

# THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 22

of December

2021

## DECISION

DKE.561.13.2021

Based on Article. 104 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2021, item 735, as amended) in connection with Art. 7, art. 60, art. 101, art. 101a paragraph. 2 and art. 103 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2019, item 1781) and pursuant to Art. 58 sec. 2 lit. i), art. 83 sec. 1-2 and art. 83 sec. 5 lit. e) in connection with Art. 58 sec. 1 lit. a) and lit. e) 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 Data Protection Regulation ) (Journal of Laws UE L 119 of 04/05/2016, p. 1, with changes announced in the Official Journal of the European Union L 127 of 23/05/2018, p. 2, and in the Official Journal of the European Union L 74 of 04.03. 2021, p. 35), hereinafter referred to as "Regulation 2016/679", after conducting administrative proceedings initiated ex officio to impose an administrative fine on Ms J. P., running a business under the name of [...], President of the Office for Personal Data Protection, finding that Ms J. P., conducting business activity under the name of [...], breached the provision of Art. 58 sec. 1 lit. a) and lit. e) Regulation 2016/679, consisting in failure to provide the President of the Office for Personal Data Protection with access to personal data and information necessary to perform his tasks, imposes on the above-mentioned administrative fine in the amount of PLN 4,548 (in words: four thousand five hundred and forty-eight zlotys).

### Justification

The Office for Personal Data Protection received information about irregularities in the processing by Ms. J. P., running a business under the name of [...], hereinafter referred to as the "Entrepreneur", of personal data as part of its business activity, consisting in the possibility of the Entrepreneur leaving personal data of contractors in unsecured location, i.e. failure to ensure adequate security of personal data (including protection against unauthorized or unlawful processing and accidental loss, destruction or damage) by appropriate technical measures.

Due to the necessity to obtain additional information necessary for the supervisory body to assess the circumstances related to the probable breach of personal data protection, the President of the Personal Data Protection Office (hereinafter also: "President of the Personal Data Protection Office") as part of the initiated administrative procedure with reference number [...] asked the Entrepreneur in a letter of [...] January 2021 to answer - within 7 days from the date of delivery of the said correspondence - to the following detailed questions about the incident:

indication of whether the Entrepreneur was aware that there was a breach of personal data protection, of which he was the administrator, and if so - to indicate when he learned about the breach in question and to provide reasons for not reporting this breach to the President of the Personal Data Protection Office in accordance with Art. 33 of the Regulation 2016/679; communicating whether the Entrepreneur has notified pursuant to Art. 34 of Regulation 2016/679, the data subjects on the violation in question, and if so, when and in what form the notification was made;

informing how the Entrepreneur ensured the ability to maintain confidentiality, integrity and availability of personal data processing processes;

an indication of how the Entrepreneur regularly tested, measured and assessed the effectiveness of technical and organizational measures to ensure the security of personal data processing;

providing information on whether the Entrepreneur conducted a risk analysis in the design phase of the processing of personal data, in particular taking into account the risk resulting from accidental or unlawful destruction, loss, modification, unauthorized disclosure or unauthorized access to personal data sent, stored or otherwise processed, along with the presentation of its results.

The aforementioned letter, sent via the Polish postal operator to the address of the Entrepreneur's permanent place of business, disclosed in the Central Register and Information on Economic Activity (CEIDG), was not collected by him. Double advised on [...] February 2021 and [...] February 2021, and then marked "RETURN not accepted on time", was returned on [...] February 2021 to the Office for Personal Data Protection.

In view of the above, the President of the Personal Data Protection Office (UODO) again, in a letter of [...] April 2021, asked the Entrepreneur to submit relevant explanations, marking a 7-day deadline for responding to such a request. At the same time, the Entrepreneur was informed that failure to provide an exhaustive answer to the summons may result in the imposition of an administrative fine referred to in Art. 83 sec. 5 lit. e) Regulation 2016/679. The above-mentioned letter, twice notified on

[...] April 2021 and [...] May 2021, was returned to the sender on [...] May 2021, which was not collected by the recipient within the deadline.

