

Case number: NAIH / 2020/2758/4.

Subject: Own-initiative decision

in official proceedings

## DECISION

The National Data Protection and Freedom of Information Authority (hereinafter: the Authority) is the UPC

Hungary Telecommunications Limited Liability Company (registered office: 1095 Budapest,

Soroksári út 30-34. Haller Gardens. ed., company registration number: 01 09 366290; hereinafter referred to as "Predecessor"

or UPC) - who, during the proceedings, was registered with Vodafone Hungary Telecommunications

To Működő Részvénytársaság (1096 Budapest, Lechner Ödön fasor 6 .; hereinafter: Vodafone

or Obligated) merged - voice recording practices in its personal customer service

to verify compliance with the requirements of the General Data Protection Regulation<sup>1</sup>,

take the following decisions in ex officio data protection proceedings:

1.

The Authority will establish a voice recording in the predecessor 's personal customer service offices

the illegality of its practice in that its predecessor was 25 May 2018 and March 2020

Between the 15th

(a) has infringed Article 6 (1) of the Regulation, the data processing is adequate

provisions relating to its legal basis;

(b) infringed Article 12 (1) and Article 13 of the Regulation in providing the information provided;

and Article 5 (1) (a);

(c) infringed the principle of purpose limitation laid down in Article 5 (1) (b) of the Regulation;

(d) infringed the principle of data protection laid down in Article 5 (1) (c) of the Regulation.

2. The Authority shall take effect on the infringements referred to in paragraph 1 from the date on which this Decision becomes

final

Within 30 days to the Debtor

HUF 60,000,000, ie sixty million forints

data protection fine

obliges to pay.

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The measures taken by the Debtor shall govern the initiation of judicial review

shall inform the Authority within 30 days of the expiry of the time limit for bringing proceedings.

The fine was centralized by the Authority within 30 days of the decision becoming final

Receipt of receivables target settlement forint account (10032000-01040425-00000000 Centralized

collection account IBAN: HU83 1003 2000 0104 0425 0000 0000). The amount

NAIH / 2020/2758/4. JUDGE. number should be referred to.

Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the protection of individuals with regard to the processing of such data on the free movement of data and repealing Regulation (EC) No 95/46 (General Data Protection Regulation or GDPR or Regulation)

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If the Debtor fails to meet the obligation to pay the fine within the time limit, a late payment allowance

is obliged to pay. The rate of the late payment interest is the statutory interest, which is the calendar affected by the delay equal to the central bank base rate valid on the first day of the first half of the year. Fines and penalties for late payment in the event of non-payment, the Authority shall order enforcement of the decision, a fine and a penalty payment recovery of taxes.

There is no administrative remedy against this decision, but it has been available since its notification

Within 30 days, an action brought before the Metropolitan Court may be challenged in an administrative lawsuit.

The application must be submitted to the Authority electronically, which will forward it together with the case file to the court. The request to hold a hearing must be indicated in the application. The whole personal

For those who do not receive an exemption, the fee for the administrative lawsuit is HUF 30,000, the lawsuit is material subject to the right to record duties. Legal representation is mandatory in proceedings before the Metropolitan Court.

The Authority shall make the decision available on its website after it has become final publishes.

## EXPLANATORY STATEMENT

I.

Procedure and clarification of the facts

### I.1. History

I.1.1. A notification was received by the Authority in which the notifier reported that UPC

In Tatabánya's customer service office, a sound recording is made during the administration, but the people involved they do not receive (adequate) information about it. The complainant stated that he had inadvertently noticed

that the microphone is set up and when you are asked if you want to record sound

The clerk gave an affirmative answer and informed the notifier that the customers are informed on the display of the numbering system.

The notifier also reported that on the second "selective screen" of the "numbering system"

you can see information in less conspicuous letters and places,

noted, however, that there was an occasion when the customer service office did not have a serial number

he had to pull, but, since no one else was there, was immediately called by the clerk,

consequently, there was no way to get the information.

I.1.2. In view of the above, the Authority considered it appropriate to initiate an official control ex officio

in order to verify that the Company, in the course of its data management practices

whether it complies with the requirements of the General Data Protection Regulation, such as NAIH / 2020/267. number

informed the Company of the initiation of the official data protection inspection and called on the

to provide written information on the issues raised in order to clarify the facts.

I.1.3. Given that it is likely based on the information revealed during the official control

was that the Company had violated the provisions of the General Data Protection Regulation, the Authority a

Dated 16 March 2020, NAIH / 2020/2758. In its order No 1, it closed the official inspection and

decided to initiate an official data protection procedure.

## I.2. Facts revealed

The Authority examined UPC's data management practices between 25 May 2018 and 15 March 2020.

UPC has informed the Authority that UPC's entry into Vodafone will take place on 1 April 2020.

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it ceases to merge. UPC also reported that - corporate law and organizational changes

UPC - owned customer service offices have been closed, and

structural changes have also been introduced in the remaining customer services, such as voice recording

Has been "removed".

The Registry Court of the Metropolitan Court (hereinafter: the Registry Court) No. Cg.01-09-366290 / 361

ordered the cancellation of UPC due to the transformation with effect from 31 March 2020. From the order

it turns out that UPC's successor is Vodafone, the successor method is a merger.

The Authority therefore considers that NAIH / 2020/2758/3. In its order no. NAIH / 2020/2758.

UPC was replaced by Vodafone in the official proceedings initiated under number

measures imposed on Vodafone.

