THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 16

October

2019

DECISION

ZSPR. 421.7.2019

Based on Article. 104 § 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended) and Art. 7 section 1 and section 2, art. 60, art. 101, art. 103 of the Personal Data Protection Act of May 10, 2018 (Journal of Laws of 2019, item 1781) in connection with Art. 5 sec. 1 lit. a, art. 5 sec. 2, art. 6 sec. 1, art. 7 sec. 3, art. 12 sec. 2, art. 17 sec. 1 lit. b, art. 24 paragraph 1, art. 58 sec. 2 lit. d and lit. and, and in connection with Art. 83 sec. 3, art. 83 sec. 5 lit. a and 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 UE L 119 of May 4, 2016, p. 1 and Journal of Laws UE L 127 of May 23, 2018, p. 2), following administrative proceedings regarding the processing of personal data by ClickQuickNow Sp. z o.o. based in Warsaw

I. stating that ClickQuickNow Sp. z o.o. based in Warsaw, regulations:

a) Art. 5 paragraph 1 lit. and in connection with joke. 5 sec. 2 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 and Journal of Laws UE L 127 of 23.05.2018, p. 2), hereinafter referred to as "Regulation 2016/679", i.e. the principles of lawfulness, fairness and transparency of the processing of personal data, and art. 7 sec. 3, art. 12 sec. 2, art. 17 sec. 1 lit. b and art. 24 sec. 1 of Regulation 2016/679, by failing to implement appropriate technical and organizational measures that would enable the data subject to easily and effectively withdraw consent to the processing of his personal data and exercise the right to request the immediate deletion of his personal data (the right to be forgotten),

b) art. 5 paragraph 1 lit. and in connection with joke. 5 sec. 2 of Regulation 2016/679, i.e. the principle of legal compliance, and

art. 6 sec. 1 of Regulation 2016/679, by processing data of persons who are not customers of ClickQuickNow Sp. z o.o., and from which ClickQuickNow Sp. z o.o., received requests to stop processing personal data,

orders ClickQuickNow Sp. z o.o. based in Warsaw, adjusting the processing of personal data to the provisions of Regulation 2016/679, within 14 days from the date of delivery of this decision, by:

1) modifying the process of handling requests to withdraw consent to data processing in such a way that data subjects can effectively exercise their right to withdraw consent and the right to be forgotten,

2) deletion of personal data of persons who are not ClickQuickNow Sp. z o.o., and from which ClickQuickNow Sp. z o.o., received a request to stop processing personal data.

II. for violation of the provisions of Art. 5 paragraph 1 lit. a, art. 6 sec. 1, art. 7 sec. 3, art. 12 sec. 2, art. 17 sec. 1 lit. b and art. 24 sec. 1 of the Regulation 2016/679 imposes on ClickQuickNow Sp. z o.o. with its registered office in Warsaw, a fine in the amount of PLN 201,559.50 (two hundred and one thousand five hundred and fifty-nine zlotys 50/100), which is the equivalent of EUR 47,000, according to the average EUR exchange rate announced by the National Bank of Poland in the exchange rate table as of 28 January 2019

JUSTIFICATION

On [...] February 2019, pursuant to Art. 78 sec. 1, art. 79 sec. 1 point 1 and art. 84 sec. 1 points 1-4 of the Act of May 10, 2018 on the protection of personal data (Journal of Laws, item 1000, as amended) in connection with joke. 57 sec. 1 lit. a and h, art. 58 sec. 1 lit. b, e and f of Regulation 2016/679, in order to control the compliance of data processing with the provisions on the protection of personal data, control activities were carried out at ClickQuickNow Sp. z o.o. with its seat in Warsaw (hereinafter also referred to as the "Company").

The scope of the control covered the processing of personal data by the Company, with the exception of data relating to employees.

In the course of the inspection, oral explanations were received from the Company's employees and the IT system was inspected. The facts were described in detail in the control protocol signed by the President of the Management Board of the Company.

The information contained in the National Court Register shows that the subject of the Company's business activities is data processing, website management (hosting) and similar activities; activities of advertising agencies; operation of call centers;

other business and management consultancy as well as the operation of internet portals.

On the basis of the evidence collected in the case, it was established that in the process of processing personal data, the Company, as the controller, breached the provisions on the protection of personal data. These shortcomings include:

1. Failure to provide data subjects with easy use of their right to withdraw consent to the processing of their personal data (violation of Article 7 (3) and Article 12 (1) of Regulation 2016/679).

2. Violation of the principles of transparency and fairness in the process of revoking consent, by sending contradictory messages to data subjects, which results in a misrepresentation of the person revoking consent and may not withdraw consent (violation of Article 5 (1) letter a of the Regulation 2016/679).

3. Violation of the right to delete data (the right to be forgotten), through the use of the consent revocation process, which hinders the effective revocation of consent - violation of Art. 17 sec. 1 lit. b of the Regulation 2016/679.

4. Processing data of persons who are not the Company's clients without a legal basis (violation of Article 6 (1) of Regulation 2016/679 and violation of the principle of lawfulness of processing referred to in Article 5 (1) (a) of Regulation 2016/679 679).

