

Registration number:

Object:

NAIH / 2020/2000/5.

decision

DECISION

The National Authority for Data Protection and Freedom of Information (hereinafter: the Authority) a

Operated by ..... (.....) (Hereinafter: the Obligated)

..... website (hereinafter referred to as the Website) data management information

Act CXII of 2011 on the right to self-determination and freedom of information. the law (a

hereinafter referred to as the Information Act) and the processing of personal data of natural persons

and the free movement of such data, and

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

Regulation (EU) No 2016/679 (hereinafter referred to as the General Data Protection Regulation)

ex officio data protection authority on the above case number

take the following decisions in the procedure:

I. The Authority notes that the data management practices related to the Dedicated Website

infringed Article 12 (1) and (2) and Article 13 of the General Data Protection Regulation.

Article.

II. The Authority shall issue an order pursuant to Article 58 (2) (d) of the General Data Protection Regulation

the Obligated to bring its data management operations in line with the general data protection

in the light of the explanatory memorandum to this decision!

III. Due to the above violation, the Authority will inform the Applicant that another data protection violation

in determining the legal consequences of the present infringement as

will take greater account of the past - he warns.

The above II. The fulfillment of the obligation provided for in paragraph 1 shall be finalized by the Debtor

must be in writing within 30 days of the

to the Authority.

There is no administrative appeal against the decision, but from the communication

by application to the Metropolitan Court within 30 days of

may be challenged in an administrative action. The application shall be submitted to the Authority,

electronically, which forwards it to the court together with the case file. Holding the hearing

must be indicated in the application. Not in full personal exemption

for the beneficiaries, the fee for the court review procedure is HUF 30,000, the lawsuit is substantive

subject to the right to record duties. Legal representation in proceedings before the Metropolitan Court

obligatory.

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## EXPLANATORY STATEMENT

I.

Procedure and clarification of the facts

To the Authority on ..... day NAIH / 2020/81

a notification was received, on the basis of which the notifier objected to the data management practices of the Website. THE

According to the public interest announcement, the operator of the Website, the Debtor, is the contact person

notwithstanding a written request sent to an address published as an email address

personal information about the Website.

In the matter of data management of the Website, the Authority on two previous occasions

conducted investigation procedure NAIH / 2014/1451 and NAIH / 2016/369.

The Authority in case NAIH / 2014/1451 imposed the following measures on the Debtor

required him to:

1. Modify your data management practices for identification and marketing purposes

obtain separate consent for data processing. In the case of consent

take a measure to ensure that both the identification and the

consent to the management of data for marketing purposes is an active part of the data subject will be an active behavior.

2. End the practice of using email addresses stored by users a

..... website page information about the use of letters, sms and other types sends messages or invitations.

3. Change your data deletion policy.

4. Modify the data management as requested by the Authority

the text of its rules of procedure. In addition, the data management policy should be supplemented by marketing with the provisions on the processing of personal data for this purpose (or separate data management information).

5. The Authority has found that all ..... performed by the website operator

data management and the data management information were not complied with in several respects

Infotv. and Grt. In accordance with the requirements in force in 2014, so the ..... website

operator does not have adequate facilities for registered users

legal basis for the processing of personal data. Accordingly, the Authority has the following called for action.

5.1. Forward to all registered users at the registered email address

amended in accordance with the resolution.

5.2. In the email, ask users to have a modified privacy policy

within 15 days of their consent to their personal data

to treat.

5.3. After 15 days, delete the personal data of the data subjects who a

on the basis of the amended prospectus, do not give their clear and explicit consent

in order for the ..... website operator to process their personal data.

A NAIH / 2016/369. The investigation procedure No. 1 was also initiated, according to which the

You must send more than once to the address listed as your contact email address

has not deleted the applicant's personal data from the Website despite his written request. The test

In the course of the proceedings, the Authority called on the Debtor to submit the data management posted on the Website

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to amend the prospectus and to delete the personal data of any user who

the deletion of which has been requested in any way by those concerned.

