

Warsaw, 18

July

2022

Decision

DKE.561.8.2022

Based on Article. 104 § I 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 and art. 60 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. b) in connection with Art. 58 sec. 1 lit. a) and ... e) Regulation of the European Parliament and of the EU Council 2016/679 of April 27, 2016. on the protection of natural persons 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) (Official Journal EU L 119 of 04.05.2016, p. 1, with changes announced in the EU Official Journal L 127 of May 23, 2018, p. 2, and in the EU Official Journal L 74 of March 4, 2021, p. 35), after conducting administrative proceedings regarding the imposition of an administrative fine on D Sp. z o.o. , President of the Office for Personal Data Protection,

admonishes D. Sp. z o.o. for violation of the provisions of art. 58 sec. 1 lit. a) and e) of the Regulation of the European Parliament and of the EU Council 2016/679 of April 27, 2016. on the protection of natural persons 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) (Official Journal EU L 119 of 04/05/2016, p. 1, with the changes announced in the EU Official Journal L 127 of May 23, 2018, p. 2, and in the EU Official Journal L 74 of March 4, 2021, p. 35), consisting in not providing the President of the Personal Data Protection Office with access to data personal data and information necessary to perform its tasks.

Justification

Facts

The Office for Personal Data Protection (hereinafter referred to as the "UODO") received a complaint from Mr. W. N. (hereinafter referred to as the "Complainant") about irregularities in the processing of his personal data by D. Sp. z o.o., (hereinafter referred to as the "Company"), including the provision of personal data in the field of name, surname, private

telephone number and place of residence on the Internet portal [...] - subject "[...]".

In order to consider the complaint lodged by the Complainant, the President of the Office for Personal Data Protection (hereinafter referred to as the "President of the Personal Data Protection Office") initiated administrative proceedings with reference number [...], under which, pursuant to art. 58 sec. 1 lit. a) and e) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons 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) (OJ 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) (hereinafter referred to as "Regulation 2016/679") - by letter of August [...] 2021 and October 2021 - called on the Company to respond to the content of the complaint and to provide explanations in the case by answering questions formulated in detail. Both letters were not collected by the Company, after two notifications, they were returned to the UODO with the annotation "Return - not collected on time". In view of the above, the letters were deemed to have been delivered to the Company in accordance with Art. 44 § 4 of the Act of June 14, 1960. Code of Administrative Procedure (Journal of Laws of 2021, item 735, as amended).

The letter of [...] October 2021 contained an instruction that the lack of an exhaustive answer may result in lack of cooperation with the President of the UODO in the performance of his tasks and failure to provide access to personal data and information necessary for the President of the UODO to carry out his tasks, imposing on the Company - in accordance with art. 83 sec. 4 lit. a or art. 83 sec. 5 lit. e Regulation 2016/679 - administrative fine.

Due to the failure to provide access to personal data and information necessary for the President of the UODO to perform his tasks, in a letter of [...] March 2022, the President of the UODO instituted ex officio against the Company - pursuant to art. 83 sec. 5 lit. e) Regulation 2016/679 - these administrative proceedings (reference number DKE.561.8.2022) 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. In this letter, 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 a financial statement or other document presenting the amount of turnover and the financial result achieved by the Company in 2021.

The letter of [...] March 2022 on the initiation of administrative proceedings regarding the imposition of an administrative fine

has not been received by the Company. Twice advised, it returned to UODO with the annotation "Return - not collected on time". Following a telephone contact with the President of the Management Board of the Company, Mr. M. C., an employee of the UODO determined that correspondence sent to the address of the Company's registered office is not received due to the conflict with the shareholder. Mr. M. C. provided a new address for correspondence: [...]. A copy of the letter of October 2021 and a copy of the letter of March 2022 were sent to the address provided. The correspondence was received on May 2022. As a result, the Company immediately started cooperation with the President of the UODO. In a letter of [...] May 2022, the Company submitted explanations in the proceedings with reference number [...] and provided the requested financial statements, prepared as at [...] May 2021.

After considering all the evidence collected in the case, the President of the UODO considered the following.

#### Legal justification

In accordance with art. 57 sec. 1 lit. a) of 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 is entitled, among others, to: to conduct proceedings regarding the application of the provisions of this legal act (Article 57(1)(h) and, in particular, considers complaints lodged by data subjects and conducts proceedings regarding these complaints in accordance with the content of art. 57 section 1 lit. f) 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 ongoing proceedings, including the right to order the controller and the processor to provide all information needed 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)).