### I.2.1. UPC owned 24 stores and used the same practices in all stores

for voice recording at personal customer service. At the customer service - any kind

without distinction, all groups of cases were recorded. A UPC -

received a total of 45,000-55,000 people per month in all of the stores it owned

in personal customer services, this meant a total of 609,619 people in 2019,

however, UPC claimed that it was not made in all cases, given the possibility of protest

sound recording.

### I.2.2. The purpose of the audio recording was to capture the interest of prospective clients and

complaints and that "data management statements" can be reconstructed

be. The sound recordings were also made for the purpose of concluding contracts

processes can be ensured, subsequent disputes can be proved,

and to be able to fulfill the "error correction and other statutory" obligations.

As UPC entered into the subscription agreement with its customers by implied conduct, it was necessary to ensure that the interest is properly recorded for the future conclusion of the contract. The referral In view of its contracting practice, UPC is required for the conclusion of a customer contract personal information has already been recorded during the interest in order to prospective subscribers statements are retrievable.

UPC reports an oral complaint under § 17 / A of the Consumer Protection Act he was required to make minutes, so he thought the audio recording was minutes may also be necessary to prove its content.

According to UPC, if what was said in personal customer service were not recorded, it would not there would be a possibility of proper administration, so it would not be possible to conclude contracts, nor for troubleshooting.

Concluding subscriber contracts, making privacy statements, reporting bugs necessarily involve data processing. According to UPC, the alternative to voice recording is a would be a completely paper-based administration at the customer service, but it would worsen the customer experience, slower and would be more complex as well as significantly more polluting, as well as electronic communications is no longer a common solution in the market.

I.2.3. According to the UPC statement, the sound recording is in accordance with Article 6 (1) (f) of the GDPR, UPC on the basis of a legitimate interest, for which a balancing test was attached by UPC to your reply letter.

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The balancing test was developed during the GDPR Preparatory Project, sometime in 2017 between November and June 2019, UPC was not able to say exactly when but it shall take effect from the date on which the GDPR becomes applicable, ie 25 May 2018.

In addition to protecting UPC's economic interests, the purpose of data protection according to the balance of interests is a ensuring consumer protection interests, including quality assurance, in shops

during personal customer service activities.

According to the balance of interests, data management is primarily in the interest of UPC as it simplifies business processes, reduce costs or the need for data management to prove the making of statements.

The processing of data was also in the interest of the data subjects in certain cases, based on the balance of interests, as it may be necessary for them to be able to enforce their civil needs and consumer rights.

The voice recording also provides an opportunity for police proceedings in the event of abuse support and data provision for the conduct of investigative actions.

The conclusion of the balance of interests was that, as UPC assessed and took into account the the interests and rights of the data subject - the processing is necessary and proportionate. Balance of interests with regard to the possible counter-interests of the data subjects, states that "the processing affects the the rights of natural persons '. From the data management - as mentioned above - to the data subject alone benefit, while in order to enforce the business and economic interests of the Company data management is downright essential.

According to the balancing test, UPC is to:

built-in guarantees into the data management process: it keeps personal data for five years in accordance with the general limitation period set out in the Civil Code, a very limited number of data - UPC

According to the statement, 30-30 people have access, which gives access rights to the interest is provided by internal regulations, however, UPC has stated that such is internal has no regulations. Stakeholders' rights are adequately safeguarded: UPC emphasized that that the data subject has the right to object to the data processing and the right to have conversations listen in at the customer service offices and request a copy of the recordings at any time on a data carrier as well as electronically. See the serial numbering system for the correct information provided by an 'explicit warning'. Personal data is not transferred to third parties they do not lead to automatic decision-making or profiling.

I.2.4. UPC has also conducted an impact assessment to assess the risks associated with data management. THE

In its impact assessment, UPC indicated that it had current as well as potential customers, respectively the personal data of employees are processed: more than 100,000 individual data in total treatment. Furthermore, the impact assessment did not include any - in terms of the regulatory procedure relevant information that would not have been included in the balance of interests or in UPC's statements me.

I.2.5. UPC said in a statement about voice recording through the serial numbering system

informed customers. On the serial number system, the customer could choose from three menu items (Retail Services, Business Services, Redirected Customer). Below the selectable menu items

- Approximately half the font size chosen to write the menu items

font size - the following information was found: "Dear Customer! Please be informed that it is

the conversation with our colleagues during the administration will be recorded. The sound recordings are relevant handled and stored in accordance with legal provisions. Please start at the start of the administration let our colleague know if you do not consent to the voice recording. ".

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All customers were required to draw a serial number, without which it was not possible to do the administration, but if in some unexpected case, someone would have been in front of a customer service colleague without it, so the microphone on which the two red LEDs were lit was placed in front of the customer, so if it was on switched on, the customer could, in UPC's view, clearly see that a voice recording was being made, against which he could protest.

He also mentioned the recording of sound in the shops on the UPC website, when making the UPC statement. available prospectus (hereinafter: General Prospectus).

The General Information contained general information about UPC's stores

"Image and sound recordings may be collected".

The appendix "5. s. Annex:

"Privacy Notice" (hereinafter referred to as the "Privacy Notice")

all current versions uploaded during the period under review (25 May 2018, 1 May 2019, 2019).

August 1) recorded the same information about the sound recordings.

