

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 29

May

2020

DECISION

DKE.561.1.2020

Based on Article. 104 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2020, item 256) and art. 7 section 1 and section 2, art. 60, art. 101, art. 103 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2019, item 1781) in connection with Art. 31, art. 58 section 1 lit. e) in connection with Art. 83 sec. 1-3 and art. 83 sec. 5 lit. e) Regulation of the European Parliament and the EU Council 2016/679 of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 / EC (general regulation on data protection) (Journal of Laws UE L 119 of 04/05/2016, p. 1, as amended) (hereinafter referred to as "Regulation 2016/679"), after conducting an ex officio administrative procedure to impose on East Power Sp. z o.o. with headquarters in Jelenia Góra at ul. Wiejska 29a / 17, an administrative fine, the President of the Personal Data Protection Office, stating that East Power Sp. z o.o. with headquarters in Jelenia Góra at ul. Wiejska 29a / 17, the provision of art. 58 sec. 1 lit. e) Regulation 2016/679, consisting in failure to provide access to personal data and other information necessary for the President of the Office for Personal Data Protection to perform his tasks, i.e. to consider the complaint of Mr. D. S. against the processing by East Power Sp. z o.o. based in Jelenia Góra his personal data, imposes on East Power Sp. z o.o. with headquarters in Jelenia Góra at ul. Wiejska 29a / 17, an administrative fine in the amount of PLN 15,000 (say: fifteen thousand zlotys), which is the equivalent of EUR 3,505.16, according to the average EUR exchange rate announced by the National Bank of Poland in the exchange rate table as of January 28, 2020.

JUSTIFICATION

The Office for Personal Data Protection received a complaint from Mr. D. S., a German citizen, residing in N. (hereinafter referred to as the "Complainant"), against processing by East Power Sp. z o.o. with headquarters in Jelenia Góra at ul. Wiejska 29a / 17 (hereinafter referred to as the "Company"), the owner of the website [www. \[...\] .de](#), his personal data for marketing purposes, despite the objection raised. The President of the Personal Data Protection Office (hereinafter "the President of the

Personal Data Protection Office"), as part of the administrative procedure initiated to consider the complaint (under the reference number [...]), requested the Company in a letter of [...] March 2019 to comment on the content of the complaint and to answer the following specific questions about the case:

on what legal basis, for what purpose and scope the Company is currently processing the complainant's personal data and from what source it obtained the data,

whether the Complainant requested that his personal data be deleted by the Company,

why and on what legal basis, in the event of the Complainant's request to delete his personal data, his request has not been complied with so far.

The above letter, properly delivered to the Company on [...] March 2019, remained unanswered.

Therefore, in a letter of [...] May 2019, the President of UODO again asked the Company to respond to the content of the complaint and to answer detailed questions already formulated in the previous letter. This letter was delivered to the Company on [...] May 2019. In a letter of [...] June 2019, responding to the above-mentioned request of the President of the Personal Data Protection Office, the President of the Management Board of the Company stated that "the Company did not process, then or currently, the Complainant's personal data" and that "The Company did not disclose, then or currently, the Complainant's personal data." At the same time, the President of the Management Board of the Company stated that "the Company obtained the Complainant's personal data from the Internet", where "they are made available in the Google search engine".

Considering the above explanations of the Company as insufficient, the President of the Personal Data Protection Office, in a letter of [...] September 2019, asked the Company to provide additional explanations on the matter, in particular to explain:

on what legal basis, for what purpose and scope, the Company was currently processing or is currently processing the complainant's personal data,

the relationship between the Company and Mr. P. K. on [...] June 2018, who, acting on behalf of the Company, sent to the Complainant's e-mail address on that day a marketing message,

if, and if so, how the Company responded to the Complainant's request of [...] June 2018 to delete his personal data and stop sending him marketing content,

if the Company did not comply with the Complainant's request - why and on what legal basis it happened.

The Company did not reply to the above letter, properly delivered to the Company on [...] September 2019.