Bearing in mind the current wording of Art. 42 § 1 in connection with Art. 44 § 4 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2021, item 735, as amended), hereinafter referred to as "k.p.a.", both of the above-mentioned the letters were considered correctly delivered to the Entrepreneur.

Due to the failure by the Entrepreneur to provide the information necessary to resolve the case with the reference number [...], the President of the Personal Data Protection Office initiated against him ex officio - pursuant to Art. 83 sec. 5 lit. e) Regulation 2016/679 - these administrative proceedings regarding the imposition of an administrative fine, in connection with the violation of Art. 58 sec. 1 lit. a) and e) of Regulation 2016/679. The Entrepreneur was informed about the initiation of the procedure by letter of [...] July 2021. This correspondence, addressed to the Entrepreneur via Poczta Polska, and notified twice on [...] July 2021 and [...] July 2021, was not received. In connection with the above, the President of the Personal Data Protection Office - pursuant to the wording of Art. 42 § 1 in connection with Art. 44 § 4 of the Code of Civil Procedure - considered it delivered to the Entrepreneur on [...] August 2021. The Entrepreneur was also summoned with the above letter - in order to determine the basis for the penalty, pursuant to Art. 101a paragraph. 1 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2019, item 1781), hereinafter referred to as "u.o.d.o." - to present a financial statement or other document showing the amount of turnover and financial result achieved by the Entrepreneur in 2020.

According to the information disclosed in CEIDG, the Entrepreneur carries out economic activity classified in accordance with the Polish Classification of Activities as the activity of insurance agents and brokers (code: 66.22), with the status "suspended" from [...] December 2019. At the same time, the Entrepreneur has indebtedness in an unspecified amount. The proof of the above is the fact that the property owned by the Entrepreneur - a flat [...], covered by the land and mortgage register No. ...]. The announcement on the first date of the auction conducted by the Court Bailiff at the District Court in [...] on the website at: [...].

After reviewing the entirety of the evidence collected in the case, the President of the Office for Personal Data Protection considered the following.

Pursuant to Art. 57 sec. 1 lit. a) Regulation 2016/679, the President of the Personal Data Protection Office - as a supervisory authority within the meaning of art. 51 of Regulation 2016/679 - monitors and enforces the application of this regulation on its

territory. As part of his competences, the President of the Personal Data Protection Office examines, inter alia, Complaints brought by data subjects shall investigate these complaints to an appropriate extent and inform the complainant of the progress and the outcome of these proceedings within a reasonable time (Article 57 (1) (f)). In order to enable the performance of such defined tasks, the President of the Personal Data Protection Office is entitled to a number of tasks specified in art. 58 sec. 1 of Regulation 2016/679, the rights in the scope of conducted proceedings, including the right to order the administrator and the processor to provide all information needed to perform its tasks (Article 58 (1) (a)) and the right to obtain access from the administrator and the processor to all personal data and information necessary for the performance of its tasks (Article 58 (1) (e)). Violation of the provisions of Regulation 2016/679, consisting in the failure of the controller or the processor to provide access to the data and information referred to above, resulting in the violation of the authority's rights specified in art. 58 sec. 1, is subject to - in accordance with art. 83 sec. 5 lit. e) in fine of Regulation 2016/679 - an administrative fine of up to EUR 20,000,000, and in the case of an enterprise - up to 4% of its total annual worldwide turnover from the previous financial year, with the higher amount being applicable.

Referring the above-mentioned provisions of Regulation 2016/679 to the actual state of affairs established in this case, and described at the beginning of this decision, it should be stated that the Entrepreneur - administrator of personal data of clients processed as part of his business - as a party to the proceedings conducted by the President of the Personal Data Protection Office with the reference number [...], breached his obligation to provide the President of the Personal Data Protection Office with access to information and personal data necessary for the performance of his tasks, in this case, the substantive resolution of the above-mentioned case. Such action of the Entrepreneur constitutes a violation of Art. 58 sec. 1 lit. a) and lit. e) Regulation 2016/679.