The Data Management Information 6.3. - for incoming calls to non-telephone customer service

The following information was found on the sound recordings made: "The Service Provider is obliged to a error messages, the result of the fault containment procedure and the result of the troubleshooting, and measures taken on the basis of troubleshooting in a traceable way, by sound recording or otherwise recorded electronically and for at least 1 (one) year in compliance with the data management rules keep. [Eht. § 141. (1)]. "

In addition, the Data Management Information 6.4. contains information on sound recording, however those provisions for incoming calls to telephone customer service and telephone communications

the Authority shall lay down the provisions on personal reception

was not considered relevant in the examination of the information provided on the sound recording performed.I.2.6. The had the right to object to the phonogram recording, UPC

attention is paid, among other things, to the information on the serial numbering system, but on the UPC website

The data management information contained in

what rights the data subject has. The number plate reads, "Please

let our colleague know when you start the administration if you do not agree to the voice recording

from which it can be inferred that the recording is made on the basis of the data subject's consent.

UPC stated that if a data subject objected to the data processing, it would be customer service

colleague did not consider individually, but in each case turned off the voice recording, and other

business processes were provided in an administrative manner. This UPC was updated on May 14, 2019

- also appears from its internal instructions, where the customer service staff was instructed to

in every office with personal customer contact, the conversation is mandatory from start to finish

fixed, but must be stopped if the customer does not consent. It was necessary to stop recording

draw the customer's attention to the benefits of voice recording. If the customer does not agree in the end

to record sound, you must fill in the so-called "AEE process form" on the reason for rejection.

I.2.7. UPC has stored the recorded sound recordings for five years. This is the retention period according to the UPC



statement

is in line with the general civil law limitation period set out in the Civil Code, and the Consumer Protection Act

- follows the analogy of its five-year retention rules for telephone customer services.

During this period, the recorded audio recordings during the investigation of complaints, civil law claims

used in the enforcement of criminal proceedings and in criminal proceedings. About 30-35 for recordings

person was entitled to access.

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## II. Applicable law

According to recital 171 of the General Data Protection Regulation, this Regulation

from the date of entry into force of this Regulation

shall be brought into line with this Regulation within two years of

Pursuant to Article 2 (1) of the General Data Protection Regulation, this Regulation shall apply to:

processing of personal data in an automated way, in whole or in part

for the non-automated processing of personal data which are subject to any of the following:

are part of a registration system or are intended to be part of a registration system

to do.

Infotv. Pursuant to Section 2 (1), the scope of this Act - with respect to personal data, shall apply to (2) - (6)

shall apply to all processing of personal data as defined in

data in the public interest or in the public interest.

Infotv. Pursuant to Section 2 (2) of the European Parliament and of the Council of

covered by the Council Regulation (hereinafter referred to as the General Data Protection Regulation)

General Data Protection Regulation in Annexes III-V. and VI / A. Chapter and Sections 3, 4, 6, 11, 12, 13,

16, 17, 21, 23-24. Section 4 (5), Section 5 (3) to (5), (7) and (8),

Section 13 (2), Section 23, Section 25, Section 25 / G. § (3), (4) and (6), 25 / H. §

(2), Article 25 / M. § (2), 25 / N. §, 51 / A. § (1), § 5254, § 55 (1) - (2), 56-60. §, 60 / A. § (1) - (3) and (6), a

Section 61 (1) (a) and (c), Section 61 (2) and (3), (4) (b) and

Paragraphs 6 to 10, paragraphs 62 to 71. §, § 72, § 75 (1) - (5), 75 / A. § and

shall apply with the additions set out in Annex 1.

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.

Personal data pursuant to Article 5 (1) (a) of the General Data Protection Regulation

must be handled lawfully and fairly and in a manner that is transparent to the data subject

("Legality, due process and transparency").

Collection of personal data pursuant to Article 5 (1) (a) of the General Data Protection Regulation

only for specific, clear and legitimate purposes and should not be treated for those purposes

in an incompatible manner; the original shall not be deemed to be in accordance with Article 89 (1)

incompatible with the purpose of archiving in the public interest, scientific and historical research

further processing for personal or statistical purposes ("purpose limitation").

Pursuant to Article 5 (1) (c) of the General Data Protection Regulation, personal data are:

they must be appropriate and relevant to the purposes of the data processing and necessary

should be limited ('data saving').

Pursuant to Article 5 (e) of the General Data Protection Regulation, the controller is responsible for

shall be able to demonstrate such compliance

("Accountability").

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Pursuant to Article 6 (1) of the General Data Protection Regulation, the processing of personal data is limited to

is lawful if and to the extent that at least one of the following is met:

(a) the data subject has given his or her consent to the processing of his or her personal data for one or more specific purposes

treatment;

(b) processing is necessary for the performance of a contract to which one of the parties is a party; or

to take steps at the request of the data subject before concluding the contract

required;

(c) processing is necessary for compliance with a legal obligation to which the controller is subject;

(d) the processing protects the vital interests of the data subject or of another natural person

necessary;

(e) the exercise of a public interest or the exercise of official authority vested in the controller

necessary for the performance of its task;

(f) processing for the legitimate interests of the controller or of a third party

necessary, unless the interests of the data subject take precedence over those interests

or fundamental rights and freedoms which call for the protection of personal data,

especially if the child concerned.

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

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 by other means, including, where appropriate, by electronic

means

- to be specified. Oral information may be provided at the request of the data subject, provided that it is otherwise

substantiated

the identity of the data subject.

Pursuant to Article 13 (1) of the General Data Protection Regulation, if applicable to the data subject

personal data is collected from the data subject, the data controller shall obtain the personal data

provide the data subject with all of the following information at the time:

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

(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 a third party

legitimate interests;

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

(f) where applicable, the fact that the controller is a third country or international organization

personal data and the Commission's decision on adequacy

existence or absence thereof, or in Article 46, Article 47 or the second subparagraph of Article 49 (1)

in the case of the transfer referred to in the first subparagraph, an indication of the appropriate and suitable guarantees,

and the means by which copies may be obtained or made available

reference.