By letters of [...] May 2019 and [...] September 2019, the Company was informed that failure to respond to the requests of the President of the Personal Data Protection Office may result - in accordance with Art. 83 sec. 5 lit. e) Regulation 2016/679 - imposing an administrative fine on the Company.

Due to the failure by the Company to provide the information necessary to resolve the case No. [...], initiated by the Complainant's complaint, the President of the Personal Data Protection Office initiated ex officio against the Company - pursuant to Art. 83 sec. 5 lit. e) Regulation 2016/679, due to the breach by the Company of art. 58 sec. 1 letter a) and e) of the Regulation 2016/679 - administrative proceedings to impose an administrative fine on the Company (under the reference number DKE.561.1.2020.RZ). The Company was informed about the initiation of the procedure by letter of [...] February 2020, delivered to the Company on [...] February 2020. This letter was also requested by the Company - in order to establish the basis for the penalty, pursuant to Art. 101a paragraph. 1 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2019, item 1781) - to present the Company's financial statements for 2019 or - in the absence thereof - a statement on the amount of turnover and financial result achieved by the Company in 2019

In response to the letter informing about the initiation of proceedings to impose an administrative fine on the Company, the President of the Management Board of the Company sent a letter to the President of UODO of [...] February 2020, in which he requested that the administrative fine be waived in the DKE.561.1 procedure. 2020.RZ and to discontinue the proceedings in the case of [...]. At the same time, in the same letter, the President of the Management Board of the Company provided explanations regarding the case [...]. In particular, it indicated that:

Currently, the Company does not process the Complainant's personal data, and previously they were obtained "from publicly available databases" and processed in the scope of the complainant's name, surname and e-mail address "for the purpose of one-time delivery of an e-mail to the complainant";

P. K. was an employee of the Company and "the activities performed by P. K. were therefore performed by him as an employee of the Company, within the scope of activities presented to him". With reference to this part of the explanations, the President of the Management Board of the Company presented, attached to his letter, copies of three employment contracts (of [...] April 2018, [...] August 2018 and [...] April 2019) concluded between The company and Mr. Pi. Ko .;

at the request of the Complainant of [...] June 2018, the Company "ceased all correspondence, did not send any further

e-mails to the Complainant due to the submitted request and deleted the Complainant's personal data".

The company did not enclose its letter of [...] February 2020 with the financial statements for 2019, informing that it "has not yet prepared" such a document. The company also did not submit a statement on the turnover and financial result achieved in 2019, which the President of the Personal Data Protection Office requested in the event of inability to present the financial statements.

The company runs - in Poland and Germany - activities including in the field of job placement (including temporary work) and human resource management in enterprises.

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

Pursuant to Art. 57 sec. 1 lit. a) Regulation 2016/679, the President of the Personal Data Protection Office - as a supervisory authority within the meaning of art. 51 of the Regulation 2016/679 - monitors and enforces the application of this regulation on its territory. As part of his competences, the President of the Personal Data Protection Office examines, inter alia, Complaints brought by data subjects shall investigate these complaints to the appropriate extent and inform the complainant of the progress and the outcome of these proceedings within a reasonable time (Article 57 (1) (f)). In order to enable the performance of such defined tasks, the President of the Personal Data Protection Office is entitled to a number of provisions specified in art. 58 sec. 1 of Regulation 2016/679, the rights in the scope of conducted proceedings, including the right to order the administrator and the processor to provide all information needed to perform its tasks (Article 58 (1) (a)) and the right to obtain access from the administrator and the processor to all personal data and all information necessary for the performance of its tasks (Article 58 (1) (e)). Violation of the provisions of Regulation 2016/679, consisting in the failure of the controller or the processor to provide access to the data and information referred to above, resulting in the violation of the authority's rights specified in art. 58 sec. 1 (including the right to obtain data and information necessary to perform its tasks), and is subject - in accordance with art. 83 section 5 letter e) in fine of Regulation 2016/679 - an administrative fine of up to EUR 20,000,000, and in the case of an enterprise - up to 4% of its total annual worldwide turnover from the previous financial year, with the higher amount applicable . It should also be indicated that the controller and the processor are obliged to cooperate with the supervisory authority in the performance of its tasks, as provided for in Art. 31 of Regulation 2016/679.

