

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 15

March

2019

DECISION

ZSPR. 421.3.2018

Based on Article. 104 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended) and Art. 7 sec. 1 and 2, art. 60 and art. 101 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000, as amended) in connection with Art. 12 sec. 1, art. 14 sec. 1 - 3 and art. 58 sec. 2 lit. d and lit. and and with Art. 83 sec. 5 lit. b of the Regulation of the European Parliament and of the EU Council 2016/679 of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 / EC (general regulation on data protection) (Journal of Laws of the EU L 119 of 04/05/2016, p. 1, with the amendment announced in the Official Journal of the European Union L 127 of 23/05/2018, p. 2), after conducting administrative proceedings regarding the processing of personal data by X. Sp. z o. o., President of the Personal Data Protection Office

finding an infringement by X. Sp. z o. o., the provisions of art. 14 sec. 1-3 of Regulation 2016/679 of the European Parliament and of the Council of the EU and of the EU Council 2016/679 of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 / EC (general regulation on data protection) (Journal of Laws UE L 119 of 04/05/2016, p. 1, with the amendment announced in the Official Journal of the European Union L 127 of 23/05/2018, p. 2), consisting in failure to provide information contained in art. 14 sec. 1 and 2 of the above-mentioned regulation to all natural persons whose personal data of X. Sp. z o. o. processes, sole proprietorships or individuals who have suspended this activity, currently or in the past:

orders X. Sp. z o. o., fulfillment of the obligation to provide the information specified in art. 14 sec. 1 and 2 of Regulation 2016/679 of the European Parliament and of the Council and of the EU Council 2016/679 of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 / EC (general regulation on data protection) (Journal of Laws UE L 119 of 04.05.2016, p. 1, with the amendment

announced in the Journal of personal data of X. Sp. z o. o. processes sole proprietorships, currently or in the past, and natural persons who have suspended this activity, to whom this information has not been provided - within three months from the date of notification of this decision;

imposes on X. Sp. z o. o., for the violation found in this decision, an administrative fine in the amount of PLN 943,470.00 (say: nine hundred and forty-three thousand four hundred and seventy zlotys).

JUSTIFICATION

From [...] to [...] September 2018 and from [...] to [...] September 2018 (file reference [...]), authorized employees of the Personal Data Protection Office conducted an inspection at X. Sp. z o. o. (hereinafter also referred to as: the "Company"), in order to examine the compliance of the processing of personal data by the Company with the provisions on the protection of personal data, i.e. the Regulation of the European Parliament and the EU Council 2016/679 of 27 April 2016 on the protection of persons individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 / EC (General Data Protection Regulation) (Journal of Laws UE L 119 of 04.05.2016, p. 1, as amended in Journal of Laws UE L 127 of 23/05/2018, p. 2), hereinafter: "Regulation 2016/679" and the Act of 10 May 2018 on the protection of personal data (Journal of Laws of 2018, item 1000, as amended), hereinafter referred to as: "the Act".

The inspection covered the processing by the Company of personal data obtained from publicly available sources, including public registers (including the Register of Entrepreneurs of the National Court Register, the Central Register and Information on Economic Activity, the REGON Database of the Central Statistical Office).

The President of the Personal Data Protection Office (hereinafter referred to as: "the President of the Personal Data Protection Office"), in a letter of [...] January 2019 (number: [...]), notified the Company of the initiation of ex officio administrative proceedings regarding non-compliance with the information obligation referred to in art. 14 of Regulation 2016/679 to those natural persons running a business for whom the Company did not have an e-mail address in its database, and this applies both to entrepreneurs who are currently running a business or suspended their business, and to those who no longer carry out this activity, but have carried it out in the past.

The President of the Personal Data Protection Office, on the basis of the collected evidence, established the following facts of the case.

As part of its activities, the Company offers, in particular, commercial reports [...]. The main activity of the Company is other

information service activities, not classified elsewhere (PKD 63.99, Z). The scope of the Company's activities also includes, among others issuing of directories and lists (eg address, telephone), data processing, website management (hosting) and similar activities, as well as other business and management consultancy ([...]).

