Warsaw, day 30

of August

2022

Decision

DKE.561.25.2021

Based on Article. 104 § 1 of the Act of June 14, 1960 Code of Administrative Procedure (Journal of Laws of 2021, item 735, as amended) in connection with Art. 7 sec. 1 and 2, art. 60, art. 101, art. 101a sec. 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 and 2 and art. 83 sec. 5 lit. e) in connection with art. 58 sec. 1 lit. a) and e) of Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 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) (Official Journal EU L 119 of 04/05/2016, p. 1, with changes announced in the Official Journal of the EU L 127 of 23/05/2018, p. 2, and in the Official Journal of the EU L 74 of March 4, 2021, p. 35), after conducting administrative proceedings initiated ex officio to impose an administrative fine on TIMSHEL Spółka z ograniczoną odpowiedzialnością with its registered office in Warsaw at ul. Dolna 30 lok. 3, President of the Office for Personal Data Protection,

finding a violation by TIMSHEL Spółka z ograniczoną odpowiedzialnością with its registered office in Warsaw at ul. Dolna 30 lok. 3 of the provisions of art. 58 sec. 1 lit. a) and e) of Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 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), consisting in failure to provide the President of the Office for Personal Data Protection with access to information necessary to perform his tasks, imposes on TIMSHEL Spółka z ograniczoną odpowiedzialnością with its registered office in Warsaw an administrative fine in the amount of PLN 31,988 (in words: thirty one thousand nine hundred and eighty eight zlotys).

Justification

Facts

On [...] December 2019, the Office for Personal Data Protection received a notification made by TIMSHEL Spółka z ograniczoną odpowiedzialnością with its registered office in Warsaw (hereinafter referred to as the "Company") - pursuant to

art. 33 sec. 1 Regulation of the European Parliament and of the EU Council 2016/679 of April 27, 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 the EU L 119 of 04.05.2016, p. 1, with changes announced in the Official Journal of the EU L 127 of 23/05/2018, p. 2, and in the Official Journal of the EU L 74 of 04/03/2021 , p. 35) (hereinafter referred to as "Regulation 2016/679") - reporting a personal data breach. The notification was made electronically via the biznes.gov.pl platform; was signed with an electronic signature by Mrs A. T. - member of the Management Board of the Company (according to the data disclosed in the Register of Entrepreneurs of the National Court Register, hereinafter referred to as the "KRS"). However, the notification with the content "personal data breach notification in the attachment" did not contain an attachment in the form of a form dedicated to this type of notification.

Due to the lack of information necessary for the President of the Office for Personal Data Protection (hereinafter referred to as the "President of the Personal Data Protection Office") to assess the breach of personal data protection, which is the subject of the Company's notification of [...] December 2019, the President of the UODO initiated proceedings with reference number [...] and within its framework, he addressed the Company - in a letter of [...] December 2020 - with a request to "present the content of the personal data breach notification". This letter, addressed to the Company via Poczta Polska to the address of the Company's registered office disclosed in the National Court Register, advised twice - on [...] December 2020 and [...] January 2021 - was not received by the Company. It returned to the sender with the annotation "RETURN not taken on time". In connection with the above, the President of the UODO - pursuant to art. 44 § 4 in connection with joke. 45 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2021, item 735, as amended), hereinafter referred to as "the k.p.a." - considered them to have been delivered to the Company on [...] January 2021 and left them in the case files. This call remained unanswered by the Company.

On February [...], 2021, the President of the UODO requested the Company again to provide information necessary to assess the breach of personal data protection, which was the subject of the Company's notification of December [...], 2019. This request, addressed to the Company via the Post Polska to the address of the Company's registered office disclosed in the National Court Register, advised twice - on [...] February and [...] March 2021, was also not received by the Company. It returned to the sender with the annotation "RETURN not taken on time". In connection with the above, the President of the UODO - based on the provision of art. 44 § 4 in connection with joke. 45 k.p.a. - considered them to have been delivered to the

Company on [...] March 2021 and left them in the case files. The company did not respond to this request of the President of the Personal Data Protection Office.

The letter of the President of the UODO of February [...] 2021 contained an instruction that the Company's failure to provide explanations regarding the breach of personal data protection reported by the Company on [...] December 2019 may result in the imposition of an administrative fine on the Company in accordance with joke. 83 sec. 5 lit. e) Regulation 2016/679.

The above factual circumstances were determined by the President of the UODO on the basis of all official correspondence that the President of the UODO conducted with the Company, which correspondence is contained in the files of the proceedings with reference number [...]. This correspondence documents all attempts by the President of the UODO to obtain access to information necessary to perform his tasks, in this case - to consider the case with reference number [...], and, on the other hand, reflects the Company's lack of reaction to the requests of the President of the UODO.

