

Case number: NAIH / 2020/3479 /

Administrator: [...]

Subject: Decision granting the application

## DECISION

The National Data Protection and Freedom of Information Authority (hereinafter referred to as the Authority) [...]

to the applicant (hereinafter: the Applicant) [...] (hereinafter: the Applicant) a

Violation of the applicant's right to rectify his personal data and unsolicited newsletters

following an application lodged on 16 April 2020,

in which case the Authority has taken a decision on the Applicant

grant its request, and

I. finds that the Applicant has violated the Applicant's natural persons a

protection of personal data and the protection of such data

and repealing Directive 95/46 / EC

the right of rectification under Article 16 of the Regulation (hereinafter referred to as the General Data Protection Regulation)

and

at the same time, the Authority finds of its own motion that it has infringed the general rule

the principle of accuracy under Article 5 (1) (d) of the Data Protection Regulation.

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 a precedent

will be given greater weight, he warns.

## PERFORMANCE

II. In view of the fact that the administrative time limit has been exceeded, the Authority

HUF 10,000, ie ten thousand forints, according to the choice of the Applicant to be indicated in writing -

pay by bank transfer or postal order.

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There is no administrative remedy against this decision, but from the date of notification

within 30 days of the application to the Metropolitan Court in an administrative lawsuit

can be challenged. The application must be submitted to the Authority, electronically, 1 which is the case

forward it to the court together with his documents. Those who do not benefit from full personal exemption

The fee for the administrative lawsuit is HUF 30,000, and the lawsuit is subject to the right to record material fees. The Capital

Legal proceedings are mandatory in proceedings before the General Court.

A II. There is no place for an independent appeal against the order under point 1, only on the merits of the case

may be challenged in an appeal against a decision taken.

The administrative lawsuit is initiated using the form NAIH\_K01: Form NAIH\_K01 (16/09/2019) The form is the general

can be filled in using a form filling program (ÁNYK program).

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## EXPLANATORY STATEMENT

### I. Procedure and clarification of the facts

The Applicant submitted an application to the Applicant on 20 February 2020 in which

complained that he had rewritten his e-mail address several days before the submission of the

operated Internet subscriber interface, after which continued to receive mail in the old e-mail

address.

The Applicant sent on February 21, 2020, referring to the Applicant's notification

In its reply, it provided information that it had changed its previous e-mail address in its system

To the e-mail address provided by the applicant. The Applicant nevertheless continues - March 2020

Also on March 16 and 20, 2020 - received a newsletter from the Applicant to the previous e-mail address.

In view of all the above, the Applicant requested in its application of 16 April 2020 a

Authority, and at the same time the National Media and Communications Authority, to

on the basis of your application, initiate proceedings against the Applicant for rectification of your personal data

infringement and the receipt of unsolicited newsletters.

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

(hereinafter: the Information Act) the right to the protection of personal data pursuant to Section 60 (1) before the Authority at the request of the data protection authority proceedings have been initiated.

Following a call for rectification by the Authority, the Applicant arrived on 5 June 2020

In its submission, it stated that between 1 January 2020 and 19 February 2020 changed his e-mail address on the Applicant's online subscription interface during the period and submitted that the "Confirm" message in the "Confirm New Email Address - Reminder" email clicked the button to arrive in your inbox on February 21, 2020.

In its order to initiate the data protection authority procedure, the Authority notified the Applicant and called for a statement and disclosure in order to clarify the facts.

Based on the Applicant's statement, the Applicant initiated the e-mail on February 16, 2020 address change on the Applicant's online subscriber interface. The Applicant submitted that in such a case the e-mail validating the new e-mail address specified by the customer initiating the change will be sent in order for the Applicant to verify the email address provided correctness. After clicking on the confirmation, the Applicant will be automatically rewritten e-mail address in their systems.

The Applicant stated that the Applicant on 16 February 2020 and the reminder

The Applicant also failed to re-send the confirmation on 21 February 2020 to send, so subject to no modification, the Applicant's old e-mail the newsletter received by the Applicant in his complaint dated 20 February 2020.