Violation of the provisions of Regulation 2016/679 consisting in the controller's or processor's failure to provide access to all personal data and information referred to above, resulting in a violation of the authority's rights set out 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 global turnover from the previous financial year, with the higher amount applicable.

The President of the UODO is also entitled to a number of specified in art. 58 sec. 2 corrective powers, including issuing reminders to the administrator or processor in the event of violation of the provisions of Regulation 2016/679 by processing

operations. The President of the UODO, acting pursuant to art. 58 sec. 2 lit. b) of Regulation 2016/679 may consider it justified to issue a reminder to the administrator or processor in the event of a violation of the provisions of Regulation 2016/679, including the provisions of art. 58 sec. 1 lit. a) and e) of this legal act.

In accordance with recital 148 of Regulation 2016/679, in order to make enforcement of the regulation more effective, sanctions should be imposed for its violation, including administrative fines - in addition to or instead of appropriate measures imposed under this regulation by the supervisory authority. If the infringement is minor, the fine may be replaced by a warning. However, due attention should be paid to the nature, gravity and duration of the breach, whether the breach was intentional, the actions taken by the controller to minimize the damage, the degree of responsibility or any significant previous breaches, the manner in which the supervisory authority found out of a breach, compliance with the measures imposed on the controller or processor, the application of codes of conduct and any other aggravating or mitigating factors.

Preventing access to the information requested by the President of the UODO from the Company prevented a thorough examination of the case and resulted in prolonging the proceedings, which is contrary to the basic principles governing administrative proceedings - set out in Art. 12 sec. 1 of the Act of June 14, 1960 Code of Administrative Procedure (Journal of Laws of 2021, item 735, as amended) with the principles of thoroughness and speed of proceedings.

In order to determine the facts of the case with reference number [...], the President of the UODO twice asked the Company to send further explanations. The President of UODO did not receive a response to any of the letters sent to the Company from August [...] 2021 and October 2021. It should be emphasized that these letters were addressed to the correct address of the Company, appropriate for correspondence. The fact that the demands of the President of the UODO formulated in these letters did not reach the Company - they were not acted upon twice by the postal operator - the Company itself is responsible. 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). The above made it necessary to initiate proceedings to impose an administrative fine.

Referring the above-mentioned provisions of Regulation 2016/679 to the facts established in this case, it should be stated that the Company - as a party to the proceedings conducted by the President of the UODO with the reference number [...], violated

the obligation to provide the President of the UODO with access to personal data and information necessary to perform his tasks . The justification provided by the Company for the lack of response to the requests of the President of the UODO does not relieve it of responsibility for the omission found. However, the reasons for the lack of cooperation with the supervisory authority indicated by the Company should have been taken into account as credible and having a significant impact on the assessment of the Company's behavior in the context of the choice of sanctions applied to it. In the opinion of the President of the UODO, the Company's lack of response to requests for explanations was not intentional. The company, after reviewing the received copies of letters sent to it, immediately provided explanations. This indicates readiness to cooperate with the President of the UODO. In the opinion of the supervisory authority, the mere initiation of proceedings to impose an administrative fine and the real prospect of imposing it became a clear signal for the Company that evading the obligations imposed by the provisions of Regulation 2016/679 will inevitably lead to the application of the strictest, provided for these sanctions.

Acting on the basis of art. 58 sec. 2 lit. b) of Regulation 2016/679, according to which each supervisory authority has the right to issue a reminder to the controller or processor in the event of a violation of the provisions of this regulation by processing operations, the President of the UODO considered it justified to issue a reminder to the Company regarding the violation of the provisions article 58 sec. 1 lit. a) and e) of Regulation 2016/679, assuming that in the light of the criteria set out in Art. 83 sec. 1 and 2 of Regulation 2016/679, it will be effective and sufficient. However, it should be noted that in the event of a similar event in the future, each reminder issued by the President of the UODO against the Company will be taken into account when assessing the grounds for a possible imposition of an administrative penalty, in accordance with the principles set out in Art. 83 sec. 1 and 2 of Regulation 2016/679.

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

#### Instruction

The decision is final. The party has the right to lodge a complaint against the decision to the Provincial Administrative Court in Warsaw, within 30 days from the date of its delivery, via the President of the UODO (address: ul. Stawki 2, 00 - 193 Warsaw). The entry fee for a complaint is PLN 200. In proceedings before the Provincial Administrative Court, a 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.

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