The company - according to the information presented on its website www.[...].pl - provides services in the field of professional recruitment and business coaching. However, according to the entry in the National Court Register, its predominant activity is related to searching for jobs and acquiring employees (PKD code 78.10.Z).

The address of the Company's registered office disclosed in the KRS is: […]. Correspondence in the proceedings with reference number [...] was sent to this address to the Company. Due to the fact that the correspondence addressed to the address of the Company's registered office returned to the Office for Personal Data Protection as not taken up by the Company on time, and the Company - according to the information obtained by the President of the UODO - actually conducts business, the President of the UODO turned to the registry court competent for the Company with a request for information whether there is an unrecognized request of the Company to disclose a change in the address of its registered office in this court. In a letter of [...] August 2021, the District Court for the Capital City of of Warsaw, 13th Commercial Division of the National Court Register, confirmed that the Company's registration files do not contain any unrecognized application by the Company for entry in the register, including, in particular, an application to disclose a change in the address of its registered office.

Procedure

Due to the Company's failure to provide information necessary to resolve the case with reference number [...], the President of the UODO initiated ex officio proceedings against it - pursuant to Art. 83 sec. 5 lit. e) of Regulation 2016/679 - these

administrative proceedings (reference number […]) regarding the imposition of an administrative fine on the Company for violation of art. 58 sec. 1 lit. a) and e) of Regulation 2016/679.

The President of UODO has determined that on its website (www.[...].pl), and in particular in the document "PRIVACY POLICY" ([...]) posted on this website, the Company provides an address of its registered office other than the one disclosed in the National Court Register , and this: […].

Information about the initiation of proceedings to impose an administrative fine on the Company (reference number DKE.561.25.2021.[...]) was sent by the President of UODO - in letters of [...] September 2021 - both to the address of its registered office disclosed in the National Court Register and additional address. In these letters, the Company was summoned - in order to determine the basis for the penalty, pursuant to Art. 101a sec. 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 the financial statements or another document presenting the amount of turnover and the financial result achieved by it in 2020. The company was informed about the possibility of submitting explanations (presenting the content of the personal data breach notification of December 2019), which he requested from it by the President of the UODO in the proceedings with reference number [...], which could have a mitigating effect on the amount of the administrative fine imposed in this case. In addition, the Company was informed about the possibility of expressing its opinion - before issuing an administrative decision - on the evidence and materials collected and the requests made.

The letter of [...] September 2021, addressed to the Company via Poczta Polska to the address of its registered office disclosed in the National Court Register, advised twice - on [...] and [...] September 2021 - was not received by the Company. In connection with the above, the President of the UODO - pursuant to art. 44 § 4 in connection with joke. 45 k.p.a. - considered them to have been delivered to the Company on [...] October 2021 and left them in the case files.

A letter of [...] September 2021, addressed to the Company via Poczta Polska to its additional address, established by the President of the UODO, [...], was received by the Company on September [...] 2021, which was confirmed by the signature of the Company's employee (Mrs. M. W.) on the acknowledgment of delivery.

The letters of the President of the UODO of September 2021 remained without any response from the Company.

In subsequent letters - dated [...] May 2022 - sent via Poczta Polska to both addresses of the Company (see points 7 and 9 of the justification for this decision), the Company was requested - in order to update the information necessary to determine the

amount of the administrative fine - to submit a report financial or other document presenting the amount of turnover and the financial result achieved by it in 2021. The company was informed about the still existing possibility to submit explanations requested by the President of the UODO in letters of [...] December 2020 and [...] February 2021. (in the proceedings with reference number [...]), which could have a mitigating effect on the amount of the administrative fine imposed in this case. In addition, the Company was informed about the possibility of expressing its opinion - before issuing an administrative decision - on the evidence and materials collected and the requests made.

Both of the above-mentioned letters from the President of the UODO of [...] May 2022, despite two notifications, were not received by the Company. In connection with the above, the President of the UODO - applying the provision of art. 44 § 4 in connection with joke. 45 k.p.a. - considered them to have been delivered to the Company on [...] May 2022 and left them in the case files.

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

Regulations

In accordance with art. 57 sec. 1 lit. a) Regulation 2016/679, the President of the UODO - 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 competence, the President of the UODO conducts, among others: proceedings on the application of Regulation 2016/679 (Article 57(1)(h), including proceedings aimed at verifying compliance with the provision of Art. 33 of Regulation 2016/679 on reporting personal data breaches to the supervisory authority (Article 33(5), second sentence of Regulation 2016/679).