5. Failure to apply appropriate technical and organizational measures that would allow the data subject to effectively exercise his rights (violation of Article 24 (1) of Regulation 2016/679).

In connection with the above, in the letter: ZSPR.421.7.2019. [...] the President of the Office for Personal Data Protection initiated ex officio administrative proceedings in the field of identified deficiencies, in order to clarify the circumstances of the case.

In response to the notification of the initiation of administrative proceedings, the Company's Representative (power of attorney in the case files), by letter of [...] July 2019, provided explanations in which he indicated, inter alia, that:

1. The position of the President of the Personal Data Protection Office regarding the objections relating to the processing of personal data contained in the notice of initiation of the procedure deviates from the findings contained in the inspection protocol and therefore the proceedings should end with the statement that the Company did not breach the provisions of the law on protection of personal data.

2. The Company does not agree with the allegation that in the process of revoking consent to the processing of personal data, it prevents or hinders data subjects from exercising the rights referred to in Art. 17 sec. 1 lit. b of the Regulation 2016/679.

3. The company leaves the so-called "[...] e-mails" (which do not contain any content, apart from the e-mail address of the

sender, date and time of sending and indication of the addressee: [...]. Messages of this type are not considered as requests for revocation of consent, or as other correspondence on (e.g. incomplete requests for consent revocation).

4. The Company does not agree with the position of the President of the Personal Data Protection Office that "[...] e-mail" sent to the address: [...] is an incomplete application for revoking consent to the processing of personal data. In the opinion of the Company, such an e-mail may constitute, for example, an incomplete request for data rectification or an incomplete request for information on data processing.

5. Adoption of the concept of legal classification of empty e-mail messages as declarations of will to use a specific right of the sender of such a "letter", in the opinion of the Company, is not supported by the provisions of Regulation 2016/679 and the rules for interpreting declarations of will included in Regulation 2016/679 (prohibition of presuming statements of the data subject). Therefore, in the opinion of the Company, "[...] e-mails" are not considered by the Company as correspondence in the case.

6. In the Company's opinion, the notice of initiation of the procedure omitted an important circumstance recorded in the inspection protocol, which shows that the "[...] e-mails" in question come from two websites - [...] and [...], which were introduced after mechanisms of automated e-mail sending to the Company's address on its website.

7. In the opinion of the Company, the large scale of this phenomenon makes it possible to conclude that "[...] e-mails" indicate systemic or accidental operation of the portal users. The rules of life experience indicate that people who consciously use e-mail do not send correspondence without content to their addressees.

8. Taking into account the potential risks - related to websites adopted by third parties that provide e-mail services to Internet users and automation mechanisms not agreed with the Company, which result in the inflow of "[...] correspondence" to the Company - the Company intervened with entities running these services in order to eliminate this phenomenon. As confirmation of the correspondence in this case, the e-mail correspondence printouts were attached to the letter constituting the response to the notice of initiation of the procedure.

9. The Company recognizes that since the alleged consent for data processing should not be collected, then the data should not be deleted on the basis of an alleged request, nor should the request be specified.

10. In the opinion of the Company, the process in which clicking on a link included in the text of the advertising message redirects the user to two websites - to the first, where the user is asked about the reason for revoking his consent, and to the

second page, where he is informed about the manner of its consent. revocation - does not infringe the obligations regarding the easy revocation of consent, because: "on the second website (after answering the question about the reason for a potential resignation), the user displays a message about the method of revoking consent (requesting an e-mail)." On this basis, the Company considers that the method of withdrawing consent is not less complicated than the process during which the consent was obtained.

11. In the opinion of the Company, the allegation that the Company obtains additional information without a legal basis from persons submitting an application for revocation of consent in terms of the need to provide the reason for its revocation is also unfounded. The Company confirms that the inquiry about the reason for resignation from further data processing should be considered as the collection of additional data by the Company, which, if it were considered that the revocation of consent would be effective, would be removed anyway. However, in the event that the revocation of consent did not take place, the information obtained would be processed by the Company pursuant to Art. 6 sec. 1 lit. f of the Regulation 2016/679, i.e. based on the legitimate interest of the administrator.

12. Referring to the content of the communication: "Your consent is withdrawn today [...]". Thank you for your answer! In this situation, I would like to inform you that you have the right to access, delete, limit processing, transfer, object, request rectification and withdraw consent at any time at [...], including the right to submit a complaint to the President of the Data Protection Office Personal. (...) ", which is displayed to the user only after answering the question about the reason for the resignation, it was indicated that after receiving the notification of the initiation of the procedure from the website, the message containing the text" Your consent is revoked today [...] "has been removed. The information provided also shows that in place of this message, the following message will be posted: "Information on how to withdraw your consent".

