTIONS

- Inspection ex officio
- Inspection at the request
- Complex inspection
- Sectoral inspection
- Partial inspection



## INSPECTION FOLLOW UP

- signalisation to GIODO
- correspondence with GIODO – in case of lack of failures or their erasure before the proceeding is commenced.
- administrative proceeding ending with a decision (for instance ordering additional security measures, technical and organisational security measures)
- motion for reexamination of the case
- judicial redress (non so far)

# OFFICIAL REPORT OF THE INSPECTION

## - PROTOCOL

- the inspector who carries out the inspection shall prepare the official report of the inspection,
- one copy of such an official report shall be delivered to the controller subject to the inspection,
- protocol shall comprise the following information:
  - names of the entity and inspector,
  - specification of the subject and the scope of the inspection,
  - description of the factual state discovered in the course of the inspection and other information having a significant impact on the assessment of compliance of personal data processing with data protection provisions,



## THE INSPECTOR GENERAL POWERS

In case of any breach of the provisions on personal data protection, the Inspector General shall order to restore the proper legal state, and in particular:

- to remedy the negligence,
- to complete, update, correct, disclose, or not to disclose personal data,
- to apply additional measures protecting the collected personal data,
- to suspend the flow of personal data to a third country,
- to safeguard the data or to transfer them to other subjects,
- to erase the personal data.

# E-GIODO – ELECTRONIC PLATFORM FOR COMMUNICATION WITH THE INSPECTOR GENERAL

E-GIODO is composed of:

- Computer software facilitating the completion of the form notifying data files for registration by the Inspector General for Personal Data Protection (GIODO),
- On-line form for reporting the appointment of the DPO,
- a Web version of the national registers of personal data filing systems and DPO's, allowing to search for registered data files or DPO's through a variety of criteria such as the name of the file and the name, or the seat of data controller.

## AMENDMENTS OF THE DATA PROTECTION LAW INTRODUCED IN 2015

- new status of the Data Protection Officer
- new rules for data filing systems registration
- new competences of the Inspector General
- new tools for supervision of data processing (checks conducted by DPO)

## NEW STATUS OF THE DATA PROTECTION OFFICER

- appointment of DPO is a right not an obligation of the data controller
- relevant knowledge of DPO (assessed by the data controller, no certificates needed)
- notification of appointment of DPO to registration to the Inspector General

# DATA PROTECTION OFFICER TASKS

- checking compliance of personal data processing with the provisions on the protection of personal data and drawing up a report in this regard for the controller,
- supervising development and update of the documentation describing the way of data processing and technical and organizational measures to protect the personal data being processed, appropriate to the risks and category of data being protected, as well as supervising compliance with the principles specified in this documentation,
- ensuring that the persons authorized to the processing of personal data become acquainted with the provisions on the protection of personal data,
- keeping a register of data files processed by the controller.



# NEW RULES FOR DATA FILING SYSTEMS REGISTRATION

DPO appointed:

- data filing systems containing sensitive data - obligation to notify filing register system before the processing starts,
- no sensitive data – no notification obligation,
- DPO keeps registers of all data filing systems kept by data controller,
- data filing systems in paper form no obligation to notify (unless these data filing systems contain sensitive data).

# NEW COMPETENCES OF THE INSPECTOR GENERAL

- Keeping the open register of the DPO's
- Requesting DPO for checking compliance of personal data processing with the provisions on the protection of personal data
- The fact that the administrator of information security has carried out a check does not exclude the Inspector General's right to carry out a supervision
- After carrying out the check the administrator of information security submits to the Inspector General a report

## DPA'S FUTURE UNDER GDPR

- stronger DPA's:
  - administrative fines (for infringements of the GDPR)
  - consistency mechanism
- increased responsibility and accountability for controllers:
  - data protection risk assessments,
  - data protection officers,
  - the principles of 'data protection by design' and 'data protection by default'.

THANK YOU FOR YOUR ATTENTION !

[desiwm@giodo.gov.pl](mailto:desiwm@giodo.gov.pl)  
<http://edugiodo.giodo.gov.pl>  
[www.giodo.gov.pl](http://www.giodo.gov.pl)