In order to enable the implementation of such tasks, the President of the UODO is entitled to a number of tasks specified in art. 58 sec. 1 of Regulation 2016/679, rights in the field of conducted proceedings, including the right to order the controller and the processor to provide all information necessary to perform its tasks (Article 58(1)(a) and the right to obtain from the controller and the processor access to all personal data and information necessary to perform its tasks (Article 58(1)(e).

Ordering the provision of information needed to perform the tasks of the President of the UODO, referred to in art. 58 sec. 1 lit. a) of Regulation 2016/679, is implemented on the basis of Polish administrative procedural law by way of a summons regulated in Chapter 9 k.p.a.

Summons, like any other letters addressed by the public administration body to the parties to the proceedings, are delivered in

accordance with the rules set out in Chapter 8 of the Code of Administrative Procedure. These provisions provide, among others, that organizational units and social organizations are served with letters at the premises of their registered office to persons authorized to receive letters (Article 45 of the Code of Administrative Procedure). However, if it is impossible to deliver the letter to the addressee in the manner specified in art. 45 k.p.a., the postal operator stores the letter for a period of 14 days in its post office (art. 44 § 1 point 1 k.p.a.), having previously placed in the return mailbox (or in another visible place) a notification about leaving the letter along with information about the possibility of collecting it in within 7 days (Article 44 § 2 k.p.a.). In the event that the shipment is not picked up within this period, a second notification is left about the possibility of collecting the shipment within no more than 14 days from the date of the first notification (Article 44 § 3 k.p.a.). If, despite being notified twice about the possibility of collecting the parcel at the post office, the addressee of the letter fails to collect it, Art. 44 § 4 k.p.a. stating that the delivery is considered to have been made after the lapse of the 14-day period referred to in art. 44 § 1 k.p.a., and the letter is left in the case files.

Legal persons to whom the provisions of the Act of 20 August 1997 on the National Court Register (Journal of Laws of 2022, item 1683) (hereinafter referred to as "u.k.r.s."), including limited liability companies, are obliged are to make an entry in the Register of Entrepreneurs of the National Court Register, among others its registered office and address (Article 38(1)(c) of u.k.r.s.). In the event of a change in this data, entities subject to entry in the Register of Entrepreneurs of the National Court Register are obliged to report this change to the Register of Entrepreneurs (Article 47(1) of the u.k.r.s.). In turn, according to art. 17 sec. 1 of u.k.r.s., it is presumed that the data entered into the Register of Entrepreneurs of the National Court Register are true.

Violation of the provisions of Regulation 2016/679, consisting in the controller's or processor's failure to provide access to personal data and information necessary for the supervisory authority to perform its tasks, resulting in a violation of the authority's rights set out in art. 58 sec. 1, and is subject - 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 global turnover from the previous financial year, with the higher amount applicable.

When assessing whether, and if so, to what extent an administrative fine should be imposed, the supervisory authority is required to take into account the following circumstances (premises for the penalty) specified in Art. 83 sec. 2 Regulation 2016/679:

the nature, gravity and duration of the infringement, taking into account the nature, scope or purpose of the given processing, the number of data subjects affected and the extent of the damage suffered by them,

the intentional or unintentional nature of the breach,

actions taken by the controller or processor to minimize the damage suffered by the data subjects,

the degree of responsibility of the controller or processor, taking into account the technical and organizational measures implemented by them pursuant to art. 25 and 32,

any relevant previous infringements by the controller or processor,

degree of cooperation with the supervisory authority in order to remove the infringement and mitigate its possible negative effects,

categories of personal data affected by the breach,

how the supervisory authority found out about the breach, in particular whether and to what extent the controller or processor reported the breach,

if the controller or processor concerned were previously subject to the measures referred to in art. 58 sec. 2 - compliance with these measures,

application of approved codes of conduct under Art. 40 or approved certification mechanisms under Art. 42,

any other aggravating or mitigating factors applicable to the circumstances of the case, such as financial benefits gained directly or indirectly from the breach or losses avoided.

In addition, the supervisory authority - in accordance with art. 83 sec. 1 Regulation 2016/679 - ensures that the applied administrative fines are effective, proportionate and dissuasive in each individual case (principles of imposing a fine).