Referred to in paragraph 1 pursuant to Article 13 (2) of the General Data Protection Regulation

In addition to the information, the data controller shall, at the time of obtaining the personal data,

In order to ensure fair and transparent data management, the data subject shall:

provides additional information:

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(a) the period for which the personal data will be stored or, if that is not possible, that period

aspects of its definition;

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

access, rectification, erasure or restriction of their processing and may object to such

against the processing of personal data and the right of the data subject to data portability;

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

in the case of data processing, the right to withdraw the consent at any time, which is not

affects the lawfulness of data processing carried out on the basis of consent prior to withdrawal;

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

(e) that the provision of personal data is based on a law or a contractual obligation

or a precondition for concluding a contract, and whether the data subject is obliged to provide personal data

and the possible consequences of providing the data

failure;

(f) 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 processing and on the data subject

has expected consequences.

Infotv. Pursuant to Section 61 (1) a) in the data protection authority proceedings

the Authority with the data processing operations specified in Section 2 (2) and (4)

in this context, the legal consequences set out in the General Data Protection Regulation

you can apply.

Pursuant to Article 58 (2) (b), (d) and (i) of the General Data Protection Regulation, the supervisory authority

condemns the controller or processor, acting in his or her capacity to rectify data, if he or she is a data controller

infringed the provisions of the Regulation or administrative proceedings in accordance with Article 83

shall impose fines on the measures referred to in this paragraph, depending on the circumstances of the case

in addition to or instead of them.

Pursuant to Article 83 (5) of the General Data Protection Regulation, the principles of data processing, including

Articles 5, 6, 7 and 9 of the General Data Protection Regulation

in accordance with Article 83 (2)

With an administrative fine of EUR 20 000 000 and, 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.

The CLV 1997 on consumer protection. (hereinafter: the Consumer Protection Act)

17 / A. § (3) (a), an oral complaint must be investigated immediately and is necessary

should be remedied. If the consumer does not agree with the handling of the complaint or the complaint is immediate

it is not possible to investigate the company about the complaint and its position on it

he shall immediately record the minutes and provide a copy thereof in person

handed over to the consumer locally in the event of an oral complaint.

17 / A of the Consumer Protection Act. § (5) e) of the report on the complaint

shall include the person taking the record and - by telephone or other electronic means of communication with the exception of an oral complaint made using the service - the signature of the consumer.

17 / A of the Consumer Protection Act. § (7), an enterprise was admitted from the complaint

shall keep the minutes and a copy of the reply for five years and shall be kept by the inspector authorities at their request.

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Section 141 (1) of Act C of 2003 on Electronic Communications (hereinafter: Eht.)

the service provider is obliged to report the errors, the result of the error delimitation procedure and the measures taken on the basis of troubleshooting in a traceable way, by sound recording or otherwise recorded electronically and for at least one year in accordance with data management rules keep.

III. Decision:

III.1. Legal basis for data management

The reference to a legitimate interest in law under Article 6 (1) (f) of the GDPR is correct if:

the processing is carried out by the controller or by a third party other than the controller and the data subject interest in the balance of interests on one side of the balance sheet by the controller or a third party the legitimate interest of the data subject (s) must be shown on the other side and the opposite to establish, after a conflict of interests, that the rights of the data subject are being restricted proportionate to the legitimate interest of the controller or of a third party in that restriction.

Based on the above, the legitimate interest cannot be supported by the arguments that the customer experience is emphasize a solution that is favorable to customers, so that only one of the 'scales' can be included on the other hand, that UPC's economic interest is to make administration simpler and faster. A UPC economic interests may therefore include the aspect that customers it would worsen the company's judgment if the administration were not fast and efficient, however

the interests of those concerned must, in principle, be reflected on the other side, in a form what kind of interests and rights may be infringed against sound recording they may be affected by data processing. The essence of the balance of interests is precisely that of the data controller recognize its own interests, recognize the opposing interests of those concerned and, where appropriate, a concludes that, although there are aspects, fundamental rights, privacy rights, which could even mean the limitations of voice recording, but on the side of the data controller the interests that arise are stronger and more significant, so the restriction of the rights of those concerned is necessary and proportionate.

As regards the balancing test, the Authority concluded that it was not acceptable that a UPC only examines the counter-interests of customers, prospective customers (ie stakeholders) noted that "data processing affects the rights of natural persons". It is not acceptable that a UPC did not examine which data subjects' rights are specifically limited by the data processing that a the extent and risk of the restriction, if any, the risks involved UPC's conflicting interests and the lawfulness of the restriction did not perform its consideration in the test. Furthermore, in UPC's statements in the present proceedings put forward a specific argument on the basis of which it could be considered, on the merits, that the interests why they would take precedence over the interests of the data subjects against his or her third parties why restricting the privacy of data subjects would be proportionate, so there is no indication that indeed weighed up the interests.

The Authority does not consider the rights of data subjects mentioned in the balancing test to be adequate built-in guarantees. In the Authority's view, it does not qualify guarantee that UPC will record the sound recordings for five years in accordance with the general limitation period. preserves it. On the one hand, not because Eht. Section 143 (2) arises from subscriber contracts sets a special limitation period of one year for civil claims and because the five-year retention period is incompatible with UPC's voice recording of contracts presumably the existing contracts in the form of sound recordings

also used to store.