13. The company, explaining why it does not use the consent withdrawal model only by clicking once on the link of the e-mail message (containing the link "consent withdrawal"), indicates that the use of such a model could result in the fact that the request in this regard could be made unknowingly (by accidental clicking) and by an unauthorized person or by the so-called "Bots" - automated Internet software that, without the knowledge of the owner of an e-mail account, can activate links contained in the content of e-mail correspondence. It was pointed out that similar solutions are also used in the public administration sector and, as an example, indicated that the website of the Ministry of Justice uses the so-called captcha, which is to prevent filling in forms and downloading data from the pages of this Ministry by the so-called bots. As evidence, a

screenshot from the KRS search engine was attached to the response to the notification, which, in the opinion of the Company, confirms the fact of using solutions on the Internet that prevent the use of forms and e-mail addresses provided on the Internet by the so-called bots (robots).

14. The Company believes that the President of the Personal Data Protection Office incorrectly assumes that clicking the "revocation of consent" link contained in a marketing message should be considered by the Company as submitting a declaration of will to revoke consent. there is the above link there is also other information regarding various rights related to the processing of personal data.

15. The company does not agree with the allegation that when fulfilling the information obligation, it always addresses the same issues differently and indicates different ways and possibilities for data subjects to submit declarations on the revocation of consent to the processing of personal data, which that they cannot effectively revoke their consent.

16. As regards information on how to withdraw consent to data processing, the Company invariably and consistently (on the basis of the current and previous legal status) informs that the data subject may submit a request by traditional mail to the address of the Company's registered office or by e-mail to the e-mail address. -mail of the Company. The fact that the Company, after the application of Regulation 2016/679 (i.e. on [...] June 2018), indicated an additional e-mail address for submitting requests should be assessed as an extension of the rights of data subjects. Therefore, the statement that the Company indicates various ways and possibilities of withdrawing consent to the processing of personal data is not consistent with the evidence collected - it is always both written correspondence addressed to the address of the Company's registered office and e-mail correspondence addressed to the Company's e-mail address.

17. The Company emphasizes that it does not comply with the collected evidence in the case that the Company did not indicate the e-mail address to which the data subject in the document entitled "Information for you on the processing of personal data by [...]" , could effectively submit a declaration of withdrawal of consent to the processing of personal data. In point 1 of the above-mentioned of the document, apart from indicating the address of the registered office of the Company, the e-mail address was indicated in the next paragraph, ie [...].

18. Regarding the message that reads: “Your consent is withdrawn today […]! Thank you for your answer! "And the following text:" I inform you that you have the right to access, delete, limit processing, transfer, object, request rectification and withdrawal of consent at any time at [...] it was indicated that this information the content is displayed as a result of clicking on

the link contained in the marketing information.However, the message is not sent to the e-mail address from which the information about the withdrawal of consent was received. The information accompanying this link does not indicate such a consequence of clicking, nor does any of the Company's information documents indicate such a consequence. knowledge and in oli owner of the mailbox of accidental clicks.

19. In the Company's opinion, the notice of initiation of the procedure did not explain how the above-mentioned process of informing about the user's personal data rights allegedly constitutes failure to develop appropriate technical and organizational measures within the meaning of Art. 24 sec. 1 of Regulation 2016/679. The authority does not provide an interpretation of this legal provision and does not refer it to the facts and the collected evidence, which is required especially in a situation where the argumentation contained on p. 9 of the Notice refers to the requirement to provide an easy way of giving consent (Art. 3 of Regulation 2016/679), and not the obligation contained in art. 24 sec. 1 of Regulation 2016/679.

20. The method of informing about the revocation of consent in each advertising mail, developed by the Company, containing a two-step access to the e-mail address to which the request can be sent, means that the Company applies above-standard technical and organizational measures within the meaning of Art. 24 sec. 1 of Regulation 2016/679.

21. With regard to the reservation regarding the processing of data by the Company without a legal basis, in the case of data received from persons who are not its clients, and the data of which the Company obtains in correspondence received via the e-mail address: [...], it was indicated that the Company did not agrees with this objection, because the Company (as well as other entities that publish their e-mail addresses on the Internet) has no influence on who and for what purpose will transfer their data to the e-mail address. The data in question is processed by the Company only for the purpose of handling correspondence, but the data is not processed for any other purposes (e.g. for marketing purposes).

The letter constituting a response to the notice of initiation of administrative proceedings was accompanied by the financial statements for the period from January 1, 2017 to December 31, 2017, which show that the amount of net sales and equated revenues amounts to: PLN [...] and financial statements for the financial year from January 1, 2018 to December 31, 2018, which show that the amount of net sales and equated revenues amounts to: PLN […].

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

I. The evidence collected in the case shows that: The Company has had its own database since 2012, in which, as at January

31, 2019, it processed the personal data of [...] persons. 98% of these data were obtained from participants in the competition named […] ”.

All personal data for the Company's database was obtained electronically using registration forms. The same form was used for all competitions.

When filling in the registration form, the user expressed the following consents: 1) consent to the processing of personal data by […]. for marketing purposes of third parties also in the future; 2) consent to share data with contractors of ClickQuickNow Sp. z o.o. for marketing purposes; 3) consent to provide commercial information by electronic means by ClickQuickNow Sp. z o.o., including on behalf of third parties and by contractors of ClickQuickNow Sp. z o.o .; 4) consent to the transmission of marketing information by phone and e-mail by ClickQuickNow Sp. z o.o., including on behalf of third parties and by contractors of ClickQuickNow Sp. z o.o.