In order to determine the basis for the assessment of the administrative fine, the entity against which the proceedings to impose the administrative fine are pending is obliged, at the request of the President of the UODO, to provide him, within 30 days from the date of receipt of the request, with the data necessary to determine this basis (Article 101a section 1 u.o.d.o.). However, if the entity subject to the penalty fails to provide this data, the President of the UODO determines the basis for the administrative fine in an estimation manner, taking into account the size of the entity, the specificity of its activity or generally available financial data regarding the entity (Article 101a(2) u.o.d.o.).

Pursuant to the content of art. 103 u.o.d.o. the equivalent of the amounts expressed in euro referred to in Art. 83 of Regulation

2016/679, is calculated in PLN at the average euro exchange rate published by the National Bank of Poland in the table of exchange rates as at January 28 each year, and if in a given year the National Bank of Poland does not announce the average euro exchange rate on January 28 - according to the average euro exchange rate announced in the exchange rate table of the National Bank of Poland, which is the closest after that date.

Legal assessment

Referring the above-mentioned provisions of Regulation 2016/679 to the facts established in this case, it should first be considered whether the Company is the addressee of the obligations referred to in Art. 58 sec. 1 lit. a) and e) of Regulation 2016/679, the violation of which is subject to an administrative fine pursuant to art. 83 sec. 5 lit. e) Regulation 2016/679. Both of the above-mentioned provisions of Regulation 2016/679 impose procedural obligations - as part of the proceedings conducted by the President of the UODO - on controllers and processors. Due to the fact that the proceedings with reference number [...] were initiated by the Company's notification of a breach of personal data protection, i.e. an action performed - in performance of the obligation referred to in art. 33 sec. 1 Regulation 2016/679 - in the event of a violation of personal data protection, it should be stated that the Company in this case acts as an administrator. The obligation to report a breach of personal data protection - pursuant to the above-mentioned provision of art. 33 sec. 1 of Regulation 2016/679 - rests only with the administrator - the entity that finds a breach of the security of the data it processes (data for which it determines the purposes and methods of processing). Due to the fact that the Company is the administrator (since it notified the President of the UODO of a breach of personal data protection), the President of the UODO was entitled - in accordance with art. 58 sec. 1 lit. a) of Regulation 2016/679 - to order it to provide information necessary to assess this infringement, and the Company - pursuant to art. 58 sec. 1 lit. e) Regulation 2016/679 - was obliged to provide such information.

In the proceedings for reference number […], in order to obtain information necessary to assess the reported infringement and pursuant to Art. 58 sec. 1 lit. a) and e) of Regulation 2016/679, the President of the UODO twice requested the Company to submit the content of this notification, i.e. to complete and send to the Office for Personal Data Protection a form intended to include all relevant information related to the infringement. None of these letters, sent by the President of the UODO to the address of the Company's registered office disclosed in the National Court Register, was received by the Company, despite having been notified twice, and therefore they were considered delivered to the Company in accordance with Art. 44 § 4 in connection with joke. 45 k.p.a. (see points 2 and 3 of the justification for this decision). As a consequence of the Company's

failure to initiate correspondence addressed to it, the President of the UODO did not obtain, in the proceedings with reference number [...] information necessary to assess the breach of personal data protection reported by the Company.

This state of affairs was not changed by the initiation of these proceedings regarding the imposition of an administrative fine (reference number DKE.561.25.2021.[…]). The letter of the President of UODO of September 2021, addressed to the Company, to the address of its registered office disclosed in the National Court Register, informing about the initiation of this procedure, was not received by the Company (see points 10 and 11 of the justification for this decision) and remained unanswered . The same letter sent by the President of the UODO at the same time to the additional address disclosed by the Company on its website also remained unanswered (see points 10 and 12 of the justification for this decision). The latter letter is not associated - in the opinion of the President of the UODO - with the effect of delivering information about the initiation of the proceedings to the Company, due to the fact that it was addressed to an address which is not - according to the presumption of truth - data entered into the National Court Register, including data on the registered office and address of the registered office (see point 20 of the justification for this decision) - the address of the Company's registered office. The effect of providing the Company with information about the initiation of these proceedings is linked by the President of the UODO with the delivery (pursuant to Article 44 § 4 in conjunction with Article 45 of the Code of Administrative Procedure) of a letter addressed [...] September 2021 to the address of the Company's registered office disclosed in the National Court Register, which the address is subject to the presumption referred to above.