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Although it is included in the balance of interests that a very limited number of persons have access to the data - a

UPC said in a statement 30-30 people - would have access to which rights of interest

according to internal rules, as UPC has declared to the Authority that such internal

the Authority does not see this guarantee as being properly enforced.

Although the test shows that the rights of the affected persons are properly guaranteed, so in particular the right to protest

as well as the 'warning' on the number plate system is legal

guarantee the processing of personal data, however, the Authority as detailed in point - the UPC

did not consider the information provided by the company to be adequate, so the inappropriate information is not considered warranty item.

Significantly different data management purposes and interests in the balancing test (eg contracting,

error reporting, efficient and fast administration), but UPC is not

that is, for each data management purpose separately, but uniformly assessed that the recording of sound recordings

why it serves its legitimate interest in general and why the restriction of rights in the process

proportionate and necessary. As a result, such data management also appears in the consideration

(recording audio of error reports), which is described in Eht. Pursuant to Section 141 (1), UPC is legal

should not be included in the balance of interests but in the reporting of errors

UPC should refer to Article 6 (1) (c) of the GDPR. That's it

the balance of interests carried out in that way is therefore inadequate, taking into account the considerations set out in

- the assessment of the existence of a legitimate interest separately for each type of administration and for each purpose of data processing,

to be considered independently.

The Authority - Article III.2. on the basis of the details set out in point

sound recording is not required for the interests listed by UPC.

Given that the conflicting interests could not be identified by UPC, the



did not represent the interests of the data subjects, as opposed to data processing, in any form in the test, and the test includes general considerations, not by type of administration / alone the Authority found that they did not exist the conditions set out in Article 6 (1) (f) of the GDPR. Because UPC has no other legal basis and, in the Authority 's view, other grounds based on all the circumstances except in the case of the recording of error reports, the Authority has found that UPC a during the period under investigation the processing of data did not comply with Article 6 (1) of the GDPR requirements.

### III.2. Enforcement of the principles of purpose limitation and data saving

The data processing carried out by UPC cannot be said to be pointless or that the named data management purposes (recording the interest of prospective customers, complaints) recording, reconstructibility of statements, security of contracting processes, disputed provability of situations, "error correction and other statutory" obligations, proof of the content of the minutes, simple and rapid administration, economic interests, consumer protection interests, environmental protection) would be illegal, but the Authority In its view, UPC did not sufficiently define it in its statements or documents clearly the purpose for which you make audio recordings at personal customer service of all administration, but listed all the purposes, interests, considerations and circumstances, the the positive effect that can be achieved by data management, which may support the sound recording it performs legal.

Some of the "goals" listed by UPC are too general, not specific and clear (statements other part is not the purpose of data processing, but the legal basis for data processing (in law

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fulfillment of a specific obligation). Furthermore, the Authority does not consider it legitimate to:

UPC records the "interests" of non-customer stakeholders in a voice recording, as it does not arise

circumstance which would require the conclusion of a contract or other

an oral conversation prior to the conclusion of the statement or an oral hearing on any service

interest should be recorded.

On the basis of the above, the recording by UPC did not comply with Article 5 (1) of the GDPR.

(b) due to a lack of certainty and clarity.

When applying the principle of data saving, the Authority examined whether the named

data management purposes (recording the interest of prospective customers, recording complaints,

reconstructibility of statements, assurance of contracting processes, controversial situations

provability, "error correction, and other statutory" obligations, protocol

The data management solution used by UPC is

solution that involves minimal data management, or there are solutions that

they are less restrictive of privacy or not at all

data management.

The above processes are clearly processes in which personal data is processed

becomes necessary. However, this is a particularly important aspect of data protection law

data minimization principle: strive to keep as little personal data as possible for a given purpose

with the least restrictive data management method for the private sector

the data controller.

UPC has recorded the entire process of the administration on audio, starting with the customer

arrived at the window, greeted him, said what he wanted, asked any questions, the

actual administration and then said goodbye. This limits privacy to a much greater extent than

the solution is for the customer to sign a contract or form that includes personal information

data. If a contract is drawn up for the contract or any other declaration so entered into

copy to both UPC and its customer, the problem should not arise even if it cannot be proven

these have happened, as both parties have the evidence. Considered by UPC

An alternative and widespread solution to the so-called

also the use of a tablet or tablet PC, which also does not require the use of recording the entire administrative process, only the necessary data, does not involve unnecessary paperwork and the customer can also receive a copy of the contract or statement electronically, so that both provability and environmental considerations prevail they know.

UPC did not report exactly what “defined by law necessary to make a sound recording in order to fulfill its obligations, but emphasized that the subject of the error report or complaint. Between the consumer and the business, so UPC and the handling of complaints between its customers is regulated by the Consumer Protection Act: the law requires mandatory data processing specifies which personal data to record in the event of a complaint obligatory. The Consumer Protection Act also stipulates that if a complaint cannot be made locally remedy immediately or if the consumer does not agree with the solution offered, a report must be made a copy of which must be given to the consumer. Before signing the minutes read by both parties, the authenticity of its contents is confirmed by their signatures. In view of the above there is no need for the contents of the minutes to be proved by an audio recording, as the protocol will be authenticated by the signing of the two parties, which the company is obliged to keep for five years. The Eht. Section 141 (1) also contains an obligation necessarily associated with data processing: a the service provider is obliged to record the process of error reporting, either by audio recording or in another way, however, if UPC prepares a report of error reports, it is not required in addition

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you can also record sound. If, in addition to the report, the audio recording is made by the UPC considered it necessary, it should have shown the consideration as a separate data management purpose and enforce data protection principles.

