



## **An opportunity to simplify the transfer of personal data from Poland to outside the EEA?**

In the second half of January 2013 a new draft framework for the draft Simplification of Conditions for Conducting Economic Activity Act (dated 8<sup>th</sup> January 2013) was published on the Government Legislation Centre website. The new draft framework contains proposals to amend the Act of 29<sup>th</sup> August 1997 on the Protection of Personal Data, prepared with the Polish data protection authority, i.e. the Inspector General for Personal Data Protection ("**GIODO**").

Further to proposed changes regarding the functioning of the information security administrator (i.e. Polish data protection officer) and the related exemptions from the obligation to register data filling systems with GIODO, the amendments contained in the Ministry of Economy's so-called fourth deregulatory package also concern data transfer to third countries, i.e. outside the European Economic Area ("**EEA**").

The planned changes represent good news for businesses that are part of international capital groups, since they would considerably simplify the transfer of personal data to outside the EEA.

Pursuant to the currently applicable legal provisions, subject to the cases provided for in Article 47 of the Polish Act of 29<sup>th</sup> August 1997 on the Protection of Personal Data, transfer of data to a third country requires GIODO's prior consent to such transfer. According to GIODO's 2011 report, 50 permits authorizing the transfer of data to a third country were issued during that year.

GIODO's examination of an application to authorize data transfer to a third country is a lengthy process, during which GIODO often requests that additional information or documents be supplied. Consequently, the administrative proceedings on obtaining GIODO consent for such data transfer, may last up to several months.

Under the existing law, GIODO's consent to the transfer of data outside the EEA is still required notwithstanding the use of standard contractual clauses approved by the European Commission or the application of binding corporate rules dealing with the transfer of personal data outside the EEA.

The envisaged amendments would remove the need to obtain GIODO's consent to the transfer of data to a third country in cases of use of standard contractual clauses, approved by the European Commission, for such transfer which are deemed to adequately protect the rights and freedoms of the data subjects concerned.

The implementation of binding corporate rules within corporate groups, whose implementation would be approved in advance by GIODO, would obviate the need to obtain separate GIODO authorizations for individual data transfers, provided that the transfer took place pursuant to such binding corporate rules. Therefore the planned changes presume also to authorize GIODO to give approval to binding corporate rules, upon consultation on that with other EEA data protection authorities.

In enabling Polish companies acting as data controllers to transfer data outside EEA without obtaining GIODO's consent, these changes should have a positive impact on transfer of data, especially within capital groups and may contribute to an increase of the flows of data. Consultations on the draft framework of the new deregulatory act are currently underway and the draft act itself is expected to be published by the end of March this year.

***Joanna Tomaszewska, Ph.D.** is a senior associate in the Intellectual Property, New Technologies and Protection of Information Department of Spaczyński, Szczepaniak & Wspólnicy, Warsaw Office. She has experience in data protection and privacy, intellectual property, media and advertising, technology law and regulatory matters. She can be reached at: [joanna.tomaszewska@ssw.pl](mailto:joanna.tomaszewska@ssw.pl)*

Spaczyński, Szczepaniak i Wspólnicy S.K.A.

Rondo ONZ 1 tel. +48 22 544 87 00  
00-124 Warszawa fax.+48 22 544 87 01  
warszawa@ssw.pl

ul. Paderewskiego 8 tel. +48 61 625 16 00  
61-770 Poznań fax.+48 61 625 16 01  
poznan@ssw.pl

[www.ssw.pl](http://www.ssw.pl)