The letter of the President of the UODO of September 2021, addressed to the additional address of the Company, which is not the address of its registered office, was for information purposes. It was sent to the Company, despite its lack of legal and procedural significance for the case, in order to enable it to present, at this stage, the information requested by the President of the UODO in the proceedings with reference number [...], thereby removing the state of violation of the provisions of Regulation 2016/679 consisting in failure to provide the President of the UODO with access to the necessary information, and consequently mitigating or even avoiding sanctions in the form of an administrative fine imposed in this case. The letter was received by an employee of the Company, which was confirmed by an appropriate annotation on the return receipt confirmation. This allows us to assume that the violation found (the objective fact that the President of the UODO did not obtain any information from the Company) is intentional (see point 35 of the justification for this decision in more detail).

At this point, it should be noted that the responsibility for failure to provide the President of the UODO with the information

requested by him rests with the Company. This is not changed by the fact that the summons sent by the President of the UODO to the Company as part of the proceedings with reference number […] (see points 2 and 3 of the justification for this decision) have not been finally received by it. It is the duty of each organizational unit to ensure that the collection of letters is organized in such a way that the course of correspondence takes place in a continuous and uninterrupted manner and only by authorized persons. Negligence in this respect is the responsibility of this organizational unit (see, for example, the judgment of the Provincial Administrative Court in Gorzów Wielkopolski of October 18, 2018, file reference number II SAB/Go 90/18 - LEX No. 2576144). Similarly, the Supreme Administrative Court, in its judgment of May 24, 2004, issued in the case with reference number FSK 40/04 (LEX No. 137872), stated that it is the duty of legal persons and organizational units to organize work in such a way that the delivery of letters during working hours and at the premises of their registered office is always possible. In the present case, the Company undoubtedly failed to fulfill this obligation.

In connection with the above, given that the Company - as the administrator notifying a breach of personal data protection - is undoubtedly in possession of information regarding this breach, it should be stated that it has breached its obligation to provide the President of the UODO with access to information necessary to perform his tasks - in in this case, to assess this infringement in the proceedings with reference number […]. Such action by the Company constitutes a violation of art. 58 sec. 1 lit. a) and e) of Regulation 2016/679. The effect of the lack of access to the information requested by the President of the UODO from the Company is an obstacle to an objective, thorough and comprehensive assessment of the infringement, which could possibly be the basis for taking further action by the President of the UODO and the Company to remove the reported infringement and minimize its negative for those affected by the breach. The assessment of the violation of the protection of personal data processed by the Company made by the President of the UODO would also be aimed at verifying whether the Company, in connection with the reported violation, is subject to the obligation provided for in art. 34 sec. 1 of Regulation 2016/679, the obligation to notify the affected persons of this breach, and whether the Company - if such an obligation arose - fulfilled it.

Considering the above, the President of the UODO states that in this case there were premises justifying imposing on the Company - pursuant to art. 83 sec. 5 lit. e) in fine of Regulation 2016/679 - an administrative fine in connection with its failure to provide access to the information necessary for the President of the UODO to perform its tasks, i.e. to make in the proceedings with reference number […] assessment of the breach of personal data protection reported by the Company.

Premises and rules for the imposition of an administrative fine

Pursuant to the content of art. 83 sec. 2 of Regulation 2016/679, administrative fines are imposed depending on the circumstances of each individual case. In each case, he refers to a number of premises listed in points a) to k) of the above-mentioned provision (see point 22 of the justification for this decision). When deciding to impose an administrative fine on the Company in this case and determining its amount, the President of the UODO took into account - from among them - the following circumstances aggravating the assessment of the infringement:

Nature, gravity and duration of the infringement (Article 83(2)(a) of Regulation 2016/679).

A breach subject to an administrative fine in this case undermines the system aimed at protecting one of the fundamental rights of a natural person, which is the right to the protection of his personal data, or more broadly - to protect his privacy. An important element of this system, the framework of which is defined by Regulation 2016/679, are supervisory authorities, which have been assigned tasks related to the protection and enforcement of the rights of natural persons in this regard. In order to enable the implementation of these tasks, supervisory authorities have been equipped with a number of control powers, powers to conduct administrative proceedings and corrective powers. On the other hand, controllers and processing entities have been imposed, correlated with the powers of supervisory authorities, certain obligations, including the obligation to cooperate with supervisory authorities and the obligation to provide these authorities with access to information necessary to perform their tasks. The importance of breaching these obligations was emphasized by the EU legislator himself, providing for their violation the higher of the two penalties specified in the provisions of Regulation 2016/679 - a penalty of up to EUR 20,000,000, and in the case of an enterprise up to 4% of its turnover from the previous financial year. The Company's conduct in this case, consisting in not answering the summons addressed to it by the President of the UODO and ignoring the already initiated correspondence, resulting in hindering and unjustified prolongation of the proceedings conducted by the President of the UODO, should therefore be considered as violating the personal data protection system, and therefore importance and reprehensible character. The gravity of the infringement is additionally increased by the fact that the infringement committed by the Company was not an incidental event. The operation of the Company is continuous and long-term. It lasts from the expiry of the 3-day deadline for presenting the content of the infringement notification in the first request addressed by the President of the UODO to the Company in the proceedings with reference number […], that is from January […] 2021, until the date of this decision.