Referring to the above-mentioned provisions of Regulation 2016/679 to the factual situation established in this case, and

described at the beginning of this decision, it should be stated that the Company - the administrator of the Complainant's personal data DS - as a party to the proceedings conducted by the President of the UODO with the reference number [...], breached its obligation to provide the President of the Personal Data Protection Office with access to information necessary for the performance of his tasks - in this case, to the substantive resolution of this case. Such activity of the Company constitutes a violation of Art. 58 sec. 1 lit. e) Regulation 2016/679.

In the proceedings with reference number [...], the President of the Personal Data Protection Office called the Company three times to provide explanations necessary to consider the case.

The first letter sent by the President of the Personal Data Protection Office on [...] March 2019 (properly delivered to the Company on [...] March 2019) remained unanswered.

The answer to the second request of the President of UODO (of [...] May 2019, properly delivered to the Company on [...] May 2019) was far from complete (no comprehensive answer to any of the three detailed questions asked in the letter of the President of UODO), contradictory (On the one hand, the company stated that it had obtained the Complainant's personal data from the Internet, and on the other hand stated that it "did not process, then or currently, the Complainant's personal data") and - in the opinion of the President of the Personal Data Protection Office - disregarding both the authority and the case, pending which the authority asked for explanations.

The third letter from the President of the Personal Data Protection Office (UODO) to the Company (of [...] September 2019, properly delivered to the Company on [...] September 2019), explaining the basic issues related to data processing (including the very concept of "data processing") and additional the questions to establish the facts of the case were again left unanswered.

The Company submitted more extensive explanations only in the letter of [...] February 2020, which was a reply to the letter of the President of the Personal Data Protection Office informing about the initiation of this proceeding concerning the imposition of an administrative fine in connection with the failure to provide access to the information requested by the President of the Personal Data Protection Office. However, even these explanations are incomplete and will require further investigation in the case No. [...]. In particular, this concerns the answer to the question about the relationship on [...] June 2018 between the Company and Mr. P. K., who, acting on behalf of the Company, sent to the complainant's e-mail address on that day a marketing message. The company stated in response to this question that Mr. K. was employed by the Company under a

contract of employment. At the same time, she attached to her letter copies of three employment contracts, which not only did not confirm the Company's explanations, but also caused additional doubts as to the facts of the case. First, according to the content of all three employment contracts, Mr Pi was a party to them. Ko., And not Mr. P. K. (The company did not explain in its letter where this discrepancy came from). Secondly, the periods of validity of the presented contracts concerned periods both before and after the date expressly asked by the President of the Personal Data Protection Office (the date on which Mr. P. K. sent an e-mail to the Complainant, ie [...] June 2018); however, they did not cover that specific date (a fixed-term employment contract of [...] April 2018 was concluded for a period from [...] April 2018 to [...] May 2018, a fixed-term employment contract with [...] August 2018 was concluded for the period from [...] September 2018 to [...] April 2019, and the employment contract for an indefinite period of [...] April 2019 was valid from [...] May 2019 r.). Also, this discrepancy was not explained by the Company in its letter.

The above-described proceedings of the Company in the case No. [...] (no response to the calls of the President of the Personal Data Protection Office and the provision of incomplete, inconspicuous, evasive and contradictory responses to specific, not very complicated questions of the President of the Personal Data Protection Office which do not require specialist knowledge in the field of personal data protection) indicates a lack of will cooperating with the President of the Personal Data Protection Office in establishing the facts of the case and correctly resolving it, or at least blatantly disregarding his obligations regarding cooperation with the President of the Personal Data Protection Office as part of the performance of his tasks specified in Regulation 2016/679. The above statement is additionally justified by the fact that the Company in no way tried to justify the fact that there was no response to the two requests for explanations, nor did it contact the Office for Personal Data Protection in order to signal any doubts that it might have regarding the scope of information requested by the President. UODO.