The findings made in the course of the inspection show that the Company is currently using the obtained personal data of competition participants in order to carry out orders for marketing to other entities.

To the concluded contracts of mandate for the conduct of a given marketing campaign, the Company attaches a document called "Statement on the processing of personal data valid from [...] May 2018". The content of this document shows, inter alia, that via a link in the e-mail or SMS messages sent, as well as in telephone conversations via the e-mail address indicated in the conversation, persons to whom the marketing campaign will be directed will be able to easily and simply withdraw the consent granted. Immediately after receiving this type of information, the Company will block the possibility of further campaign implementation in relation to the user who has withdrawn his consent or stated that he does not want the campaign to be addressed to him.

It should be pointed out that the findings made in the course of the inspection showed that the Company did not comply with the principles it developed itself. The use of the link (link) included in the content of commercial information, contrary to the assurances of the Company, does not result in a quick revocation of consent to the processing of personal data. Messages sent as a result of activating this link mislead the person requesting the revocation of consent, which results in the revocation of consent ineffective.

During the inspection, it was found that a sample marketing offer sent by the Company at the request of another entity contains, inter alia, such information: [...] informs that after clicking on the message you will be redirected to the website of

ClickQuickNow Sp. z o.o. where you will be able to answer the questions. Clicking on the "revocation of consent" link results in the following: 1) the user is redirected to the website where there is a question about the reason for opting out of receiving advertisements by e-mail (with two defined answers: "A: I receive advertisements that do not interest me "," B: I get advertisements too often "); 2) after answering the above-mentioned questions, the user is redirected to the next page on which the following message appears: "Your consent is revoked today [...]! The following message reads: “Thank you for your answer! In this situation, I would like to inform you that you have the right to access, delete, limit processing, transfer, object, request rectification and withdraw consent at any time at [...], including the right to submit a complaint to the President of the Data Protection Office Personal. That's all for my part. […] […].

When analyzing the above consent revocation process, it should be stated that the Company first of all (without any legal basis) requires the person who submits the consent revocation statement to indicate the reason for their request. It is important that failure to answer this question does not allow for the continuation of the consent revocation process, which means that consent is not revoked.

In addition, after providing the person with the message "Your consent is revoked today [...]!", The Company informs the person about the method of revoking the consent.

In the opinion of the Company, an effective submission of a declaration of will regarding the revocation of consent to data processing may only take place if the person, after reading the content of the above-mentioned of the announcement, he will send his request once again to the following address: […] and will define exactly what he is asking of the Company in it.

There is no doubt that the vast majority of people, after reading the content of this wording, state that the declaration of revocation of consent was adopted by the Company on the date indicated in the announcement and therefore no longer take any further steps in this regard.

The application of such a mechanism by the Company results in the data subject not taking further action after reading this message, which means that consent is not effectively withdrawn. As a result of such actions of the Company, persons who cannot effectively exercise their rights (i.e. withdraw their consent) submit complaints to the Office for Personal Data Protection in this regard.

Pursuant to Art. 7 sec. 3 of Regulation 2016/679, the data subject has the right to withdraw consent at any time. It must be as easy to withdraw consent as it is to express it.

In the opinion of the President of the Personal Data Protection Office, the manner of proceeding used by the Company in the consent revocation process does not meet the criteria of simple and quick revocation of consent. Thus, it is undisputed that the Company is in breach of Art. 7 sec. 3 of the Regulation 2016/679.

At this point, reference should be made to the explanations of the Company (included in response to the notice of initiation of proceedings) regarding the allegation that the Company has no legal basis to request information regarding the reason for revoking the consent, from which it follows the quotation data, which in the event of revocation of consent would be removed anyway, but in the event of a decision not to continue the consent revocation process, constitutes data that the Company may collect on the basis of the legitimate interest of the controller (Article 6 (1) (f) of the GDPR) ".

Referring to these explanations, it should be noted that the Company assumes in advance that the consent revocation process may be ineffective.

Pursuant to Art. 5 sec. 1 lit. and Regulation 2016/679, personal data must be processed lawfully, fairly and in a transparent manner for the data subject ("lawfulness, fairness and transparency").

It should also be pointed out that pursuant to Art. 12 sec. 2 of Regulation 2016/679, the controller makes it easier for the data subject to exercise his rights under art. 15–22. In the cases referred to in Art. 11 sec. 2, the controller does not refuse to take action at the request of the data subject wishing to exercise his rights under art. 15-22, unless he proves that he is not able to identify the data subject.

In the opinion of the President of the Personal Data Protection Office, the Company violates the principles of transparency and fairness referred to in Art. 5 sec. 1 lit. and Regulation 2016/679, because the Company sends contradictory messages to persons who revoke the consent, which results in the fact that the person revoking the consent, after receiving from the Company the message "Your consent is revoked today [...]!" is convinced that it has successfully revoked its consent. However, the consent is not revoked, the Company, after sending the above-mentioned message, sends a message to the same person in which he informs about the method of effective withdrawal of consent.