The need for the method used is questionable because although UPC is in all cases automatically recorded audio of all administrations, however, if the person concerned objected

against it, the protest was upheld in each case, not considered individually in that particular case whether it is necessary to record the course of the administration in an audio recording despite the protest. If that a central instruction is that any protest from the affected party should not be recorded, but alternatively, the administration should continue, because the process can be ensured anyway in fact, the data controller performs the judgment in such a way that the data processing it performs it is not actually necessary for the purposes to be achieved because it can be achieved in other ways also, the chosen data management method merely simplifies the achievement of the goal by the data controller for.

Furthermore, UPC itself stated that there would have been an alternative to voice recording, namely the completely paper-based administration, but it would have worsened the customer experience, slower and more complex and significantly more polluting, as well as in the electronic communications market no longer a common solution.

If an activity involves data processing, compliance with data protection provisions is an essential condition for the activity to be lawful. An example to follow if you are a business it keeps in mind the environmental factors and the solution that is favorable to the customers (simplicity, speed), and these aspects may also be reflected in the balance of interests, however, these criteria may apply if and after the controller otherwise choose the solution that involves the least amount of data and that is a least intrusive, i.e. these two aspects are equally appropriate from a data protection point of view during the choice of solution.

Based on the above, the Authority found that UPC's practice is personal administration in all cases, with the exception of protests did not comply with the principle of data protection under Article 5 (1) (c) of the GDPR.

### III.3. Information on data management

III.3.1. In part, the Authority found it a good practice for UPC to provide on - site voice recording informs customers through a serial numbering system, as this is the interface that the customer uses

will definitely study in order to select which one from the menu bar

category. Brief alert information is appropriate if otherwise

the data subject can find out the details of the data management on site, e.g. in such a way that the

information is available in print or detailed information is provided orally by the administrator.

Because in customer service offices the only textual information on the serial number system

information provided, and when you reach the customer service window, the person concerned may not notice the

microphone, so single-level local information can only achieve its purpose if it is

sufficiently attention-grabbing e.g. its color, size and font, as opposed to the rest of the text, and

due to any pictogram placed.

In the Authority's view, there is no difference in color and font for the wording of the menu items

is about half the size of a pictogram, although it is framed, but in addition any pictogram or

text without any other motif suitable for attention (eg large exclamation mark)

it is not suitable to draw the attention of all concerned to the recording of sound. Customer attention

This is essentially one of the three possible menu items (Citizens' Services,

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Business Services, Redirected Customer). Because the prospectus is smaller in size

written, they are easily distracted, they will not study a large proportion of the 'small print'.

there is not enough time to study it.

The Authority did not accept UPC's argument that the red flashing LED was in place

based on the microphone, the person concerned must be told that a voice recording is being made, as it should be

the fact of data processing is, in the opinion of the data controller, no matter how obvious it is, it does not give an excuse

from the obligation to provide information under Article 13 of the GDPR.

III.3.2. Furthermore, the information provided on the numbering system is inadequate in terms of content

nor is it a false and misleading statement that sound recording depends on the consent of those involved.

In cases based on the consent of the data subjects, no data will be processed until

the data subject does not consent: in this case, this would mean that the customer service is

an employee will only start voice recording if the client expressly consents to it, all

otherwise, no sound would be recorded.

In the case of data processing based on a legitimate interest, as in the present case, the reverse is true:

basically, voice recording takes place, which data processing begins without the data subject being involved

would be affected by any active action, but

all data subjects have the right to object to it, and the data controller - according to the GDPR, given the situation

on a case-by-case basis - upholds the protest and no audio recording is made, or rejects and continues

the voice recording.

If, on the serial numbering system, UPC informs the parties concerned that

indicate that they do not consent to the processing, giving the impression that the processing is

he would be based on their consent, it would depend on it. False information provided in this way is not

it is inappropriate simply because UPC does not provide adequate information under Article 13 of the GDPR

Paragraph 1 (c) and (d), but in particular the legitimate interest (as a de facto legal basis) and

the differences in consent (such as information on the serial number system) detailed above

due to which the information provided on data management is not transparent.

In the case where UPC recorded the error messages on a voice recording, it was also untrue

information that the data subject has the opportunity to consent to the processing:

In this case, information should have been provided that the data processing was in accordance with Eht. It is formed on §

141, therefore

the legal basis is Article 6 (1) (c) GDPR.

UPC thereby infringed Article 13 (1) of the GDPR.

III.3.3. In the present case, the law does not specify what is to be provided during the recording

form of information, but as a result of the principle of accountability and

that the controller must certify that prior information has been given is the method of communication

typically the written form.

In the Authority's view, Article III.2.1. as explained in point

In the case of sound recording at customer service, prior information is provided as a first step a provided by UPC through a serial numbering system, as this is not yet the case sound recording.

However, the basic condition for fair and transparent data management is that the data subjects are not the only ones be aware of the fact of data processing but also of all its details: the data controller obligation to make all the information listed in Article 13 available to them.

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Accordingly, it is sufficient to have only one short on the serial number system

Awareness information with basic information is available if there is a longer and information covering all the details to which the controller actively calls attention of stakeholders.

In fulfilling the obligation to provide information, the controller is required to it has an obligation, which means that the data controller must take active steps to do so in order to make that information available to the data subject or to actively promote the data subject you should direct it to the location of the information.

On this basis, the information provided by UPC was inadequate as the General Information and

Although the Privacy Notice was not available on UPC's website, UPC did not draw the attention of data subjects to this in accordance with the GDPR, as neither the existence nor the availability of this information was did not provide information to the customer service offices, so the Authority found that UPC a prior to the commencement of the recording to the data subjects only of the fact of the data processing other relevant circumstances of the data processing in an easily accessible way, thus, the information it provided did not comply with Article 12 (1) of the GDPR.