The Applicant submitted that in view of the contents of the Applicant's complaint, the Applicant on 21 February 2020, his employee manually changed the Applicant's e-mail address, which however, due to an administrative error, the so-called campaign management system so that the Applicant again received newsletters to his old e-mail address.

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The Applicant stated that the Authority had received an order for clarification of the facts

after 8 July 2020, the so-called campaign management system also modified the

Applicant's email address, so no later newsletters will be sent to the old email address.

In its order, the Authority invited the Applicant to make a further statement, to which the Applicant

its reply was received by the Authority on 5 August 2020.

The Applicant emphasized that validation is necessary to protect customers because

so that no third party modification can be made on behalf of the subscriber to the subscriber's knowledge

without.

The Applicant stated that the confirmation made by the Applicant on 21 February 2020

he cannot prove his absence (absence), given that for an event that did not happen

related logfile is not and cannot be made available to the Applicant.

## II. Applicable law

Pursuant to Article 2 (1) of the General Data Protection Regulation, for the processing of data in the present case

the general data protection regulation applies.

Infotv. Pursuant to Section 2 (2), the general data protection decree is indicated therein

shall apply with the additions provided for in

Infotv. Pursuant to Section 38 (2), the Authority is responsible for the protection of personal data,

and the right of access to data in the public interest and in the public interest

monitoring and facilitating the enforcement of personal data within the European Union

facilitating the free movement of

Infotv. Pursuant to Section 38 (2a) of the General Data Protection Decree on Supervision

the tasks and powers established for the authority under the jurisdiction of Hungary

as defined in the General Data Protection Regulation and this Act

according to the Authority.

Infotv. Pursuant to Section 38 (3) (b), within the scope of its responsibilities under Section 38 (2) and (2a)

as defined in this Act, in particular at the request of the data subject and ex officio data protection

official procedure.

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

the Authority shall, upon request, initiate an official data protection procedure and of its own motion

initiate proceedings against the data protection authority. The data protection authority procedure is general

CL of 2016 on administrative order. (hereinafter: Ákr.)

apply with the additions specified in the Information Act and the general data protection regulation

with the derogations provided for in

Infotv. Pursuant to Section 60 (2): "To initiate official data protection proceedings

Article 77 (1) and Article 22 (b) of the General Data Protection Regulation

may be submitted in the case specified in

Under Article 77 (1) of the General Data Protection Regulation, "other administrative or

without prejudice to judicial remedies, any person concerned shall have the right to lodge a complaint with a

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supervisory authority, in particular where he has his habitual residence, place of employment or

in the Member State of the alleged infringement, if it considers that the

the processing of personal data infringes this Regulation. "

Article 5 (1) (d) of the General Data Protection Regulation states: "Personal data shall:

[...]

(d) be accurate and, where necessary, kept up to date; all reasonable measures must be taken

in order to ensure that personal data are inaccurate for the purposes of data processing

deleted or corrected immediately ("accuracy") ".

Under Article 16 of the General Data Protection Regulation, the data subject has the right to

the data controller shall correct the inaccurate personal data without undue delay

data. Taking into account the purpose of the data processing, the data subject has the right to request the incomplete data

supplementing personal data, inter alia by means of a supplementary declaration.

According to Article 12 (1) to (6) of the General Data Protection Regulation: '1. The controller shall

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

each piece of information in a concise, transparent, comprehensible and easily accessible form, in a clear manner

and provide any information addressed to children, in particular, in plain language

in the case of. The information shall be provided in writing or otherwise, including, where appropriate, by electronic means

must also be provided. Oral information may be provided at the request of the data subject, provided otherwise

the identity of the data subject has been established.

2. The controller shall facilitate the processing of the data subject in accordance with Articles 15 to 22. exercise of their rights under this Article. Article 11 (2)

In the cases referred to in paragraph 15, the controller shall to exercise their rights under this Article

may not refuse to comply with his request unless he proves that the person concerned

unable to identify.