It should definitely be stated that the Company as an administrator does not make it easier for the data subject to exercise the right to withdraw consent (the right to be forgotten).

In response to the notice of initiation of the procedure, it was found that the allegation of the President of the Personal Data Protection Office with regard to this breach is justified and therefore the Company removed the announcement from the

website: "Your consent is revoked today [...]". in the same letter it was declared that the quotation "introduces the subject and the phrase:" Information on how to withdraw your consent "instead of" Your consent is withdrawn today [...] ". Nevertheless, these explanations have not been confirmed to the President of the Personal Data Protection Office with any additional evidence.

From the evidence collected in the case, it does not appear that the Company ceased to obtain information on the reason for revoking consent, which undoubtedly results in the fact that the lack of such a response still prevents the data subject from effectively revoking the consent.

It was indicated that the information contained in the notice on the initiation of the procedure regarding the Company's failure to conduct correspondence regarding incorrectly submitted applications and failure to respond to the requests of data subjects is not consistent with the evidence collected. Referring to this objection, it should be noted that during the inspection, the President of the Management Board of the Company explained that the quotation "(...) the Company does not send feedback on the way of considering a given application to its sender, because in the opinion of the Company, effective removal of personal data is equivalent to final consideration of the application "and the quotation" The company does not conduct any form of correspondence regarding incorrectly submitted applications ".

The findings of the audit also showed that the Company has been receiving around […] […] of the so-called [...] e-mails (not containing the content of the request). These messages are sent to the address […] on the pages of two websites ([…] and […]).

As it was established in the course of the inspection, the Company leaves such messages without consideration. In response to the notice of initiation, it was clarified that the "[…] e-mails" did not contain any requests and the Company itself cannot presume what the e-mail was about. The company, explaining the above issue, indicated that it had taken steps to eliminate the above-mentioned phenomenon. To confirm the above explanations, as additional evidence in the case, along with the response to the notice of initiation of the proceedings, printouts of the correspondence conducted in this case were sent to the Office for Personal Data Protection (printout of the e-mail of [...] confirms the correspondence with [...], the printout of the e-mail of [...] confirms the correspondence with [...]). The content of the correspondence shows that the Company informs the entities conducting the above-mentioned portals, the need to disable automatic sending mechanisms, the so-called […] To the address […].

Nevertheless, the process of receiving by the Company "[…] e-mail" has been going on since at least the beginning of […] and so far, nothing has changed in this respect. The Company indicates that in the case of "[...] e-mail", the Company cannot fulfill the requests of an unidentified person, and moreover, it is not known what the e-mail addressee is asking for.

The so-called "[...] e-mails" contain such information as: the sender's e-mail address, date and time, and the addressee: [...]. In the opinion of the President of the Personal Data Protection Office, defining the addressee in such a way indicates the conscious actions of the sender of such an e-mail, i.e. that he revokes the consent.

The doubts of the Company as to the request of the sender of such a message could be clarified, for example by means of return correspondence addressed to the sender's e-mail address asking what the e-mail concerns. However, the evidence collected in the case clearly shows that the Company leaves "[...] e-mails" incoming to the address [...] without considering them, and does not follow them up. The addressee of the e-mail does not receive any feedback from the Company. Therefore, there is no doubt that the infringement in this respect is still ongoing.

It should be pointed out that pursuant to Art. 7 sec. 3 of Regulation 2016/679, the data subject has the right to withdraw consent at any time. Withdrawal of consent does not affect the lawfulness of the processing which was carried out on the basis of consent before its withdrawal. The data subject is informed of this before giving his consent. It must be as easy to withdraw consent as it is to express it.

However, according to Art. 17 sec. 1 lit. b of Regulation 2016/679, the data subject has the right to request the administrator to immediately delete his personal data, and the administrator is obliged to delete personal data without undue delay, if the data subject has withdrawn the consent on which the processing is based (in accordance with Art.6 (1) (a) or Art.9 (2) (a) and there is no other legal basis for the processing.

Summarizing the above findings, it should be stated that in the process of personal data processing, the Company violates Art. 7 sec. 3 of Regulation 2016/679, because the consent revocation process used by the Company makes it difficult or even impossible for the data subject to effectively use his right to revoke consent.

In addition, in the opinion of the President of Personal Data Protection, the process of handling requests for revocation of consent to data processing used by the Company prevents the data subject from effectively exercising his right referred to in art. 17 sec. 1 lit. b of the Regulation 2016/679. Consequently, it should be stated that the Company also infringes this provision of Regulation 2016/679.

II. Pursuant to Art. 24 sec. 1 of Regulation 2016/679, taking into account the nature, scope, context and purposes of processing as well as the risk of violating the rights or freedoms of natural persons of varying probability and seriousness, the controller implements appropriate technical and organizational measures so that the processing takes place in accordance with the above. regulation and to be able to demonstrate it. These measures are reviewed and updated as necessary.