III.3.4. Although UPC did not provide information in customer service offices on where to contact

detailed information, the Authority shall carry out a comprehensive examination of all information practices evaluated a document that, according to UPC's statement on data management, during the period under review including the General Prospectus and the Data Management Prospectus, which

In the period under review, they were available on the website of the Predecessor at [www.upc.hu/rolunk/adatvedelem](http://www.upc.hu/rolunk/adatvedelem) links.

the)

None of the prospectuses made it clear that personal administration was the rule according to which a sound recording is made in all cases, regardless of the case the client is dealing with, unless, in one case, the person concerned objects, because in turn the employee stops the recording.

The General Prospectus did not contain false information because "possibly (...)" "sound recordings may be collected" information means that there may be a case (eg error report or contract) when the Predecessor makes a sound recording, but this is occasional and by no means does it occur in all cases.

As the Privacy Notice specifically provides for two cases: telephone calls that UPC is required to record error messages so that it can do so conclude on the basis of the information provided in the document, in which case an audio recording will be made of the in stores if the customer visits the Predecessor in person for error reporting.

On the one hand, this information is untrue, as it is not just in this case, but all in the case of administration, a sound recording was made, on the other hand, it is not in accordance with the serial numbering system

provided information, which in any case created a precarious situation for those concerned because it was not transparent when the recording was made in the course of personal administration, despite the fact that Article 12 (1) of the GDPR explicitly requires that information be provided it should be clear, avoiding conditional wording.

Although Article 13 does not explicitly state that information on the fact of data processing must also be provided, it does It is clear from the principle of transparency under Article 5 (1) (a) that the graduate data processing is transparent if the data subject is aware of whether his or her personal data are being processed and, if so, in which cases. Article 12 (1) also emphasizes that Article 13



The information referred to in Article 1 shall be communicated to the data subject in a transparent manner.

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Based on the above, the information provided by UPC on the fact of data processing did not comply with GDPR 5.

Article 12 (1) (a), Article 12 (1) and Article 13.

b)

The Data Management Information stated that the Eht. Pursuant to Section 141 (1) a

error messages and their handling shall be recorded by audio recording or other electronic means

way. UPC thus gave the impression that data processing was in all cases GDPR 6.

would be based on the fulfillment of a legal obligation under Article 1 (1) (c) and would not be made

a sound recording if it would not otherwise be necessary for the fulfillment of its legal obligation

required.

However, UPC based its statements on Article 6 (1) (f) of the GDPR

data management, for which it also carried out a balancing test: one

However, it did not provide any information in the prospectus that the recording was lawful under the GDPR

does not refer to the balancing test carried out or to the fact that

which interests it carries out the data processing in order to enforce.

UPC did not provide this information to interested parties despite the fact that

GDPR explicitly states that the data controller is obliged to inform data subjects about the data processing

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

or the legitimate interests of a third party.

The information provided by UPC thus did not comply with Article 13 (1) (c) and (d) of the GDPR.

point.

c)

UPC has informed the parties concerned that it is making a sound recording in order to:

documents error messages and how to handle them. In addition to this purpose, UPC has identified a number of purposes

In its statements to the Authority and in the balancing test itself. About the

the purpose of the sound recording was also to capture the interest of prospective clients, and

that “data management statements” can be reconstructed for the conclusion of contracts

and to prove subsequent disputes

to ensure that the administration is quick and easy in order to have a good customer experience, and

UPC did not provide any information to stakeholders on environmental aspects.

Information on the purpose of data processing is an essential part of the obligation to provide information, without it

the person concerned is not aware of the reason why it is necessary to make the sound recording.

On the basis of the above, the information provided by UPC did not comply with Article 13 (1) (c) of the GDPR.

point.

d)

UPC did not provide real information on the duration of the data processing either, as it

Nevertheless, it provides information on a one - year retention period in the data management prospectus (a

error recordings) that the recorded sound recordings were in fact for five years

stores.

The information provided by UPC on the duration of the data processing is therefore not in line with Article 13 of the GDPR

Paragraph 2 (a).

With regard to the retention period of sound recordings, the Authority further notes that a

It would be worthwhile for the right holder to keep the storage time of the recordings not in accordance with the general civil

law provisions set out in the Civil Code.

to the limitation period, but to the Eht. To adjust to the special limitation period pursuant to Section 143 (2),

that civil law claims arising from subscription contracts expire within one year.

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In summary, the information provided by UPC is incomplete and misleading

which was a serious breach of transparency under Article 5 (1) (a) of the GDPR

principle.

ARC. Sanction and justification applied

The Authority found that the data processing of the Predecessor during the period under investigation violated the Article 5 (1) (a), (b) and (c), Article 6, Article 12 (1) and Article 13 of that Regulation. E

In respect of the infringement, the Authority considered it appropriate to impose a fine as follows according to.

As the Predecessor ceased to exist in the Debtor as of 1 April 2020, the

The Authority has imposed sanctions and obligations on the Debtor.

As to whether the imposition of a data protection fine is justified, the Authority

Article 83 (2) of the Data Protection Regulation and Infotv.75 / A. § considered ex officio

all the circumstances of the case and found that, in the case of the infringement found in the present proceedings,

the warning is neither a disproportionate nor a dissuasive sanction, so a fine should be imposed.

In view of this, the Authority Pursuant to Section 61 (1) (a), in the operative part

and in this decision to pay the data protection fine to the Debtor

obliged.