Intentional nature of the infringement (Article 83(2)(b) of Regulation 2016/679).

In the opinion of the President of the UODO, there was a conscious and intentional lack of cooperation on the part of the Company in providing the authority with access to all information necessary to resolve the case in which the President of the UODO asked it to provide it. It should be emphasized that this case was initiated by the Company itself (see point 1 of the justification for this decision). A member of the Company's management board, submitting a notification of a personal data protection breach to the Office for Personal Data Protection (even if the form containing information about the breach was missing), must have been aware that this action would initiate the actions of the President of the UODO provided for in the provisions of Regulation 2016/679, and these activities will require contact with the Company. Therefore, failure to collect the correspondence of the President of the UODO after the date of submission of the notification is perceived by the President of the UODO as a deliberate action aimed at hindering or even preventing him from assessing the reported infringement. The above is confirmed by the fact that the Company did not provide any response to the only call received by it, which (although it is not associated with the effect of delivery - see point 28 of the justification of this decision) reached, as it should be presumed, the awareness of the persons managing the Company. Therefore, the lack of response to them must have been the result of a conscious and intentional decision of persons acting on behalf of the Company in such a situation. It is worth noting that this request - in addition to information about the infringement made by the Company consisting in failure to provide the President of the UODO with the requested information and the threat of a sanction in the form of an administrative fine for this infringement - also informed the Company about the possibility of presenting the information requested by the President of the UODO in the proceedings for reference no. […]. Therefore, the company was fully aware of the infringement and knew how to end the infringement (provide the President of the UODO with the requested information). The company did not do so after receiving the letter from the President of the UODO referred to above, which should be treated as a deliberate and intentional action, having an adverse impact on the assessment of the infringement found in this case.

Degree of cooperation with the supervisory authority to remove the infringement and mitigate its possible negative effects (Article 83(2)(f) of Regulation 2016/679.

In the course of these proceedings regarding the imposition of an administrative fine on the Company (sign. DKE.561.25.2021.[...]), the Company did not cooperate with the President of the UODO to any extent. In particular, the Company did not provide any information requested by the President of the Personal Data Protection Office in the proceedings

with reference number […], which could be treated as an action aimed at removing the violation found in this case or mitigating its effects. Such a complete lack of cooperation with the President of the UODO continues to prevent the President of the UODO from making a quick and thorough assessment of the breach of personal data protection which is the subject of the Company's notification of [...] December 2019.

In the opinion of the President of the UODO, none of the prerequisites referred to in Art. 83 sec. 2 of Regulation 2016/679, does not support the mitigation of the established - taking into account the above-mentioned aggravating circumstances - the amount of the penalty imposed by this decision.

Due to the specific nature of the breach (concerning the relationship between the controller and the supervisory authority, and not the relationship between the controller and the data subjects), the following circumstances could not necessarily be taken into account by the President of the UODO in this case:

number of injured persons and the extent of the damage suffered by them (Article 83(2)(a) of Regulation 2016/679) - due to the fact that the breach (the Company's failure to grant the President of the Personal Data Protection Office access to the necessary information) does not involve a data breach personal data of any person and, as a consequence, there were no damages to natural persons in the case;

actions taken by the controller or processor to minimize the damage suffered by the data subjects (Article 83(2)(c) of Regulation 2016/679) - due to the fact that there was no damage to the data subjects in the case physical, there is no obligation and no possibility for the Company to take any action to minimize them;

the degree of responsibility of the controller or processor, taking into account the technical and organizational measures implemented by them pursuant to art. 25 and 32 of Regulation 2016/679 (Article 83(2)(d) of Regulation 2016/679) - due to the fact that the infringement itself does not involve technical and organizational measures implemented by the Company to ensure protection personal data and the security of their processing;

categories of personal data that the breach concerned (Article 83(2)(g) of Regulation 2016/679) - due to the fact that the breach does not involve the breach of any personal data.