In the opinion of the President of the Personal Data Protection Office, the evidence collected in the case shows that the Company has not developed and implemented such technical and organizational measures that would cause the data subject to receive in an easily accessible, concise, transparent and understandable form. information on the possibility of effective electronic revocation of consent to the processing of personal data. As a result, the data subject cannot effectively exercise his right to withdraw his consent at any time and the right to be forgotten.

The company as an administrator is obliged to apply appropriate organizational and technical solutions so that the data processing process, including the consent revocation process, is carried out in a simple and transparent manner. The company, as the administrator, should provide such technical and organizational solutions in the processing of personal data (also used by other entities participating in this process), the use of which will ensure that the implementation of the rights of persons is carried out effectively.

As it was established in the course of the inspection, the solutions taken over by the Company in the process of revoking the consent are ineffective, as evidenced by the fact that the breach consisting in the inflow of the so-called "[...] e-malii" has not been removed.

Organizational solutions applied by the Company are also ineffective because, as it was established, the Company does not conduct any correspondence regarding requests for revocation of consent.

It follows from recital 59 of Regulation 2016/679 that procedures should be foreseen to facilitate the exercise of the data subject's rights under this Regulation, including request mechanisms - and, where applicable, to obtain, in particular, access and personal data free of charge. rectification or deletion and the possibility of exercising the right to object. The administrator should ensure the possibility of submitting relevant requests also electronically, in particular when personal data are processed electronically. The controller should be obliged to respond to the requests of data subjects without undue delay - no later than within one month, and if he does not intend to comply with such request - provide the reasons for this.

On this basis, it should be stated that the Company (administrator) has not implemented appropriate technical and

organizational measures in the process of revoking consent, which constitutes a breach referred to in Art. 24 sec. 1 of Regulation 2016/679.

III. Pursuant to Art. 6 sec. 1 of Regulation 2016/679, the processing of personal data is lawful only in cases where at least one of the conditions is met: a) the data subject has consented to the processing of his personal data for one or more specific purposes; b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract; c) processing is necessary to fulfill the legal obligation incumbent on the controller; d) processing is necessary to protect the vital interests of the data subject or of another natural person; e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller; f) processing is necessary for the purposes of the legitimate interests pursued by the administrator or by a third party, except where these interests are overridden by the interests or fundamental rights and freedoms of the data subject, which require protection of personal data, in particular when the data subject is a child.

The collected evidence in the case shows that from the beginning of 2018, from the websites of […] and […], to the address of the Company's mailbox: […] numerous requests to stop sending advertisements were sent. These requests also include requests from persons who request the cessation of the processing of their data by entities other than the Company. These persons have e-mail accounts on the indicated websites, but are not the Company's clients.

During the inspection, screen shots of a search for the personal data of an exemplary person in the Company's database were obtained, from whom the Company had received a revocation of its consent to the processing of personal data by another entity. This evidence confirms that in the so-called "Database [...]" of the Company, the data of the searched person are not processed.

The inspection findings show that the Company does not conduct any correspondence with these persons, and in particular the Company does not send any correspondence to such persons. Therefore, the Company's statement that the data of these persons is processed by the Company in order to handle correspondence is not consistent with the facts.

On this basis, the President of the Office for Personal Data Protection decided that the Company - after determining that the Company did not have any information about a given person - should delete the obtained data due to the lack of legal grounds for further processing (storage).

In connection with the above, on the basis of the collected evidence in the case, the President of the Office for Personal Data

Protection decided that the Company violates Art. 6 sec. 1 of Regulation 2016/679, and thus violates the principle of legality, which under Regulation 2016/679 is called the principle of lawful processing (Article 5 (1) (a) of Regulation 2016/679).

Pursuant to Art. 58 (2) (a) of Regulation 2016/679, each supervisory authority shall be entitled to apply, in addition to or instead of other remedial measures provided for in Art. 58 sec. 2 lit. a-h and lit. j of this Regulation, an administrative fine under Art. 83 of the Regulation, depending on the circumstances of a particular case.

Bearing in mind the above findings, the President of the Personal Data Protection Office, exercising his right specified in the aforementioned provision, stated that in the case in question there were premises justifying the imposition of an administrative fine on the Company.

When deciding to impose a financial penalty on the Company, the President of the Personal Data Protection Office - pursuant to Art. 83 sec. 2 lit. a-k of the regulation 2016/679 - took into account the following circumstances of the case, read to the detriment of the Company and having an aggravating impact on the amount of the imposed financial penalty:

The consent revocation process used by the Company violates Art. 7 sec. 3, art. 12 sec. 2 and art. 17 sec. 1 lit. b of the Regulation 2016/679, by not providing data subjects with easy exercise of their right to withdraw consent to the processing of their data and the right to delete data (the right to be forgotten). In the opinion of the President of the Personal Data Protection Office, this breach is an intentional breach. According to the position of the Working Group for Art. 29 Data Protection (contained in the guidelines on the application and setting of administrative fines for the purposes of Regulation 2016/679), adopted on 3 October 2017, in the part relating to the intentional or unintentional nature of the breach, "intention" includes both knowledge and deliberate action in connection with the characteristics of a prohibited act. The document prepared by the Company called "[...]" indicates that people to whom the marketing campaign is directed will have the possibility to simply and quickly withdraw their consents. This information also shows that the Company, immediately after receiving the declaration of revocation of consent, will block the possibility of further implementation of the marketing campaign towards a given person. On this basis, it should be considered that the Company knows that the consent revocation process should be easy, simple and effective. Unfortunately, the findings made during the inspection showed that the Company did not comply with the rules it had developed. Contrary to the Company's assurances, the use of a link included in the content of commercial information does not result in a quick withdrawal of consent. After activating the link in question, messages addressed to the person interested in revoking the consent mislead him. The company, after sending a message saying "Your consent is revoked today