President of the Personal Data Protection Office, in order to establish the facts of the case with reference number [...], he twice asked the Entrepreneur to provide explanations by answering detailed questions about the case. None of the letters sent to the Entrepreneur dated [...] January 2021 and [...] April 2021, addressed to the address of the Entrepreneur's permanent place of business activity disclosed in CEIDG, was received by him despite the double notification. In connection with the above, these letters were considered correctly delivered to the Entrepreneur in accordance with 42 § 1 in connection with Art. 44 § 4 of the Code of Civil Procedure As a consequence of the Entrepreneur's failure to take up the correspondence addressed to him, the President of the Personal Data Protection Office did not obtain the information necessary to consider the case with reference

number [...]. This state of affairs was not changed by the initiation of the present proceedings to impose an administrative fine (reference number [...]). The letter informing about the initiation of this procedure was also not received by the Entrepreneur. It should be noted here that the responsibility for not providing the President of the Personal Data Protection Office with the requested information rests with the Entrepreneur. This is not changed by the fact that the summons addressed by the President of the Personal Data Protection Office to the Entrepreneur were not finally taken up by him. It is the duty of every person running a sole proprietorship to ensure that the receipt of letters is organized in such a way that the course of correspondence is continuous and undisturbed. In particular, if it is impossible to collect the letters in person, the Entrepreneur should appoint an authorized person for this purpose. Failure to do so should be regarded as gross negligence of the Entrepreneur, which should not in any way adversely affect the possibility of exercising the powers of the supervisory body, including the timeliness of its proceedings.

Similarly, the responsibility of the Entrepreneur is not diminished by the fact that on [...] December 2019 (and thus before the initiation of the administrative procedure with reference number [...]), the performance of individual business activities was suspended, which was disclosed in CEIDG. The fact of suspending the performance of activities does not release the Entrepreneur from the obligation to cooperate with the supervisory authority. According to the provisions of the Act of March 6, 2018, Entrepreneurs' Law (Journal of Laws of 2021, item 162), during the period of suspension of economic activity, he has the right or obligation to participate in court proceedings, tax and administrative proceedings related to with economic activity performed before the date of suspension of economic activity, and also performs all obligations prescribed by law (Article 25 (2) (4) and (5) of this Act). Undoubtedly, such an obligation, resulting from the law itself, is the enforceable obligation to provide the President of the Personal Data Protection Office with any requested information and personal data necessary for the performance of the tasks of the data protection authority referred to in Art. 58 sec. 1 lit. a) and lit. e) Regulation 2016/679. Thus, it should be stated that the obligation of the Entrepreneur, also during the period of suspension of his activities, was to provide a timely and comprehensive response to the call for explanations addressed to him by the President of the Personal Data Protection Office.

Bearing in mind the above findings, the President of the Personal Data Protection Office states that in the present case there are premises justifying the imposition on the Entrepreneur - pursuant to Art. 83 sec. 5 lit. e) in fine of Regulation 2016/679 - administrative fine.

Pursuant to art. 83 sec. 2 of Regulation 2016/679, administrative fines are imposed depending on the circumstances of each individual case. In doing so, attention is drawn to a number of circumstances listed in points a) to k) of the above-mentioned provision. When deciding to impose an administrative fine on the Entrepreneur and determining its amount, the President of the Personal Data Protection Office took into account the following circumstances aggravating the assessment of the infringement:

Nature, severity and duration of the breach (Article 83 (2) (a) of Regulation 2016/679). Conduct of the Entrepreneur subject to an administrative financial penalty, constituting a violation of Art. 58 sec. 1 lit. a) and lit. e) of Regulation 2016/679, because it violates the system aimed at protecting one of the fundamental rights of a natural person, which is the right to the protection of their personal data, or more broadly - to the protection of their privacy. An important element of this system, the framework of which is set out in Regulation 2016/679, are supervisory authorities with tasks related to the protection and enforcement of the rights of natural persons in this respect. In order to enable the performance of these tasks, supervisory authorities have been equipped with a number of control powers, powers to conduct administrative proceedings and remedial powers. On the other hand, controllers and processors have been imposed specific obligations, correlated with the powers of supervisory authorities, including the obligation to provide these authorities with access to personal data and information necessary for the performance of their tasks. The actions of the Entrepreneur in the present case, consisting in the failure to provide any information requested by the President of the Personal Data Protection Office, and resulting in the impediment and unjustified extension of the proceedings conducted by him, should therefore be considered as detrimental to the entire personal data protection system, and therefore of great importance and reprehensible nature. The significance of the infringement is additionally increased by the fact that the infringement by the Entrepreneur was not a one-off and incidental event. On the contrary, the Entrepreneur's action was continuous and long-lasting, which is undoubtedly confirmed by the fact that the infringement found in these proceedings lasts from the expiry of the deadline for submitting explanations, set out in the first letter of the President of the Personal Data Protection Office, i.e. from [...] February 2021 to the present moment.

Intentional or unintentional nature of the breach (Article 83 (2) (b) of Regulation 2016/679). Due to the fact that none of the calls for explanations addressed by the President of the Personal Data Protection Office (UODO) to the Entrepreneur was actually received by him, there are no grounds to conclude that the Entrepreneur's action subject to penalty in this case was intentional. In the opinion of the President of the Personal Data Protection Office, the infringement committed by the

Entrepreneur was unintentional, however, due to the fact that it was a consequence of gross and long-term neglect by the Entrepreneur of his basic obligation (ensuring such organization of receipt of letters that the course of official correspondence would be continuous and undisturbed). ), this circumstance should be assessed negatively and considered aggravating in the context of determining the amount of the sentence.

The degree of cooperation with the supervisory authority in order to remove the breach and mitigate its possible negative effects (Article 83 (2) (f) of Regulation 2016/679). In the course of this proceeding regarding the imposition of an administrative fine (reference number [...]), the Entrepreneur did not cooperate with the President of the Personal Data Protection Office in any way. In particular, the Entrepreneur did not provide the information requested by the personal data protection authority in the procedure with reference number [...], Which could be regarded as an action aimed at remedying the infringement found in the present case. Such a complete lack of cooperation with the President of the Personal Data Protection Office (UODO) still makes it difficult for the President of the Personal Data Protection Office to quickly and thoroughly investigate information on alleged irregularities in the processing of personal data of his clients by the Entrepreneur.

The remaining conditions for the assessment of an administrative fine specified in Art. 83 sec. 2 of Regulation 2016/679 did not affect (aggravating or mitigating) the assessment of the infringement made by the President of the Personal Data Protection Office (including: any relevant prior infringements by the controller, the manner in which the supervisory authority learned about the infringement, compliance with the measures previously applied in the same case , the use of approved codes of conduct or approved certification mechanisms) or, due to the specific nature of the breach (relating to the controller's relationship with the supervisory authority and not the controller's relationship with the data subject), could not be taken into account in the present case (in including: the number of injured persons and the extent of the damage suffered by them, actions taken by the administrator to minimize the damage suffered by data subjects, the degree of administrator's liability, taking into account the technical and organizational measures implemented by him, categories of personal data affected by the infringement zenie) Pursuant to Art. 83 sec. 1 of Regulation 2016/679, an administrative fine imposed by a supervisory authority should be effective, proportionate and dissuasive in each individual case. In the opinion of the President of the Personal Data Protection Office, the penalty imposed on the Entrepreneur in these proceedings meets these criteria. It will discipline the Entrepreneur to properly cooperate with the President of the Personal Data Protection Office, both in the further course of the proceedings with reference number [...], as well as in any possible other future proceedings with his participation