Other circumstances indicated below referred to in Art. 83 sec. 2 of Regulation 2016/679, after assessing their impact on the infringement found in this case, were considered neutral by the President of the UODO, i.e. having neither an aggravating nor mitigating effect on the amount of the adjudicated administrative fine:

any relevant previous violations by the controller or processor (Article 83(2)(e) of Regulation 2016/679);

The President of the UODO has not found any previous violations of the provisions on the protection of personal data by the Company, therefore there are no grounds for treating this circumstance as aggravating. And since such a state (compliance with the provisions on the protection of personal data) is a natural state resulting from the legal obligations imposed on the Company, it also cannot have a mitigating effect on the assessment of the infringement made by the President of the UODO.

how the supervisory authority found out about the infringement (Article 83(2)(h) of Regulation 2016/679);

Information about the violation found in this case was obtained by the President of the UODO ex officio by analyzing the course of the proceedings pending before him with reference number […]. This is a natural way of obtaining information about this type of infringement (i.e. failure to provide access to the necessary information) resulting from the competence of the President of the UODO to assess the course of these proceedings and assess what information is necessary for him to resolve the case. Therefore, there are no grounds for a negative assessment of the fact that the information about the infringement does not come from the Company; however, this fact cannot be taken into account in favor of the company, since it did not take any part in obtaining information about the infringement by the President of the UODO.

compliance with the measures previously applied in the same case referred to in Art. 58 sec. 2 of Regulation 2016/679 (Article 83(2)(i) of Regulation 2016/679);

Before issuing this decision, the President of the UODO did not apply any measures listed in art. 58 sec. 2 of Regulation 2016/679, therefore the Company was not obliged to take any action related to their application, and which actions, subject to the assessment of the President of the UODO, could have an aggravating or mitigating impact on the assessment of the violation found.

application of approved codes of conduct or approved certification mechanisms (Article 83(2)(j) of Regulation 2016/679);

The company does not use the instruments referred to in Art. 40 and art. 42 of Regulation 2016/679. However, their adoption, implementation and application is not - as provided for by the provisions of Regulation 2016/679 - mandatory for administrators, therefore the circumstance of their non-application cannot be considered to the Company's disadvantage in this case. In favor of the Company, however, the circumstance of adopting and applying such instruments as measures guaranteeing a higher than standard level of protection of personal data being processed could be taken into account.

financial benefits achieved directly or indirectly in connection with the infringement or losses avoided (Article 83(2)(k) of

Regulation 2016/679)

The President of the UODO did not state that the Company, due to the failure to provide the information requested by him, gained any financial benefits or avoided such losses. Therefore, there are no grounds for treating this circumstance as incriminating the Company. The statement of the existence of measurable financial benefits resulting from the violation of the provisions of Regulation 2016/679 should be assessed definitely negatively. However, the Company's failure to achieve such benefits, as a natural state, independent of the Company's will and actions, is a circumstance that, by nature, cannot be a mitigating factor for it. This is confirmed by the wording of Art. 83 sec. 2 lit. k) Regulation 2016/679, which requires the supervisory authority to pay due attention to the "achieved" benefits - those that occurred on the part of the entity that committed the infringement.

other aggravating or mitigating factors (Article 83(2)(k) of Regulation 2016/679).

The President of the UODO, examining the case comprehensively, did not notice any circumstances other than those described above that could affect the assessment of the infringement and the amount of the adjudicated administrative fine. Pursuant to the wording of Art. 83 sec. 1 of Regulation 2016/679, the administrative fine imposed by the supervisory authority should be effective, proportionate and dissuasive in each individual case. When defining the above-mentioned rules for imposing administrative fines, reference should be made to the views of the legal doctrine on the protection of personal data. “A sanction is effective if it achieves the purpose for which it was introduced. The sanction is proportionate if it does not exceed the severity threshold determined by taking into account the circumstances of the individual case. A sanction is a deterrent if it meets the considerations of individual and general prevention, in other words, it is a clear signal of disapproval of the violation for the society, as well as for the sanction's addressee" (P. Litwiński (ed.), Regulation of the European Parliament and of the Council (EU) 2016 /679 of April 27, 2016 [...]; Commentary on Article 83 [in:] P. Litwiński (ed.) General Regulation on the Protection of Personal Data. Act on Protection of Personal Data. Selected sectoral regulations. Commentary). The rules for imposing administrative fines defined in this way require reference to the size, financial capabilities and position of the fined entity on the market, and as a measure of these attributes of the fined entity, in the case of an enterprise, Regulation 2016/679 allows us to assume the total annual global turnover from the previous year turnover (Article 83(4) and (5) of Regulation 2016/679). Complementing this principle, the provision of Art. 101a sec. 2 u.o.d.o. provides that in the absence of such data, the President of the UODO determines the basis for the administrative fine based on estimates as to the size of the entity, the

specificity of its business or generally available financial data regarding the entity. Reference to the economic potential of the punished entity is necessary because, among others, a penalty disproportionately low in relation to the financial capacity of the perpetrator of the infringement (the penalty is even "imperceptible" for this entity) will not be effective and dissuasive for this entity; a penalty that is too severe (a penalty whose payment will threaten the entity's existence) will not be a proportional penalty.