[...]!" confirms the person in the fact that the revocation of consent has been recognized by the Company, and then requires additional actions from the same person in order to effectively revoke the consent. The company significantly complicates, or even hinders, revocation of consent. In the process of revoking consent, it is necessary to provide the reason for revoking the consent. Failure to indicate the reason interrupts the consent revocation process. Indication of the reason also does not result in the revocation of the consent, as the Company, after receiving the answer, continues the process of revoking the consent, providing the person concerned with contradictory messages, which ultimately results in the revocation of the consent ineffective. Such actions of the Company should definitely be considered as deliberate actions aimed at hindering or even preventing the implementation of the rights of the data subjects. The intention of the Company to take action to remedy this state of affairs does not constitute grounds for believing that the violation has been removed. Meanwhile, the Company, as an administrator, is obliged to act in accordance with the law, it is obliged to facilitate the exercise of data subjects' rights (Article 12 (2) of Regulation 2016/679), to ensure that the consent withdrawal process used allows for effective withdrawal of consent (Article 7 (3) of Regulation 2016/679). By its actions in the processing of data, the company also violates the principle of lawfulness of data processing, the principle of transparency and the principle of fairness referred to in art. 5 sec. 1 lit. and Regulation 2016/679, and most importantly, it misleads people who want to effectively exercise their right. The consent revocation process applied by the Company poses a high risk of negative consequences for a very large number of people (personal data of [...] persons were processed in the Company's database as of [...] [...] 2019). The company has been processing data in the database since [...]. Due to the fact that all personal data was obtained on the basis of consent, ie pursuant to Art. 6 sec. 1 lit. and Regulation 2016/679, each data subject at any time has the right to withdraw (withdraw) consent.

In the process of revoking the consent, the company did not apply appropriate technical and organizational measures that would enable the data subject to effectively exercise his rights (Article 24 (1) of Regulation 2016/679). According to the evidence collected in the case, the Company did not take into account the principle that the consent withdrawal should be as easy as expressing consent in the process of revoking the consent (Article 7 (3) of Regulation 2016/679). It should be noted that from all persons whose personal data are processed in the Company's database (participant database [...]), consent to data processing was always obtained in electronic form, by using the "checkbox" button included in the registration form. The consent revocation process should also be easy, not complicated, and most importantly, using the same communication

channel, i.e. via the Internet (e.g. by placing a consent revocation form or a tab for revoking it on the website). The company, as the administrator, is responsible for the fact that an ineffective tool is used in the process of revoking the consent, ie the button: "[...]" located on the websites ([...] and [...]). The effect of the solutions applied by the Company is such that people who use this button to revoke consent cannot effectively exercise their right. The scale of this phenomenon is very large (about [...] the so-called "[...] e-mail" daily). The company cannot be released from liability in this regard only because the button in question is available on the websites of other entities. It should be pointed out that it is the controller's obligations to ensure that technical and organizational solutions (also used by other entities involved in this process) are used in the data processing process, the use of which will ensure the effective implementation of the rights of data subjects.

When determining the amount of the administrative fine, the President of the Personal Data Protection Office did not take into account any mitigating circumstances affecting the final penalty. It should be pointed out here that in the letter constituting a response to the notice of initiation of the procedure, the Company explained that after receiving the notice of initiation of the procedure from the website, the message - "Your consent is revoked today [...]", was also indicated in the letter. also that the Company has declared to change the message "Your consent is withdrawn today [...]" to the message "Information on the method of withdrawal of your consent". Nevertheless, the submitted explanations have not been confirmed to the President of the Personal Data Protection Office with any additional evidence. On this basis, the President of the Personal Data Protection Office decided that the mere intention of the Company to take action to remove the infringement does not constitute a mitigating circumstance affecting the final penalty.

The circumstances that:

a) 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;

b) there is no evidence that the Company obtained financial benefits and avoided losses in connection with the breach;

c) there was good cooperation on the part of the Company in the course of the inspection; within this deadline, the Company sent to the Office for Personal Data Protection a response to the notification of initiation of the procedure;

d) there is no evidence in the collected evidence that would confirm that the data subjects have suffered material damage;

e) there is no evidence that the Company obtained financial benefits and avoided losses due to the breach;

f) it has not been found that the Company previously violated the provisions of Regulation 2016/679, which would be relevant

to the present proceedings.