In the IT system called "N [...]" (hereinafter: "system N [...]"), the Company processes personal data of natural persons conducting business activity, which have been obtained from publicly available sources, including public registers, including . from the Central Register and Information on Economic Activity, from the REGON Database of the Central Statistical Office, from the Court and Economic Monitor ([...]).

The database of "system N [...]" contains data on approx. 3.59 million natural persons currently engaged in sole proprietorship and natural persons who have suspended this activity, and 2.33 million natural persons conducting business activity in the past ([...]).

In the "N [...]" system", the Company processes, in particular, address data (registration address, correspondence address, operational address) relating to natural persons conducting business activity ([...]).

On April 27, 2018, i.e. before the effective date of Regulation 2016/679, the Company sent information on the processing of personal data entitled "[...] - GDPR - information obligation" to all e-mail addresses in the database of system N [...] assigned to self-employed entrepreneurs ([...]). During the above-mentioned the information campaign The company sent 902,837 electronic messages ([...]).

The company also published on its website at [www. \[...\].pl](http://www.[...].pl), in the "Data and privacy" / "Information on the processing of personal data" tab, information on the processing of personal data by X. ([...]). The company also published on its website [www. \[...\].pl](http://www.[...].pl), in the "Data and privacy" / Information on the processing of personal data "tab, at [https: // www. \[...\].pl / GDPR /](https://www.[...].pl/GDPR/), a full information clause , meeting the requirements of art. 14 sec. 1 and sec. 2 of Regulation 2016/679.

The company decided not to fulfill the information obligation by sending short text messages (SMS) to persons whose data it obtained from publicly available sources (including natural persons running a business), as it does not have telephone numbers for each of these persons and also because of the high cost of such an action. Due to the high costs, the Company also decided not to fulfill this obligation by means of traditional correspondence sent to persons whose data it processes ([...]).

The explanations provided by the Company in the letter of [...] February 2019 show that the data processed by it are publicly available data, collected in official, public registers, the scope of this data is relatively narrow, and the risk to the rights and

freedoms of persons whose data concern, related to their processing - low. The company has a total of 7,594,636 data records relating to natural persons, including entrepreneurs conducting sole proprietorship and persons who are partners or members of corporate bodies, foundations and associations. The company has fulfilled the individual information obligation towards 682,439 persons for whom it has e-mail addresses in the database record. The Company has only mobile phone numbers for 181,142 persons, and only has correspondence addresses for 6,490,226 persons, of which 2,924,443 records relate to inactive business activities. The explanations of the Company also show that if it were to fulfill the information obligation laid down in Art. 14 sec. 1 - 2 of Regulation 2016/679, individually for all natural persons whose data are the subject of the proceedings, using traditional mail, the cost of such an operation would be over PLN 33,749,175.00 (the amount obtained by multiplying the number of data subjects to which information clause sent by e-mail, by the cost of sending an economic registered letter via Poczta Polska, without additional administrative costs), which is [...] the Company's turnover in 2018. In addition, the explanations of the Company show that the implementation of the information obligation in its basic form (ie individual contact with each data subject) would result in a "disproportionate effort" on the part of the Company, referred to in Art. 14 sec. 5 lit. b of the Regulation 2016/679, understood as an organizational burden (i.e. the need to delegate employees and material resources - computers, office equipment - to perform this task only) and financial (i.e. the cost of printing, preparation for shipment and shipping, including paper, toner, envelopes, postage stamps, handling of correspondence returns, possibly remuneration of entities that could be commissioned by the Company to perform this task), which would critically disrupt the functioning of the Company to an extent that could require the termination of business in Poland. The company applies high-class technical security measures to the personal data it processes, [...]. The company has implemented detailed procedures and instructions for employees to ensure the security of data processing. The company also referred to the decision of the Inspector General for Personal Data Protection of July 12, 2016, file ref. no. DIS / DEC-587/16/62309, in a similar case, in which, following the judgment of the Supreme Administrative Court of January 24, 2013 (file reference number I OSK 1827/11) and the Provincial Administrative Court in Warsaw of April 24, 2013 (file reference number II SA / Wa 507/13), GODO stated that the information obligation exists and the appropriate measure for its implementation was to publish the required information on the website of the company being the data controller. In the opinion of the Company, in this proceeding there are no premises that the assessment made by the President of the Personal Data Protection Office would be different in this respect.