In connection with the above, in view of the Company's failure to submit the financial data requested by the President of the UODO for 2021, the assessment of the size of the Company and its economic potential, as the basis for the administrative fine imposed on it, was made by the President of the UODO in an estimated manner - based on generally available its financial data for the years 2018-2020.

When determining the amount of the administrative fine, the President of the UODO took into account the financial data on the Company available on the website of the National Court Register (www.gov.pl/web/justosc/przeglarka-dokumentow-Finansowych). These data show that the turnover (net income from sales) of the Company in the last three years, for which the Company submitted financial statements to the National Court Register, amounted to: in 2018 - [...], in 2019 - [...], in 2020 r. – […]. On the other hand, the net profit that the Company achieved in the same years was as follows: in 2018 - [...], in 2019 - [...], in 2020 - [...]. These data allow to conclude that the Company operates on a small scale. However, the similar level of revenues achieved in three consecutive financial years proves the stable financial situation of the Company, and the net profit shown in each of these periods - the high profitability of the Company's operations.

When determining the amount of the administrative fine imposed by this decision, the President of the UODO weighed all three principles indicated in Art. 83 sec. 1 of Regulation 2016/679 in the context of the above-presented data describing the size and scale of the Company's operations and its financial situation. In his opinion, the fine of PLN 31,988 corresponds to these principles. Its severity in the financial dimension (perceptibility consisting in a decrease in its net profit of up to several percent) will discipline the Company to properly cooperate with the President of the UODO, both in the further course of the proceedings for ref. [...] as well as in possible other proceedings conducted in the future with her participation before the President of the UODO. Therefore, in terms of discipline for the Company, the penalty will be effective. Due to its ailment, it will also fulfill a deterrent function; will be a clear signal both for the Company and other entities obliged under the provisions of Regulation 2016/679 to cooperate with the President of the UODO that disregarding the obligations related to ensuring access

to personal data and information necessary for the President of the UODO to perform his tasks constitutes a violation of a large weight and as such will be subject to financial sanctions. The fine imposed on the Company in this specific amount, specified in the operative part of this decision, is also - in the opinion of the President of the UODO - proportional to the seriousness of the infringement found and the ability to bear it by the Company (it will not threaten the existence of the Company and the ability to continue its current operations).

The amount of the administrative fine specified in the operative part of this decision, which is the equivalent of EUR 7,000, was set in PLN - in accordance with Art. 103 u.o.d.o. (see point 25 of the justification for this decision) - using the average euro exchange rate on January 28, 2022 (where EUR 1 = PLN 4.5697).

In this factual and legal state, the President of the UODO decided as in the sentence.

Instruction

The decision is final. In accordance with art. 53 § 1 of the Act of August 30, 2002 Law on Proceedings before Administrative Courts (Journal of Laws of 2022, item 329, as amended) (hereinafter "p.p.s.a."), the party has the right to lodge a complaint against the decision to the Voivodship of the 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 relative entry must be made against the complaint, in accordance with Art. 231 in connection with art. 233 p.p.s.a. In accordance with art. 74 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2019, item 1781) (hereinafter "u.o.d.o.") lodging a complaint by a party to the administrative court suspends the execution of the decision regarding 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 a lawyer, legal advisor, tax advisor or patent attorney. The right to assistance may be granted at the request of the Party submitted before the initiation of the proceedings or in the course of the proceedings. The application is free of court fees.

In accordance with art. 105 sec. 1 of u.o.d.o., the administrative fine should 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 when the administrative court's decision becomes final, to the bank account of the Office for Personal Data Protection in NBP O/O Warszawa No. 28 1010 1010 0028 8622 3100 0000.

In addition, in accordance with art. 105 sec. 2 u.o.d.o., the President of the Office for Personal Data Protection may, at the

justified request of the punished entity, postpone the date of payment of the administrative fine or divide it into installments. In the event of postponing the payment of an administrative fine or spreading it into installments, the President of the Office for Personal Data Protection shall charge interest on the unpaid amount on an annual basis, using a reduced interest rate for late payment, announced pursuant to art. 56d of the Act of August 29, 1997 - Tax Ordinance (Journal of Laws of 2021, item 1540, as amended), from the day following the date of submission of the application.

Print article

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