Taking into account all the above-mentioned circumstances, the President of the Personal Data Protection Office took the position that the imposition of an administrative fine on the Company was necessary and justified by the weight and nature of the alleged infringements. It should be stated that any other remedy provided for in Art. 58 sec. 2 of Regulation 2016/679, would not be proportionate to the identified irregularities in the processing of personal data and would not guarantee that the Company will not engage in similar practices in the future violating the rights of data subjects.

Referring to the amount of the administrative fine imposed on the Company, the President of the Personal Data Protection Office stated that in the established circumstances of this case, i.e. in the event of a breach by the Company of the right to delete data (the right to be forgotten) referred to in Art. 17 sec. 1 lit. b of the Regulation 2016/679 and violation of the principle of lawfulness of data processing, the principle of transparency and the principle of fairness expressed in art. 5 sec. 1 lit. a of Regulation 2016/679 (and reflected in the form of obligations set out in Article 7 (3), Article 12 (2) and Article 24 (1) of Regulation 2016/679), as well as the processing of data of persons who are not customers of the Company (i.e. violation of Article 6 (1) of Regulation 2016/679), through the use of complex organizational and technical solutions in the consent revocation process, Art. 83 sec. 5 lit. a and lit. b of the Regulation 2016/679. In accordance with these provisions, violations of the basic principles of processing, including consent conditions, the terms and conditions of which are referred to, inter alia, in art. 5, 6, 7 of this regulation and violations of the rights of data subjects are subject to 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, the higher amount applies.

At the same time, due to the finding by the Company of a breach of several provisions of this Regulation as part of the same or related processing operations, pursuant to Art. 83 sec. 3 of Regulation 2016/679, the President of the Personal Data Protection Office determined the total amount of the administrative fine in an amount not exceeding the amount of the fine for the most serious breach.

In the presented facts, the most serious violation by the Company of the right to delete data (the right to be forgotten) referred to in art. 17 sec. 1 lit. b of the Regulation 2016/679 and the violation of the principles of transparency and fairness referred to in article 1. 5 sec. 1 lit. a regulation 2016/679. This is evidenced by the serious nature of these violations and the group of people affected by them (in the Company's database as of [...] [...] 2019, personal data of [...] persons were processed). Due to the

fact that all data of persons was obtained on the basis of consent (i.e. pursuant to Article 6 (1) (a) of Regulation 2016/679), each of these persons has the right to withdraw (appeal) at any time. consent.

It should be emphasized that the Company's admission in the process of personal data processing inadequate technical and organizational measures referred to in art. 24 (1) of Regulation 2016/679, led to the violation of the principle of lawfulness of data processing referred to in art. 5 sec. 1 lit. and Regulation 2016/679, because the Company came into possession of personal data for processing, which it is not entitled to, because it does not meet any of the conditions specified in art. 6 sec. 1 of Regulation 2016/679.

However, taking into account the fact that this violation applies only to persons who mistakenly sent to the Company statements on the withdrawal of consent to data processing (despite the fact that they are not the Company's clients), this violation to a small extent affects the decision to impose a penalty and its amount. .

Pursuant to art. 103 of the Act of 10 May 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000, as amended), 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.

Bearing in mind the above, the President of the Personal Data Protection Office, pursuant to art. 83 sec. 3 and art. 83 sec. 5 lit. a regulation 2016/679, in connection with art. 103 of the Act on the Protection of Personal Data of 2018, for the violations described in the operative part of this decision, imposed 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 201 559, PLN 50 (equivalent to EUR 47,000), according to the average EUR exchange rate announced by the National Bank of Poland in the exchange rate table as of January 28, 2019.

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

In the opinion of the President of the Personal Data Protection Office, the penalty imposed on the Company is intended to lead

to a state in which the Company applies in the data processing process (i.e. in the process of revoking consent) such technical and organizational measures that will ensure that data subjects can effectively use their data. rights.

The applied pecuniary penalty is also proportional to the infringements found, in particular their severity, the number of individuals affected by them and the risk they bear in connection with the infringements. The amount of the fine was set at such a level as to constitute an adequate response of the supervisory authority to the degree of breach of the administrator's obligations.

In the opinion of the President of the Personal Data Protection Office, the imposed administrative fine will fulfill a repressive function in these specific circumstances, as it will be a response to a breach by the Company of the provisions of Regulation 2016/679, but also preventive, as the Company itself and other administrators will be effective. discouraged from violating the provisions on the protection of personal data in the future.

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 importance of the infringements found in the context of the basic requirements and principles of Regulation 2016/679.

The purpose of the imposed penalty is to ensure proper performance by the Company of the obligations provided for in Art. 5 paragraph 1 lit. a, art. 5 sec. 2, art. 6 sec. 1, art. 7 sec. 3, art. 12 sec. 2, art. 17 sec. 1 lit. b, art. 24 (1) of Regulation 2016/679, and consequently to conduct data processing processes in accordance with applicable law.

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: 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, item 1302, as amended). 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 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 on the day the ruling of the administrative court becomes final, to the bank account of the Personal Data Protection Office at NBP O / O Warsaw No. 28 1010 1010 0028 8622 3100 0000.

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.

2019-11-06