The Company attached to the letter of [...] February 2019: the Management Board's statement on net sales revenues and equivalent for 2018 in the amount of PLN 34,778,450.50, and the Company's financial statements for the financial year from 01/01/2017. until December 31, 2017, which shows the amount of net revenues from sales and equivalent revenues: PLN 29,026,755.76.

After analyzing the evidence collected in the case, the President of the Office for Personal Data Protection states as follows. The President of the Personal Data Protection Office is the competent authority for the protection of personal data (Article 34 of the Act of May 10, 2018 on the Protection of Personal Data) and the supervisory authority within the meaning of Regulation 2016/679 (Article 34 (2) of the Act of May 10, 2018. . about personal data protection).

Pursuant to Art. 57 sec. 1 of Regulation 2016/679, without prejudice to other tasks set out under this Regulation, each supervisory authority on its territory shall monitor and enforce the application of this Regulation (point a), conduct investigations on the application of this Regulation (point h). The instruments for the implementation of the tasks referred to in Art. 57 of the Regulation 2016/679 are, in particular, the remedial powers granted pursuant to Art. 58 sec. 2, to order the controller or processor to bring the processing operation into line with the provisions of this Regulation and, where applicable, the manner and time limit (point (d)) and to apply, in addition to or instead of the measures referred to in this paragraph, an administrative fine pursuant to Art. 83, depending on the circumstances of the specific case (point i).

Pursuant to Art. 14 sec. 1 of Regulation 2016/679, if the personal data has not been obtained from the data subject, the controller shall provide the data subject with the following information:

his identity and contact details and, where applicable, the identity and contact details of his representative;

where applicable, the contact details of the data protection officer;

the purposes of the processing for which the personal data are to be used and the legal basis for the processing;

the categories of personal data concerned;

information about the recipients of personal data or categories of recipients, if any;

where applicable - information on the intention to transfer personal data to a recipient in a third country or an international organization and on the determination or absence of an adequate level of protection by the Commission, or in the case of transfer referred to in art. 46, art. 47 or article. 49 sec. 1, second paragraph, a reference to appropriate or appropriate security features and information on how to obtain a copy of these security features or on the place where they are made available.

However, from the content of Art. 14 sec. 2 of Regulation 2016/679 it follows that, in addition to the information referred to in para. 1, the controller provides the data subject with the following information necessary to ensure fair and transparent processing towards the data subject:

the period for which personal data will be stored, and if this is not possible, the criteria for determining this period;

if the processing is based on art. 6 sec. 1 lit. f) - legitimate interests pursued by the administrator or by a third party;

information on the right to request the administrator to access personal data relating to the data subject, rectification, deletion or limitation of processing and the right to object to the processing, as well as the right to transfer data;

if the processing is based on art. 6 sec. 1 lit. a) or Art. 9 sec. 2 lit. a) - information on the right to withdraw consent at any time without affecting the lawfulness of processing based on consent before its withdrawal;

information on the right to lodge a complaint with the supervisory authority;

the source of the personal data and, where applicable, whether they come from publicly available sources;

information on automated decision making, including profiling referred to in art. 22 sec. 1 and 4, and - at least in these cases - relevant information about the rules for their taking, as well as the significance and envisaged consequences of such processing for the data subject.

Article 14 (2) 3 of Regulation 2016/679 indicates the time by which the administrator should fulfill the information obligation referred to in para. 1 and 2, that is:

within a reasonable time after obtaining the personal data - no later than within one month - taking into account the specific circumstances of the processing of personal data;

if the personal data are to be used for communication with the data subject - at the latest at the time of the first such communication with the data subject; or

if it is planned to disclose personal data to another recipient - at the latest at the first disclosure.

Bearing in mind the findings made in this matter, it should be indicated that the obligation referred to in Art. 14 of the Regulation 2016/679, was completed by the Company only in relation to 682 439 natural persons conducting business activity, whose personal data the Company processes in the IT system "N [...]", for which the Company had an electronic address (e-mail address) and sent electronic correspondence containing "Information on the processing of personal data" (the number on the day of the findings made during the inspection).