The Debtor did not comply with the provisions of the Notice of the Authority, so the Infotv. § 58 (2)

As an additional measure pursuant to paragraph b) of the Infotv. Pursuant to Section 59 (3)

prepared a report which was published on its website.

As a result of the above, the Debtor has amended the data management prospectus, but the previous one

did not substantially change the practice complained of on 2 January 2020

also supports. The data management information does not explicitly include data management

the rules on the sending of newsletters and data retention are unclear and the Authority

previous decisions detailed above shall not be taken into account for the exercise of the rights of the data subject

there is no clear guidance, the marked privacy record has not been since 25 May 2018

there is and there is a lack of information on redress, so to clarify this

it was necessary to contact the Debtor.

For the above reasons, the Authority initiated ex officio data protection authority proceedings against the Debtor

He called for an inquiry into his data management practices related to the Website and for making a statement.

The purpose of the Website is to provide a specified number of SMSs per day after mandatory registration

can be sent through it or a certain number of credits can be earned. That's it

You can send an SMS if you have enough credits to send an SMS

available to that user. Compliance with the number of daily sms and related

registration is required to allow credit management. Available daily

The amount of credits and the amount of credits needed to send an SMS may vary. THE

To identify the sender, the service provider can add the user to the end of the sent SMS

phone number.

The data management information II.2. on the Website in accordance with the third paragraph of point the legal basis for data processing is in each case the consent of the data subject. In contrast, the data management information II.4. in accordance with the provisions of the Debtor for certain data for additional purposes II.6 of the data management information sheet. according to point III. included in Chapter

In such cases, the Debtor is entitled to use the data, especially if the user unlawful conduct. The data management information II.2. also certain

In such cases, in particular as regards the particulars which must appear on the form, the data management is a condition for using the services of the site.

Based on the response letter sent by the Debtor at the request of the Authority, received on 1 April 2020 the Authority has established the following facts:

1. The user voluntarily registers on the site to access the service, the specified email will send you a verification link that will allow you to access your account. This

After that, personal information can be accessed and deleted in the "Setup" menu of your account.

2. Attached by the Debtor

(.....).

the

On the website

is

available

data management

information

3. Name, email address, IP address, phone number and password are provided voluntarily by users in order for the service to work.

4. There are roughly 300,000 registrations on the Website, but there are many meaningless names like that "Asdf" so that the exact number and identity of those involved cannot be identified.

5. Access to the account is subject to an email address and password, and the account can be deleted in the same way or personal information.

6. The Website is operated as a private individual, free of charge, and does not generate any substantial revenue.

Response letter sent by the Debtor to another request of the Authority, received on 4 June 2020

the Authority has determined that:

1. There is no actual newsletter sending and it hasn't been for years.

2. The Debtor shall not transmit personal data to third parties by advertising,  
nor in connection with anything else.

3. Personal data will not be retained in the system after deletion. There was a plan a  
to filter out multiple registrations to keep some data after deletion  
(as the service can be used to send a limited number of free SMS and this is plural  
registration), but this has not been achieved.

4. The Debtor shall comply with the previous notices described above with data processing as amended above  
but did not notify the Authority.

5. The Obligated Individual is an employee who has been unemployed for a period of time, thus earning an annual income  
he could not prove.

II.

Applicable legal provisions

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

Regulation (EU) No 2016/679 (hereinafter referred to as the General Data Protection Regulation)

According to Article 1 (1), the General Data Protection Regulation applies to personal data

for the automated processing of data, in whole or in part, and for the processing of such data

non-automated processing of data which are part of a registration system

which are intended to be part of a registration system.

Personal data have been identified in accordance with Article 4 (1) of the General Data Protection Regulation

any information relating to an identifiable natural person ("data subject"), including also the online ID.

It may be lawful under Article 6 (1) (b) of the General Data Protection Regulation data processing if it is necessary for the performance of a contract to which the data subject is a party at the request of the party concerned or before the conclusion of the contract necessary to do so.