3. The controller shall, without undue delay, but in any case upon receipt of the request,

shall inform the data subject within one month of the following an application under Article

measures. If necessary, taking into account the complexity of the application and the requests

this period may be extended by a further two months. On the extension of the deadline

the controller shall indicate the reasons for the delay from the receipt of the request

inform the data subject within one month. If the application was submitted by electronic means, the

information shall, as far as possible, be provided by electronic means, unless otherwise specified by the data subject asks.

If the controller does not act on the data subject 's request without delay, but

shall inform the data subject no later than one month after receipt of the request

the reasons for not taking action and the fact that the person concerned may lodge a complaint with one of the

supervisory authority and may exercise its right to a judicial remedy. 5. In accordance with Articles 13 and 14

information and Articles 15 to 22. The information and action provided for in Articles 31 and 34 shall be provided free of charge

to assure. If the data subject's request is clearly unfounded or - particularly repetitive

excessive, the controller shall provide the information or information requested

or for the administrative costs of taking the requested action: (a) a reasonable fee

or (b) refuse to act on the application. The application

the burden of proving that it is manifestly unfounded or excessive is on the controller. (6) A 11.

without prejudice to Articles 15 to 21, if the controller has reasonable doubts in accordance with Article

the identity of the natural person submitting the application

may request the information necessary to confirm his identity. "

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According to Article 23 (1) of the General Data Protection Regulation: "The data controller or

Union or Member State law applicable to the processor may be limited by legislative measures

a 12-22. Articles 12 and 34 and Articles 12 to 22. with the rights set out in Article

the rights and obligations set out in Article 5 in

obligations if the restriction respects fundamental rights and freedoms

necessary and proportionate measure to protect the following

in a democratic society:

(a) national security;

b) national defense;

(c) public security;

(d) the prevention, investigation, detection or prosecution of criminal offenses; or

enforcement of criminal sanctions, including against threats to public security

protection and prevention of these dangers;

(e) other important general interest objectives of general interest of the Union or of a Member State, in particular:

Important economic or financial interests of the Union or of a Member State, including monetary,

budgetary and fiscal issues, public health and social security;

(f) protection of judicial independence and judicial proceedings;

g) in the case of regulated professions, the prevention, investigation and detection of ethical violations

and conducting related procedures;

(h) in the cases referred to in points (a) to (e) and (g), even occasionally,

control, inspection or regulatory activity related to the provision of

(i) the protection of the data subject or the protection of the rights and freedoms of others;

(j) enforcement of civil claims. "

According to Article 58 (2) of the General Data Protection Regulation: "The supervisory authority shall be corrective acting under the authority of:

(a) warn the controller or processor that certain data processing operations are planned

its activities are likely to infringe the provisions of this Regulation;

(b) reprimands the controller or the processor if he or she is acting in a data-processing capacity

has infringed the provisions of this Regulation;

(c) instruct the controller or processor to comply with this Regulation

the exercise of his rights under this Regulation;

(d) instruct the controller or processor to carry out its data processing operations, where applicable

in a specified manner and within a specified period, bring this Regulation into line

with its provisions;

(e) instruct the controller to inform the data subject of the data protection incident;

(f) temporarily or permanently restrict the processing, including the prohibition of the processing;

(g) order personal data in accordance with Articles 16, 17 and 18 respectively

rectification or erasure of data and restrictions on data processing, as well as Article 17 (2)

shall notify the addressees with whom it is addressed in accordance with paragraph 1 and Article 19

or with whom personal data have been communicated;

(h) withdraw the certificate or instruct the certification body in accordance with Articles 42 and 43

revoke a duly issued certificate or instruct the certification body not to grant it

issue the certificate if the conditions for certification are not or are no longer met;

(i) impose an administrative fine in accordance with Article 83, depending on the circumstances of the case

in addition to or instead of the measures referred to in this paragraph; and



(j) order the flow of data to a recipient in a third country or to an international organization

suspension. "

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Under Article 83 (2), (5) and (7) of the General Data Protection Regulation:

administrative fines in accordance with Article 58 (2) (a) to (h), depending on the circumstances of the case.

and (j) shall be imposed in addition to or instead of the measures referred to in When deciding that

whether it is necessary to impose an administrative fine or the amount of the administrative fine

In each case, due account shall be taken of the following:

(a) the nature, gravity and duration of the breach, taking into account the processing in question

the nature, scope or purpose of the infringement and the number of persons affected by the infringement;

the extent of the damage they have suffered;

(b) the intentional or negligent nature of the infringement;

(c) the mitigation of damage caused to the data subject by the controller or the processor

any measures taken to

(d) the extent of the responsibility of the controller or processor, taking into account the

and the technical and organizational measures taken pursuant to Article 32;

(e) relevant infringements previously committed by the controller or processor;

(f) the supervisory authority to remedy the breach and the possible negative effects of the breach

the degree of cooperation to alleviate

(g) the categories of personal data concerned by the breach;

(h) the manner in which the supervisory authority became aware of the infringement, in particular

whether the controller or processor has reported the breach and, if so, what

in detail;

(i) if previously against the controller or processor concerned, in the same

one of the measures referred to in Article 58 (2) has been ordered orally

compliance with revolving measures;

(j) whether the controller or processor has kept itself approved in accordance with Article 40

codes of conduct or approved certification mechanisms in accordance with Article 42;

and

(k) other aggravating or mitigating factors relevant to the circumstances of the case, such as:

financial gain or avoidance as a direct or indirect consequence of the infringement

loss.

[...]

5. Infringements of the following provisions, in accordance with paragraph 2, shall be imposed no later than 20

An administrative fine of EUR 000 000 or, in the case of undertakings, the previous financial penalty

up to a maximum of 4% of the total annual world market turnover for the year, provided that the

the higher of the two shall be charged:

(a) the principles of data processing, including the conditions for consent, in accordance with Articles 5, 6, 7 and 9;

appropriately;

(b) the rights of data subjects under Articles 12 to 22. in accordance with Article

(c) the transfer of personal data to a recipient in a third country or to an international organization

transmission in accordance with Articles 44 to 49. in accordance with Article

d) the IX. obligations under the law of the Member States adopted pursuant to this Chapter;

(e) the instructions of the supervisory authority pursuant to Article 58 (2) and the processing of data

temporary or permanent restriction of the flow of data

non-compliance with the request or access in breach of Article 58 (1)

failure to provide.

[...]

7. Without prejudice to the corrective powers of the supervisory authorities under Article 58 (2),

each Member State may lay down rules on the

whether it may be imposed on a public authority or other body performing a public function

administrative fine and, if so, the amount. "

Infotv. 75 / A. §: The Authority is set out in Article 83 (2) to (6) of the General Data Protection Regulation exercise its powers in accordance with the principle of proportionality, in particular by: legislation on the processing of personal data or binding European Union law for the first time in the event of a breach of the rules laid down in in accordance with Article 58 of the General Data Protection Regulation by alerting the controller or processor.

Infotv. According to Section 61 (4) (b): "The amount of the fine is from one hundred thousand to twenty million forints may be extended if the fine imposed in a decision taken in an official data protection procedure budgetary body under Article 83 of the General Data Protection Regulation in the case of a fine imposed. "

#### ARC. Decision

In its application, the Applicant requested the Authority to establish that the Applicant e-mail address has violated his right of rectification under Article 16 of the General Data Protection Regulation during the change.

Regarding how to provide information on the correction of personal data the obligations of the controller are detailed in Article 12 of the General Data Protection Regulation.

It was not possible to prove that fact in a credible manner in the present proceedings - and

The Authority has not identified any other means by which it can be optimally clarified that a

Whether or not the applicant clicked on the "confirm" button on 21 February 2020, or on the same day, the Applicant's employee manually corrected the Applicant's email address. However, it can be stated that the Applicant alone before 20 February 2020

The legal declaration communicated by the applicant to the Applicant on the Applicant's interface shall not be considered a data subject

as an application, as in that case it was carried out by only one Applicant

it was an amendment to the data and not a request for correction of the inaccuracy of the data. So the

The applicant's only complaint to the Applicant, submitted on 20 February 2020, was deemed to be as a request for rectification under Article 16 of the General Data Protection Regulation without undue delay but within one month at the latest.