On the other hand, the obligation in question resulting from Art. 14 of the Regulation 2016/679 has not been met by the Company in relation to other natural persons conducting business activities, whose data is processed in the "N [...]" system, i.e. those whose e-mail addresses the Company did not have. The findings of the President of the Personal Data Protection Office show that the Company did not fulfill this obligation towards those natural persons conducting business activity, for whom it did not have an e-mail address in its database, both entrepreneurs who currently conduct business activity ("they did not close "Of this activity are active or suspended), as well as about those who ceased their business activity.

The company also published on its website at the address [www. \[...\] .pl](http://www.[...] .pl), in the tab "Data and privacy" / "Information on the processing of personal data", information on the processing of personal data by the Company, to the extent provided for in Art. 14 sec. 1 and sec. 2 of Regulation 2016/679.

In the context of the above, the President of the Personal Data Protection Office states that the mere inclusion of the information required in Art. 14 sec. 1 and sec. 2 of Regulation 2016/679, on the Company's website, if the Company has the address data (and sometimes also telephone numbers) of natural persons conducting sole proprietorship (currently or in the past), enabling the sending of correspondence by traditional mail containing the information required by this provision (or providing them by telephone contact), cannot be considered as sufficient fulfillment by the Company of the obligation referred to in Art. 14 sec. 1-3 of the Regulation 2016/679.

The condition excluding the fulfillment of the information obligation, provided for in Art. 14 sec. 5 lit. b) of Regulation 2016/679, i.e. excluding the application of Art. 14 sec. 1 to sec. 4 of Regulation 2016/679, if - and to the extent that: providing such information turns out to be impossible or would require a disproportionate effort, it will not apply in the present case to natural persons conducting business activity, whose personal data the Company processes in the database of the N [...].

In the opinion of the President of the Personal Data Protection Office, sending the information referred to in Art. 14 of the Regulation 2016/679 by traditional mail, to the address of a natural person conducting business activity, or by telephone contact, is not an "impossible" activity and does not require "disproportionately large effort", if the Company has an IT system N in its database [...] address data for natural persons running a sole proprietorship (currently or in the past), and additionally - telephone numbers - for some of these persons. It should be pointed out here that, unlike the above-mentioned natural persons, the situation of persons who are shareholders or members of corporate bodies and other legal persons whose data the Company processes is different. There are no contact details of these persons in public registers (in particular in the

National Court Register), and therefore the Company would have to search for these data in other sources, which could already constitute a “disproportionately big effort for the Company.

In the letter of [...] February 2019, the Company presented a calculation of the costs related to the possible sending of the information referred to in Art. 14 sec. 1-2 of the Regulation 2016/679, by traditional mail, i.e. by registered mail in the economic variant, which costs would amount to over PLN 33,749,175.00 (representing [...] the Company's turnover in 2018).

Meanwhile, the established facts of the present case show that the Company has been operating on the Polish market for over 25 years, and as of [...] February 2019, a total of 7,594,636 records containing personal data of entrepreneurs and persons who are partners are in the database. or members of corporate bodies, foundations or associations. The submitted explanations also show that as at the date of their submission, the Company did not meet the individual information obligation with regard to a total of 6,671,368 people. Regarding 181,142 persons, the Company only has mobile phone numbers, which means that it can fulfill the information obligation through this communication tool. As for 6,490,226 persons for whom the Company has only correspondence addresses, attention should be paid to the content of Art. 12 sec. 1 of Regulation 2016/679. This provision provides for the controller to undertake, on its own initiative, without the participation of the data subject, the information obligation, referred to, inter alia, in art. 14 of the Regulation 2016/679 In the opinion of the President of the Personal Data Protection Office, this provision does not impose an obligation on the controller to send such information, e.g. by registered mail, as long as only the processes personal data. The essence of the fulfillment of the obligation is such action of the administrator in an active and active way towards the data subject, by providing this person with information specified in the provisions of Regulation 2016/679.

The need for active notification is emphasized by the Article 29 Working Party in the Transparency Guidelines under Regulation 2016/679 adopted on November 29, 2017 (as last amended and adopted on April 11, 2018). Regardless of the above-mentioned methods of fulfilling the information obligation, in the opinion of the President of the Personal Data Protection Office, the Company may fulfill it in any way, and in the context of recital 171 of Regulation 2016/479 - in which the EU legislator indicated that the processing, which on the date of application of this Regulation is already pending should be brought into line with its provisions within two years of the entry into force of this regulation - the date by which certain obligations were to be discharged matters matters.