In accordance with Article 7 (4) of the General Data Protection Regulation, in determining whether the contribution is voluntary should be taken into account as far as possible a fact, inter alia, that the performance of the contract, including the provision of services consent to the processing of personal data which they are not necessary for the performance of the contract.

Pursuant to Article 12 (1) of the General Data Protection Regulation, the controller is appropriate take measures to ensure the processing of personal data by the data subject all the relevant information referred to in Articles 13 and 14 and Articles 15 to 22. and Article 34 concise, transparent, comprehensible and easily accessible

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in a clear and comprehensible manner, in particular for children for any information to which it is addressed.

Pursuant to the first sentence of Article 12 (2) of the General Data Protection Regulation, the controller facilitates the implementation of Articles 15 to 22 exercise of their rights under this Article.

Article 13 of the General Data Protection Regulation lists the minimum required information that the controller is obliged to provide to the data subject, if any personal data relating to the data subject are collected from the data subject:

(a) the identity of the controller and, if any, of the controller 's representative; and contact details;

(b) the contact details of the Data Protection Officer, if any;

(c) the purpose of the intended processing of the personal data and the legal basis for the processing;

(d) in the case of processing based on Article 6 (1) (f), the controller or

legitimate interests of third parties;

(e) where applicable, the recipients or categories of recipients of the personal data, if any;

(f) where applicable, the fact that the controller is in a third country or internationally

personal data to the organization and the Commission

the existence or absence of a decision on adequacy, or in Article 46, Article 47

or in the case of a transfer referred to in the second subparagraph of Article 49 (1)

an indication of the appropriate and suitable guarantees and a copy thereof

reference to the means of obtaining them or their availability.

(g) the period for which the personal data will be stored or, failing that, the

aspects of determining the duration;

(h) the data subject's right to request from the controller the personal data concerning him or her

access to, rectification, erasure or restriction of the processing of data, and

may object to the processing of such personal data as well as to the data subject

the right to data portability;

(i) information based on Article 6 (1) (a) or Article 9 (2) (a);

the right to withdraw consent at any time in the event of data processing,

which is without prejudice to the processing carried out on the basis of the consent prior to the withdrawal

legitimacy;

(j) the right to lodge a complaint with the supervisory authority;

(k) whether the provision of personal data is legal or contractual

whether it is based on an obligation or a precondition for concluding a contract and whether the person concerned

whether it is obliged to provide personal data and how possible

they may have consequences for non-reporting;

(l) the fact of automated decision-making referred to in Article 22 (1) and (4), including:



profiling and, at least in these cases, the logic used

understandable information on the significance of such data processing and the

the expected consequences for the data subject.

According to Article 99 (2) of the General Data Protection Regulation, the general data protection

It shall apply from 25 May 2018.

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Information processing covered by the General Data Protection Regulation

CXII of 2011 on the right to self-determination and freedom of information Act (a

hereinafter: Infotv.) pursuant to Section 2 (2) of the General Data Protection Decree therein

shall apply with the additions set out in the provisions set out in

Infotv. Enforcement of the right to the protection of personal data pursuant to Section 60 (1)

To that end, the Authority shall, at the request of the data subject, initiate a data protection authority procedure and

may initiate ex officio data protection proceedings.

Infotv. Pursuant to Section 61 (1) (a), it was taken in a data protection official proceeding

In its decision, the Authority Data management specified in Section 2 (2)

defined in the General Data Protection Regulation in the context of

may apply legal consequences.

Pursuant to Article 58 (2) (b) of the General Data Protection Regulation, the Authority

condemns the data controller or the data processor if it has a data processing activity

infringed the provisions of the General Data Protection Regulation or the same paragraph (d)

Pursuant to paragraph 1, the supervisory authority, acting in its corrective capacity, shall instruct the

the data controller to carry out its data processing operations, where appropriate in a specified manner and

comply with the provisions of this Regulation.