before the President of the Personal Data Protection Office. The penalty imposed by this decision is - in the opinion of the President of the Personal Data Protection Office - proportional to the severity of the infringement found and to the possibility of the Entrepreneur incurring it without excessive prejudice to his activity. When deciding on the amount of the fine, the President of the Personal Data Protection Office took into account both the reprehensibility of the Entrepreneur's conduct, including, in particular, its impact on the proceedings conducted by the supervisory authority in the case of a breach of data protection, as well as the information obtained regarding the Entrepreneur's financial condition. Considering the Entrepreneur's indebtedness, undoubtedly due to the bailiff's sale of the apartment belonging to him [...], covered by the land and mortgage register No. its payment options. This penalty will also have a deterrent function; will be a clear signal for the Entrepreneur, obliged under the provisions of Regulation 2016/679 to cooperate with the President of the Personal Data Protection Office, that disregarding the obligations related to providing access to personal data and information necessary for the President of the Personal Data Protection Office to perform his tasks, constitutes a breach of great importance and as such will be subject to financial sanctions. At this point it should be pointed out that the imposition of an administrative fine on the Entrepreneur is - in relation to the previous proceedings mentioned above, as a party to the proceedings with reference number [...] - necessary; because it is the only means at the disposal of the President of the Personal Data Protection Office, which will enable access to information necessary in the conducted proceedings.

In view of the failure by the Entrepreneur to present the financial data requested by the President of the Personal Data Protection Office for 2020, when determining the amount of the administrative fine in this case, the President of the Personal Data Protection Office took into account, pursuant to Art. 101a paragraph. 2 u.o.d.o., the specificity, scope and scale of the business conducted by the Entrepreneur.

Pursuant to art. 103 u.o.d.o. the equivalent of the amounts expressed in euro, referred to in Art. 83 of 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, which is closest after that date. Bearing in mind the above, the President of the Personal Data Protection Office, pursuant to art. 83 sec. 5 lit. e) Regulation 2016/679, in connection with art. 103 u.o.d.o., for the violations described in the operative part of this decision, imposed on the Entrepreneur - using the average EUR exchange rate of



January 28, 2021 (where EUR 1 = PLN 4.5479) - an administrative fine in the amount of PLN 4,548 (which is equivalent to EUR 1,000) ).

Considering the above, the President of the Personal Data Protection Office adjudicated as in the conclusion of this decision. The decision is final. Pursuant to Art. 53 § 1 of the Act of August 30, 2002 - Law on proceedings before administrative courts (Journal of Laws of 2019, item 2325, as amended), 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: ul. Stawki 2, 00-193 Warsaw).

A proportionate fee should be filed against the complaint, pursuant to Art. 231 in connection with Art. 233 of the Act of August 30, 2002, Law on proceedings before administrative courts (Journal of Laws of 2019, item 2325, as amended). Pursuant to Art. 74 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2019, item 1781), the submission of a complaint by a party to the administrative court suspends the execution of the decision on the administrative fine.

In the proceedings before the Provincial Administrative Court, the party has the right to apply for the right to 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 10 May 2018 on the Protection of Personal Data (Journal of Laws of 2019, item 1781), the administrative fine must be paid within 14 days from the date of expiry of the deadline for lodging a complaint to the Provincial Administrative Court, or from the date the ruling of the administrative court becomes legally binding, to the bank account of the Personal Data Protection Office in NBP, O / O Warsaw, no. 28 1010 1010 0028 8622 3100 0000. Moreover, pursuant to Art. 105 paragraph. 2 of the above-mentioned Act, the President of the Personal Data Protection Office may, at a justified request of the punished entity, postpone the date of payment of the administrative fine or divide it into installments.

2022-01-25