The processed personal data was obtained by the Company from publicly available sources of information. The scope of data

processed by the Company for commercial purposes is - in relation to all natural persons whose data it processes - including: name, surname, PESEL number (obtained from the National Court Register), and in relation to natural persons conducting business activity, among others obtained from CEIDG and REGON Database of the Central Statistical Office of Poland: name, surname, company name, registration address and other addresses, type of PKD activity, telephone number (optional), e-mail address (optional), website address (optional), prohibitions / permissions / restrictions / concessions for conducting specific activities, related to the entrepreneur legal events (in accordance with the scope of data indicated in Annex 63 - case file number 464).

Therefore, the President of the Personal Data Protection Office notices that the considered situation of the Company is not analogous to the one assessed by the Supreme Administrative Court in the judgment of 24 January 2013 (file reference number I OSK 1827/11), nor in terms of the amount of data that the Company obtains from publicly available sources or from the fulfillment of the information obligation. In that case, the Supreme Administrative Court indicated: "The findings made by the authority show that the applicant company, as part of its commercial activities providing services consisting in providing information, processes data on legal entities and organizational units without legal personality, the data of which is disclosed in the National Court Register (Monitor Court and Economic). These files also include personal data of natural persons in the scope of: name, surname, PESEL number, function performed, year of birth. Court and Economic Monitors do not contain data on the addresses of natural persons. In this situation, the applicant company rightly challenges the general imposition by the authority of the obligation to fulfill the information obligation, without specifying how and by what means the data controller should obtain it. " However, in the present case, the Company has a much wider scope of personal data, including correspondence addresses of natural persons and telephone numbers, which means that it could fulfill the obligation to provide the data referred to in Art. 14 sec. 1 and 2 of Regulation 2016/679, to natural persons whose data is processed.

Bearing in mind the above findings, the President of the Office for Personal Data Protection, exercising his powers specified in art. 58 sec. 2 lit. d of Regulation 2016/679, orders the Company - within three months from the date of receipt of this decision - to fulfill the obligation to provide the information referred to in Art. 14 sec. 1 and 2 of Regulation 2016/679, those natural persons who are currently or in the past a sole proprietorship, whose personal data is processed, and to whom this information has not been provided.

Pursuant to Art. 58 sec. 2 lit. and Regulation 2016/679, each supervisory authority has the power to apply, in addition to or

instead of other remedial measures provided for in Art. 58 sec. 2 of this regulation, an administrative fine pursuant to Art. 83 of the Regulation, depending on the circumstances of a particular case. The President of the Personal Data Protection Office states that in the case under examination there are conditions for imposing an administrative fine on the Company.

Pursuant to art. 83 sec. 2 of Regulation 2016/679, administrative fines shall be imposed, depending on the circumstances of each individual case, in addition to or instead of the measures referred to in Art. 58 sec. 2 lit. a-h and lit. j.

When deciding on the imposition of an administrative fine on the Company and determining its amount, the President of the Personal Data Protection Office, pursuant to Art. 83 sec. 2 lit. a-k of Regulation 2016/679 took into account the following circumstances of this case:

the information obligation resulting from Art. 14 sec. 1 - 3 of Regulation 2016/679, in relation to natural persons who currently or in the past conducted sole proprietorship (active, suspended and historical - closed activity), this state of affairs continues until now, i.e. it is not a one-off time-limited event, and applies jointly 6,671,368 records, according to the data contained in the Company's interpretations as of [...] February 2019 (nature, severity and duration of the breach);

the violation found in this case is of a serious nature, as it concerns the fundamental rights and freedoms of persons whose data the Company processes, and also violates the fundamental principle of fairness and transparency in relation to the processing of personal data (Article 5 (1) (a) of Regulation 2016/679). A breach by the Company of the obligation to provide basic information on processing and information on the related rights of data subjects (indicated in Articles 15-21 of Regulation 2016/679), entails, inter alia, risk of being denied the possibility of exercising these rights; the seriousness of the breach is also increased by the fact that the Company that processes personal data in a professional manner, as part of its core business, for commercial purposes, and on a very large scale (the number of data subjects affected by the breach - 6,671,368), has greater responsibility and greater requirements than on the entity that processes personal data as a side activity, incidentally or on a small scale. Moreover, it should be emphasized, which is an aggravating circumstance in the present case, that the infringement found continues to date (nature, gravity and duration of the infringement);