Infotv. 75 / A. Pursuant to Article 83 (2) to (6) of the General Data Protection Regulation, the Authority

exercise the powers set out in paragraph 1 in accordance with the principle of proportionality,

in particular by providing for the law or regulation on the processing of personal data

Requirements laid down in a binding act of the European Union

Article 58 of the General Data Protection Regulation

in particular by alerting the controller or processor.

In order to conduct the official procedure, the CL of 2016 on general administrative order.

Pursuant to Section 7 (1) of Act no. provisions of this Regulation

apply.

III.

Decision

1. False information in the data management information

The privacy statement still contains information related to newsletters

provisions. In contrast, the Debtor's statement is not available

rebuttal evidence that the Authority has complied with a previous call for newsletters,

and did not send newsletters. However, this was not passed on in the data management prospectus, so

it gave misleading information to those concerned as if it were continuing

data management for newsletter purposes.

There is no evidence to rebut the Debtor's statement that the Authority

has complied with your previous request for newsletters and will not keep your cancellation requests

certain personal data after completion. However, this was not passed through

data management information, so the data provided misleading information to the data subjects

retention and possible transfer to third parties.

The data controller shall inform the data subjects that the data processing has been notified to the data subject

data protection register. From 25 May 2018, in accordance with the General Data Protection Regulation a

Authority no longer keeps a data protection record, so this information is untrue and

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misleading. Pursuant to Article 30 of the General Data Protection Regulation, from 25 May 2018

the data controller is obliged to keep records of data management activities.

The above is in breach of the concise,

in a transparent, comprehensible and easily accessible form, in a clear and comprehensible manner

the obligation to provide the information set out in this Article and the general data protection rules

the principle of lawful and transparent data processing in accordance with Article 5 (1) (a) of that Regulation, since

the Debtor provides untrue and contradictory information to those concerned in such a way that

data subjects cannot reasonably understand the essence of data management on this basis.

2. The legal basis for data processing is not clearly indicated in the data processing

in the prospectus

From the text of the prospectus, both are required to complete the SMS sending service

(Article 6 (1) (b) of the General Data Protection Regulation) and the consent of the data subject

Article 6 (1) (a) of the General Data Protection Regulation)

the legal basis for data processing is not clearly indicated.

Refusal or withdrawal of consent to the processing of personal data is not

may have any adverse consequences for the data subject. The consent of the data subject

Absence or revocation of the Debtor's statements based on the SMS sending

would make it impossible to provide the service, so the data subject's consent is voluntary

data processing is in fact not a condition for the provision of the service

valid legal basis. Special consideration should be given to Article 7 (4) of the General Data Protection Regulation.

paragraph in this regard.

Without the management of a mobile phone number, it is technically impossible to provide the service, the email address

and password management is required to access the service

in which case the consent of the data subject is in any case a legal basis,

at most a legal basis under Article 6 (1) (b) of the General Data Protection Regulation

room. All other types of personal information or the above types of personal information for other purposes

may only be based on the consent of the data subject if the service

clearly does not depend on the granting of consent and on individual purposes

may be specified separately or revoked at any time, easily, without adverse consequences

contribution. An important condition for the validity of the consent is that it is properly informed

the person concerned, which in the present case as explained in point

is missing.

Due to the above, based on the data management information related to the Website, it is not clear

legal basis for data processing in breach of Article 6 (1) of the General Data Protection Regulation and

Article 7 (4).

### 3. Weaknesses in the provision of information on data subjects' rights

in the prospectus

The obligated way of exercising the rights of the data subject, in particular the right of cancellation, is the Debtor

data management information, in particular the possibility of deletion within the account

description is missing. At the request of the Authority, the Debtor

which is not in the information of the data subjects or not according to the statements of the Debtor

can be found in the form.

The above is in breach of the concise,

in a transparent, comprehensible and easily accessible form, in a clear and comprehensible manner

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the obligation to provide the information set out in

the obligation of the controller under Article 12 (2) of the Data Protection Regulation to

the data controller shall facilitate the exercise of their rights under this Article.