However, despite the fact that the Applicant had lawfully amended the

In view of the applicant's complaint lodged on 20 February 2020, the e-mail address, the so-called campaign illegally in the management system on 8 July 2020 only as a result of the present proceedings corrected the Applicant's email address.

Based on all of the above, given that the Applicant has corrected the Applicant's email address has not complied with its request of 20 February 2020, the Authority finds that

The applicant infringed Article 16 of the General Data Protection Regulation. However, given that that the Applicant has corrected the Applicant's e-mail address as a result of the present proceedings, further no measure is required. Also given that the rights of the data subject are closely linked to data protection principles, the Authority concludes of its own motion that

The Applicant violated the fact that the Applicant did not handle the data of the exact e-mail address the principle of accuracy under Article 5 (1) (d) of the General Data Protection Regulation.

The Authority finds, as an infringement related to the above infringement, that at the same time the handled personal data in connection with the sending of the newsletter without legal basis, as two newsletters

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also sent (March 16, 2020 and March 20, 2020) after on February 21, 2020 about it informed the Applicant that he had corrected his e-mail address.

The Ákr. According to § 51 (b), if the authority exceeds the administrative deadline - and

there was no place to make a decision - equivalent to a fee or charge for conducting the proceedings

in the absence of this, he shall pay ten thousand forints to the applicant client, who shall be released from the from the payment of procedural costs. Consequently, the Authority shall take a decision in accordance with the operative part brought.

IV.3. Legal consequences

The Authority examined whether it was justified to impose a data protection fine on the Applicant.

In this context, the Authority complies with Article 83 (2) of the General Data Protection Regulation and Infotv. 75 / A. §A considered all the circumstances of the case and found that in the present proceedings in the case of detected infringements, the warning is a proportionate, dissuasive sanction and therefore a fine is not required.

The Authority shall take each measure

has decided, in the light of:

when necessary

the

below

criteria systems

-

the gravity of the infringement is low, also taking into account the fact that it has been established

the infringements are closely linked and the damage suffered has not occurred

in proceedings [Article 83 (2) (a) of the General Data Protection Regulation];

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the breach is the result of the Applicant 's negligent conduct [general data protection

Article 83 (2) (b) of the Regulation]

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the Authority condemned the Applicant in NAIH / 2020/2758/4. In its decision no

due to a breach of the General Data Protection Regulation, however, NAIH / 2020/2758. number

The findings made in the course of the proceedings cannot be regarded as relevant in the present case [General

Article 83 (2) (e) of the Data Protection Regulation];

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the personal data (email address) affected by the breach does not qualify as special data

[Article 83 (2) (g) of the General Data Protection Regulation]

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the Applicant as soon as it becomes aware that the Applicant is not a valid e-mail records its address, provided for its correction [General Data Protection Regulation Article 83 (2) (k)].

Based on the above, the Authority has decided in accordance with the operative part.

#### V. Other issues

The powers of the Authority shall be exercised in accordance with Infotv. Section 38 (2) and (2a), its jurisdiction is covers the whole country.

The present decision of the Authority is based on Art. 80-81. § and Infotv. It is based on Section 61 (1). The decision is Ákr. Pursuant to Section 82 (1), it becomes final upon its communication. The Ákr. Section 112 and Section 116 (1) and (4) (d) and § 114 (1) there is a right of appeal through an administrative lawsuit.

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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) a)

The General Court has exclusive jurisdiction under point (aa) of A Kp. Section 27 (1)

In a dispute in which the tribunal has exclusive jurisdiction, the

representation is mandatory. A Kp. Pursuant to Section 39 (6), the filing of the application a has no suspensory effect on the entry into force of an administrative act.

A Kp. Section 29 (1) and with regard to this, Act CXXX of 2016 on Civil Procedure.

applicable in accordance with Section 604 of the Act, electronic administration and trust services

CCXXII of 2015 on the general rules of pursuant to Section 9 (1) (b) of the Act

his legal representative is obliged 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 is

Itv. Section 59 (1) and Section 62 (1) (h) shall release the party instituting the proceedings.

Budapest, November 18, 2020

Dr. Attila Péterfalvi

President

c. professor