The company made a conscious decision (motivated by the desire to avoid additional financial outlays) not to meet the obligation referred to in Art. 14 sec. 1-3 of Regulation 2016/679 "due to the costs of millions" ([...]), which means that it should be attributed to its intentionality in violating the indicated provisions of law (intentional or unintentional nature of the violation); in the course of the proceedings, it has not been established that the consequence of the breach found would result in damage

to the data subjects, however, further processing of personal data without the knowledge of the data subjects undoubtedly hinders or restricts the exercise by these persons of their rights, e.g. the right to delete data, rectify or object to the processing of personal data (as of [...] September 2018, 12,630 people exercised this right - [...]). As a consequence, failure to meet the information obligation leads to a privileged position of the Company in the exercise of its rights in relation to the rights of data subjects and constitute an important element of the Company's activities. At this point, the position of the Supreme Administrative Court, expressed in the judgment of 16 December 2004 (file reference number OSK 829/04), that the protection of some goods cannot take place at the expense of violating the rights of others, which can be directly or indirectly removed from many provisions of the Polish Constitution, e.g. from: Art. 2, art. 32 sec. 1 and art. 83 (actions taken to minimize the damage);

the breach found is not related to the implementation and quality applied by the Company - pursuant to Art. 25 and 32 of Regulation 2016/679 - organizational and technical measures, therefore there is no need to determine in this context the degree of liability of the Company (the degree of administrator's responsibility taking into account technical and organizational measures);

it has not been found that the Company previously violated the provisions of Regulation 2016/679, which would be significant for the present proceedings;

both during the inspection and during this procedure, the Company cooperated with the President of the Personal Data Protection Office, within the prescribed period, the Company sent explanations and replied to the letter of the President of the Personal Data Protection Office, and at the same time sent relevant documents to confirm the submitted explanations. However, this cooperation was aimed only at ensuring the correct course of the proceedings, and not removing the infringement found in the course of the inspection, or removing its effects (the degree of cooperation with the supervisory authority in order to remove the infringement and mitigate its possible negative effects);

personal data of natural persons conducting business activity (currently or in the past), which the Company processes, come from publicly available sources of information and include: name, surname, company name, registration address and other addresses, type of PKD activity, telephone number (optional), e-mail address (optional), website address (optional), prohibitions / rights / restrictions / concessions for running a business, legal events related to the entrepreneur (in accordance with the scope of data indicated in Annex 63 - case file number 464). The party indicated that it also has: e-mail addresses,

correspondence addresses of natural persons and telephone numbers (categories of personal data affected by the violation).

The breach found does not apply to special categories of personal data referred to in Art. 9 of Regulation 2016/679 (the company does not process such data);

The President of the Personal Data Protection Office obtained information about the failure by the Company to fulfill the obligation under Art. 14 sec. 1-3 of Regulation 2016/679, during an inspection carried out ex officio at the Company (the manner in which the supervisory body learned about the infringement);

in the same case, the measures referred to in Art. 58 sec. 2 of Regulation 2016/679 (compliance with the measures imposed on the controller in the same case);

The company does not apply the approved codes of conduct pursuant to Art. 40 of the Regulation 2016/679 or approved certification mechanisms pursuant to Art. 42 of Regulation 2016/679 (application of codes of conduct or certification mechanisms);