### 4. Lack of information about the data subject's rights of redress in the data processing

in the prospectus

The data subject's data management information does not include the right of data subjects to exercise their rights

they may apply to the Authority or to a court for enforcement

availability. This is in line with Article 13 (2) (d) and Article 12 of the General Data Protection Regulation.

causes a lack of information in accordance with Article 4 (4), which violates the general data protection law

these provisions of this Regulation and Article 12 (1).

#### 5. Summary of the main issues to be corrected in the data management information

(i) The sections on data processing not actually carried out shall be deleted

from the data management information sheet (sending newsletters, data retention in accordance with data transmission).

(ii) The legal basis for data processing must be clearly defined for each data subject

assigned to data types and purposes. Article 6 (1) of the General Data Protection Regulation

shall be based on one of the legal bases listed exhaustively in paragraph 1

the processing of personal data for any purpose which must be clearly identified

from the data management information.

(iii) The exercise of the rights of data subjects, in particular the right of access and cancellation,

concise but informative information should be provided, as both account settings are affected

cancellation and access can be exercised in person or by e-mail addressed to the Debtor

but this cannot be inferred from the data management information examined.

(iv) The information on the so-called data protection register is unnecessary and misleading,

therefore, this information should be deleted.

(v) The prospectus should be provided in accordance with Article 13 of the General Data Protection Regulation

information on the data subject 's rights of appeal (recourse to the Authority or to a court)

possibility and method).

#### ARC. Legal consequences

In view of the above, the Authority is Article 58 (2) (d) of the General Data Protection Regulation

decided in accordance with the operative part.

However, the Authority examined of its own motion whether it was justified in respect of the applicant

imposition of a data protection fine. On the question of whether a data protection fine is justified

the Authority has acted in accordance with its statutory discretion

Infotv. § 61 (1) a), Infotv. 75 / A. § as well as general

Article 83 (2) of the Data Protection Regulation and Article 58 of the General Data Protection Regulation

Paragraph 2.

The Authority took into account that the Debtor is an individual and assessed the Debtor on it that it is prepared to amend its data processing practices in accordance with the provisions of the Authority without presumably imposing a fine on the basis of all the circumstances of the case

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available to fully comply with the decision of the Authority and to provide personal data protection. The Authority will explicitly monitor compliance with this Decision and not in the event of compliance, it may impose a procedural fine or initiate further data protection official proceedings.

V. Other issues

The powers of the Authority shall be exercised in accordance with Infotv. Section 38 (2) and (2a) defines its jurisdiction It covers the entire territory of Hungary.

The Ákr. Section 112 (1) and (2) and Section 116 (1) and Section 114 (1), respectively the decision is subject to administrative review.

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The rules of administrative litigation are laid down in Act I of 2017 on the Procedure of Administrative Litigation (a hereinafter: Kp.). A Kp. Pursuant to Section 12 (1) by decision of the Authority

The administrative lawsuit against the court falls within the jurisdiction of the court Section 13 (3)

Under subparagraph (a) (aa), the Metropolitan Court has exclusive jurisdiction.

A Kp. Pursuant to Section 27 (1), legal representation in administrative proceedings before the Tribunal obligatory. A Kp. Pursuant to Section 39 (6), the filing of an application is administrative has no suspensory effect on the entry into force of the act.

A Kp. Section 29 (1) and with this regard Pp. Applicable in accordance with § 604, electronic CCXXII of 2015 on the general rules of public administration and trust services. law (hereinafter: the E-Administration Act), the customer is legal pursuant to Section 9 (1) (b) representative is required to communicate electronically.

The time and place of the submission of the application is Section 39 (1). THE

Information on the possibility of requesting a hearing is provided in the CM. Section 77 (1) - (2)

based on. The amount of the fee for an administrative lawsuit shall be determined in accordance with Act XCIII of 1990 on

Fees. law

(hereinafter: Itv.) 45 / A. § (1). From the advance payment of the fee

the Itv. Section 59 (1) and Section 62 (1) (h) shall exempt the person initiating the proceedings

half.

Budapest, August 3, 2020

Dr. Attila Péterfalvi

President

c. professor