It should be pointed out here that obstructing and preventing access to information requested and requested by the President of the Personal Data Protection Office, and which are undoubtedly in the possession of the Company (e.g. information on the relationship between the Company and Mr. PK), prevents a thorough consideration of the case. , it also results in excessive and unjustified prolongation of the procedure, which is in contradiction with the basic principles governing the administrative procedure - set out in Art. 12 sec. 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2020, item 256), the principles of insight and speed of proceedings.

Considering the above findings, the President of the Personal Data Protection Office states that in the present case there are premises justifying the imposition on the Company - pursuant to Art. 83 sec. 5 lit. e) in fine of Regulation 2016/679 - an administrative fine in connection with the Company's failure to provide access to information necessary for the President of the Personal Data Protection Office to perform his tasks, that is, to resolve the case No. [...]. Referring to the request contained in the Company's letter of [...] February 2020, the request to waive the imposition of an administrative fine in this proceeding, the President of the Personal Data Protection Office indicates that he does not see any grounds for a positive consideration. The company did not justify its request in any way, in particular, it did not try to justify its action in breach of the provisions of Regulation 2016/679 and did not remove the infringement itself by providing full and exhaustive explanations allowing for a ruling on [...].

Pursuant to art. 83 sec. 2 of Regulation 2016/679, administrative fines are imposed depending on the circumstances of each individual case. It refers in each case to a number of circumstances listed in points a) to k) of the above-mentioned provision. When deciding to impose an administrative fine on the Company and determining its amount, the President of the Personal Data Protection Office (UODO) took into account the following circumstances aggravating the assessment of the infringement: Nature, gravity and duration of the infringement (Article 83 (2) (a) of Regulation 2016/679).

The breach liable to an administrative pecuniary penalty in the present case undermines the system designed to protect one of the fundamental rights of a natural person, which is the right to the protection of his personal data, or more broadly, to the protection of his privacy. An important element of this system, the framework of which is set out in Regulation 2016/679, are supervisory authorities with tasks related to the protection and enforcement of the rights of natural persons in this respect. In order to enable the performance of these tasks, supervisory authorities have been equipped with a number of control powers, powers to conduct administrative proceedings and remedial powers. On the other hand, administrators and processors have been imposed specific obligations, correlated with the powers of supervisory authorities, including the obligation to cooperate with supervisory authorities and the obligation to provide these authorities with access to information necessary for the performance of their tasks. The actions of the Company in the present case, consisting in impeding and preventing access to information requested by the President of the Personal Data Protection Office, and resulting in hindering and unjustified prolongation of the proceedings conducted by him, should therefore be considered as detrimental to the entire personal data protection system, and therefore of great importance and reprehensible character. The significance of the breach is

additionally increased by the fact that the breach by the Company was not a one-off and incidental event; the company's operation was continuous and long-term. It lasts from the expiry of the deadline for submitting explanations in the first letter of the President of the Personal Data Protection Office, i.e. from [...] April 2019, until now (in relation to some of the information requested by the President of the Personal Data Protection Office).

Intentional nature of the breach (Article 83 (2) (b) of Regulation 2016/679).

In the opinion of the President of the Personal Data Protection Office, the Company lacks the will to cooperate in providing the authority with all information necessary to resolve the case in the course of which the authority requested it. This is evidenced in particular by the lack of any response to two out of three requests from the President of the Personal Data Protection Office (UODO) addressed to her and received by her. Also the explanations that the Company ultimately submitted to the President of the Personal Data Protection Office (incomplete, evasive, contradictory) prove the lack of will to cooperate with the authority or at least blatantly disregarding its obligations related to this cooperation, unacceptable especially in the case of an entity processing personal data professionally (due to the type of services provided - job placement - requiring the acquisition, storage and sharing of data of natural persons who are potential employees). It should be emphasized that at no stage of the proceedings with reference number [...], as well as in the present proceedings, did not attempt to justify such proceedings. Considering that the Company is an entrepreneur, an entity professionally involved in legal and economic transactions, the activity of which is related to the processing of personal data (in connection with the provided employment services), it should also be assumed that it was (and has until now) aware that that her conduct is in breach of the provisions of Regulation 2016/679.