justifying the Company's failure to fulfill the obligation under Art. 14 sec. 1 - 3 of the Regulation 2016/679 with high financial costs, up to an attempt to shift the responsibility - if it did - for a possible decrease in its competitiveness on the market, or loss of financial liquidity, until the end of the business, is a circumstance definitely acting to the detriment of the Company. It should be noted that although the Company obtains data from the indicated public sources, they are the subject of its many years of commercial activity, and the data subjects do not have information about the processing of such data by the Company. In the opinion of the President of the Personal Data Protection Office, the responsibility towards these persons rests with the Company, in particular with regard to the fulfillment of the obligation under Art. 14 sec. 1-3 of the Regulation 2016/679. Failure to perform the above-mentioned obligation due to the financial costs indicated by the Company, proves a reduction in the value of the rights of persons whose personal data the Company processes, in relation to the value of the Company's finances, which argumentation cannot be considered justified in the light of the requirements of Regulation 2016/679. It should also be noted that the Company acquires funds as part of its business activities, the subject of which is the disclosure of personal data of natural persons to its clients (i.e. business entities, including sole proprietorships, or public authorities), as separate administrators in connection with the products offered by the Company. In the database N [...], the Company also stores the data of persons who no longer conduct business activity, because, as it results from the findings of the control, "(...) the Company's clients ask questions as to whether there are no deleted entities among their suppliers. Information about inactive

customers is part of the Company's product consisting in providing economic information. " ([...]).

In the opinion of the President of the Personal Data Protection Office, an additional aggravating circumstance is the motivation followed by the Company when deciding that a sufficient way to provide the information referred to in Art. 14 (1) and (2) of Regulation 2016/679, entrepreneurs whose e-mail addresses are not available will be published on their website. The company does not hide that behind this decision was the calculation of costs related to direct forms of reaching the people whose data it processes, and therefore the desire to avoid additional costs related to it. At the same time, the Company is aware that the correct form of providing them with the required information, ensuring an adequate level of protection of the rights and freedoms of data subjects, is direct contact initiated by the Company. This is evidenced by the fact that such contact was selected in the first place in the case of entrepreneurs whose e-mail addresses were available to the Company (in this case, however, direct contact was not associated with virtually any costs). Resignation from direct contact only because of the related costs should be assessed negatively, especially since operations on personal data are the subject of the basic, purely commercial, professional, long-term activity of the Company. As a professional in this type of activity, the Company should be required to shape the business side of its business in such a way as to take into account all costs necessary to ensure its compliance with the law (in this case, with the provisions on the protection of personal data).

Pursuant to Art. 83 of Regulation 2016/679 - setting out the general conditions for imposing administrative fines - each supervisory authority shall ensure that the administrative fines referred to in para. 4, 5 and 6 were effective, proportionate and dissuasive in each individual case (paragraph 1).

When deciding whether to impose an administrative fine, as well as determining its amount, the most important factor was the intentional nature of the infringement, i.e. a deliberate decision by the President of the Personal Data Protection Office not to fulfill the information obligation. It is also extremely important that this decision had and has an impact on a very large number of people with respect to whom the information obligation has not been fulfilled. The consequences of non-compliance with this obligation are also important, such as: ignorance of data subjects about the processing of their data and the possibility of exercising their rights guaranteed by the provisions of Regulation 2016/679. The duration of the infringement should also be assessed negatively, bearing in mind the date of entry into force of Regulation 2016/679 and the date of its application. It is also important in this case that the infringement concerns - pursuant to Art. 83 sec. 5 letter b of Regulation 2016/679 - one of the fundamental rights of persons to which the higher amount of administrative fine applies.

In the opinion of the President of the Personal Data Protection Office, the applied administrative fine performs the functions referred to in Art. 83 sec. 1 of Regulation 2016/679, i.e. it is effective, proportionate and dissuasive in this individual case.

It should be considered that the penalty will be effective if its imposition leads to the fact that the Company adjusts its data processing processes to the lawful state. The amount of the fine should be large enough to prevent the Company, as the punished entity, from including it in the costs of its operations. In addition, the effectiveness of this type of measure should be related to the administrator, such as the Company, with a financial ailment, undoubtedly in the case of a purely commercial entity, motivating its activities (including those related to the violation found) with the desire to increase its profits or avoid additional ones, unnecessary in his opinion, costs or financial outlays. The application of an administrative fine in this case is necessary also considering that the Company, being aware of the existence of the infringement, has not taken or even declared to take any action to remove it.

In the opinion of the President of the Personal Data Protection Office, the applied fine is proportional to the infringement found, especially taking into account the significant gravity of the infringement, the number of data subjects affected by the infringement and the duration of the infringement. This is indicated by the President of the Personal Data Protection Office after making an in-depth and detailed reference in this decision to all the premises referred to in Art. 83 sec. 2 of Regulation 2016/679.