The amount of the fine was determined by the Authority acting in accordance with its statutory discretion.

The infringement is a more serious infringement under the GDPR, for which - an appropriate legal basis

breach of principles - upper limit of the fine to be imposed under Article 83 (5) (a) GDPR

EUR 20 000 000 or, in the case of the Debtor, the total world market for the preceding financial year

not more than 4% of its turnover, whichever is the higher.

In imposing the fine, the Authority took into account the following factors as aggravating circumstances:

-

the general data management practice applied during the period under review contains several basic provisions therefore the infringement constitutes a serious infringement [Article 83 (2) (a) GDPR];

-

the very high number of stakeholders, as UPC during the period under review - all

In total, he received 45,000 to 55,000 people a month in his personal business

customer service, which meant a total of 609,619 people in 2019 (although UPC specifically

provided data for 2019 only, as the period under review is from 2018

and two and a half months from 2020, the number of people affected is estimated at millions

the natural high number of

data management, for which an impact assessment has been carried out [Article 83 (2) GDPR

the dot];

-

the unlawful processing took place over a long period of time, more than one and a half years [GDPR 83.

Article 2 (2) (a)];

-

the method used would, in UPC's view, have been achievable and feasible

alternative [Article 83 (2) (k) GDPR];

-

its core business was to provide regular and mass customers for many years

received at customer service offices with due regard for privacy

would have been expected of him, so that his liability is higher [Article 83 (2) GDPR

d)];

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-

the lack of a sufficiently precise and specific definition of the legal basis and purpose, and thus the lack of a well-thought-out

definition of the legal basis and purpose

gross data processing indicates gross negligence [Article 83 (2) GDPR

b)].

In imposing fines, the Authority took into account the following other factors:

-

UPC has complied with its obligation to cooperate with the Authority [Article 83 GDPR

Paragraph 2 (f)];

-

the processing did not affect special categories of personal data [Article 83 (2) GDPR paragraph (g)];

-

the fine imposed will be able to achieve its purpose if its amount - the Obligated sales relative to its turnover - appreciable;

-

the Borrower's net sales revenue according to the 2018 financial statements is 172,000,000,000  
According to its report for 2019, it was HUF 192,659,000,000, according to its report for 2020  
and was HUF 205,209,000,000, so the amount of the data protection fine imposed is on the Applicant  
0.0292% of net sales in 2020.

The Authority was not aware of any factor as an explicit attenuating circumstance in the imposition of the fine appreciate.

The Authority did not consider Article 83 (2) (e), (h) and (i) of the GDPR to be relevant for the imposition of fines.  
and (j) as they cannot be interpreted in the context of the specific case.

The Authority did not order the cancellation of the recordings, but the gravity of the infringement according to the amount of the fine.

rated with height.

ARC. Other issues:

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

In order to do so, the Authority may initiate ex officio data protection proceedings. The data protection authority  
CL of the General Administrative Procedure Act 2016. Act (hereinafter: Act)  
shall apply with the additions specified in the Information Act.

The Ákr. Pursuant to Section 103 (1), in ex officio proceedings the Act no. procedures initiated upon request  
The relevant provisions of Art. 103–105. With the exceptions contained in §.

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

and the exercise of the right of access to data in the public interest and in the public interest control and facilitation. In the General Data Protection Regulation for the supervisory authority established entities and entities under the jurisdiction of Hungary as defined in the General Data Protection Decree and the Information Act a Authority exercises. The competence of the Authority extends to the entire territory of the country. Infotv. 75 / A. § according to Article 83 (2) - (6) of the General Data Protection Regulation shall exercise the powers set out in paragraph 1, taking into account the principle of proportionality, in particular: whether it is mandatory under the law on the processing of personal data or the European Union in the case of a first-time breach of the requirements set out in its legal act in accordance with Article 58 of the General Data Protection Regulation by alerting the controller or processor.

The decision is otherwise based on Ákr. Sections 80 and 81 shall apply.

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The Ákr. Pursuant to Section 112 and Section 116 (1), the decision is the subject of an administrative lawsuit place of redress.

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), it is against the decision of the Authority administrative lawsuit falls within the jurisdiction of the court, the lawsuit is subject to the Kp. Section 13 (3) (a) (aa) The Metropolitan Court has exclusive jurisdiction under

A Kp. Pursuant to Section 27 (1) (b), legal representation in litigation falling within the jurisdiction of the General Court obligatory. A Kp. Pursuant to Section 39 (6), the filing of an application is an administrative act has no suspensive effect.

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. Act (a hereinafter referred to as the Customer's legal representative pursuant to Section 9 (1) (b) of the E-Administration Act obliged to communicate electronically.

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

Information on the possibility of requesting the maintenance of the It is based on § 77 (1) - (2). THE

the amount of the fee for an administrative lawsuit in accordance with Act XCIII of 1990 on Fees. Act (hereinafter:

Itv.) 45 / A. § (1). From the advance payment of the fee, the Itv. Section 59 (1)

and Section 62 (1) (h) shall release the party initiating the proceedings.

The Ákr. Pursuant to Section 135, the debtor is entitled to a late payment supplement equal to the statutory interest

is obliged to pay if it fails to meet its obligation to pay money on time.

Act V of 2013 on the Civil Code 6:48. § (1)

in the case of the debtor, the calendar half-year affected by the delay from the date of the delay

is obliged to pay default interest equal to the central bank base rate valid on the first day of

Budapest, September 29, 2020

Dr. Attila Péterfalvi

President

c. professor