The dissuasive nature of a financial penalty has to do with the prevention of infringements by punishing them. The penalty is intended to deter both the Company from repeated breach and other entities. By imposing a fine for violating the provisions on the protection of personal data, the President of the Personal Data Protection Office took into account both aspects: in the future, personal data protection law.

The purpose of the imposed penalty is to ensure that the Company fulfills its obligation under Art. 14 sec. 1-3 of Regulation 2016/679, and consequently data processing in accordance with the provisions on the protection of personal data.

In the established circumstances of the case, i.e. in the event of a breach of the obligation under Art. 14 sec. 1-3 of Regulation 2016/679, Art. 83 sec. 5 lit. b of the Regulation 2016/679, according to which violations of the provisions on the rights of data subjects (including the right to obtain information referred to in Article 14 (1) and (2) of this Regulation) are subject to an administrative fine of up to EUR 20,000,000 and, for a company, up to 4% of its total annual worldwide turnover for the previous financial year, whichever is the higher.

Pursuant to art. 103 of the Act, the equivalent of the amounts expressed in euro, referred to in Art. 83 of the Regulation 2016/679, are calculated in PLN according to the average EUR exchange rate announced by the National Bank of Poland in the exchange rate table on January 28 of each year, and if the National Bank of Poland does not announce the average EUR exchange rate on January 28 in a given year - according to the average euro exchange rate announced in the table of exchange rates of the National Bank of Poland that is closest to that date.

President of the Personal Data Protection Office, pursuant to art. 83 sec. 5 lit. b of the Regulation 2016/679, in connection with art. 103 of the Act, for the violation described in the operative part of this decision, the Company imposes on the Company - using the average EUR exchange rate of January 28, 2019 (EUR 1 = PLN 4.2885) - an administrative fine in the amount of PLN 943,470.00 (equivalent to EUR 220,000) .

In the opinion of the President of the Personal Data Protection Office, the applied fine meets the conditions referred to in Art. 83 sec. 1 of Regulation 2016/679 due to the seriousness of the infringements found in the context of the basic requirements and principles of Regulation 2016/679 - reliability and transparency as well as the right to information.

Referring to the principle of transparency - established by Art. 5 sec. 1 lit. and Regulation 2016/679, according to which data must be processed lawfully, fairly and in a transparent manner for the data subject - it should be noted that it is of key importance for the fair processing of personal data, especially in the context of a significant expansion by law of Regulation 2016/679, obligations regarding informing data subjects and enabling data subjects to exercise their rights. One of the aspects of the disclosure obligations arising from the transparency principle is the formal aspect concerning the fulfillment of the information obligation (including Article 14 of Regulation 2016/679) in general, as well as its fulfillment in a timely manner and form. The fulfillment of the information obligation in accordance with the principle of transparency is to make data subjects aware of the risks, rules, safeguards and rights related to the processing of personal data and the methods of exercising the rights related to processing.

Bearing in mind the above, the President of the Personal Data Protection Office resolved as in the operative part of this decision.

The decision is final. The party has the right to lodge a complaint against the decision with the Provincial Administrative Court in Warsaw, within 30 days from the date of its delivery, via the President of the Office for Personal Data Protection (address: Office for Personal Data Protection, ul. Stawki 2, 00-193 Warsaw). A proportional fee should be filed against the complaint, in

accordance with Art. 231 in connection with Art. 233 of the Act of August 30, 2002, Law on proceedings before administrative courts (Journal of Laws of 2018 1302, i.e. of 2018.07.05). The party has the right to apply for the right of assistance, which includes exemption from court costs and the appointment of an attorney, legal advisor, tax advisor or patent attorney. The right to assistance may be granted at the request of a party submitted prior to the initiation of the proceedings or in the course of the proceedings. The application is free of court fees.

Pursuant to Art. 105 paragraph. 1 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000, as amended), the administrative fine must be paid within 14 days from the date of expiry of the deadline for lodging a complaint to Provincial Administrative Court, or from the date of the ruling of the administrative court coming into force, to the bank account of the Personal Data Protection Office at NBP O / O Warsaw No. 28 1010 1010 0028 8622 3100 0000.

2019-03-26