Unsatisfactory level of cooperation with the supervisory authority to remove the breach and mitigate its possible negative effects (Article 83 (2) (f) of Regulation 2016/679).

In the course of these proceedings regarding the imposition of an administrative fine, the Company submitted (in a letter of [...] February 2020) additional explanations to the case No. full, comprehensive and enabling the issuing of a decision in the case. The other conditions for the assessment of an administrative fine specified in Art. 83 sec. 2 of Regulation 2016/679 did not affect (aggravating or mitigating) the assessment of the infringement made by the President of the Personal Data Protection Office (including: any relevant prior infringements by the controller, the manner in which the supervisory authority learned about the infringement, compliance with the measures previously applied in the same case , the use of approved codes of

conduct or approved certification mechanisms) or, due to the specific nature of the breach (relating to the controller's relationship with the supervisory authority and not the controller's relationship with the data subject), could not be taken into account in the present case (in including: the number of injured persons and the extent of the damage suffered by them, actions taken by the administrator to minimize the damage suffered by data subjects, the degree of administrator's liability, taking into account the technical and organizational measures implemented by him, categories of personal data affected by the infringement *zenie*).

Pursuant to the wording of art. 83 sec. 1 of Regulation 2016/679, the administrative fine imposed by the supervisory authority should be effective, proportionate and dissuasive in each individual case. In the opinion of the President of the Personal Data Protection Office, the penalty imposed on the Company in these proceedings meets these criteria. He will discipline the Company to properly cooperate with the President of the Personal Data Protection Office, both in the further course of the proceedings with reference number [...] and in any other future proceedings with the participation of the Company before the President of the Personal Data Protection Office. The penalty imposed by this decision is - in the opinion of the President of the Personal Data Protection Office - proportional to the severity of the breach found and the possibility of incurring it by the Company without major detriment to its activities. This penalty will also have a deterrent function; will be a clear signal both for the Company and for other entities obliged under the provisions of Regulation 2016/679 to cooperate with the President of the Personal Data Protection Office that disregarding the obligations related to cooperation with him (in particular, obstructing access to information necessary for the performance of his tasks) is a violation of significant and as such will be subject to financial sanctions. It should be noted here that the imposition of an administrative fine on the Company is - in view of the Company's conduct to date as a party to the proceedings [...] - necessary; is the only measure at the disposal of the President of the Personal Data Protection Office, which will enable access to information necessary in the conducted proceedings. Due to the fact that the Company did not present the financial data requested by the President of the Personal Data Protection Office for 2019, when determining the amount of the administrative fine in this case, the President of the Personal Data Protection Office took into account, pursuant to Art. 101a paragraph. 2 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2019, item 1781), the estimated size of the Company and the specificity, scope and scale of its operations.

Pursuant to the wording of Art. 103 of the Act of 10 May 2018 on the Protection of Personal Data (Journal of Laws of 2019,

item 1781), the equivalent of the amounts expressed in euro, referred to in Art. 83 of Regulation 2016/679, are calculated in PLN at the average EUR exchange rate announced by the National Bank of Poland in the exchange rate table as of January 28 of each year, and if the National Bank of Poland does not announce the average EUR exchange rate on January 28 in a given year - according to the average euro exchange rate announced in the table of exchange rates of the National Bank of Poland that is closest to that date. In the present case, the exchange rate is PLN 4.2794 per EUR 1.

Considering the above, the President of the Personal Data Protection Office adjudicated as in the conclusion of this decision. The decision is final. The party has the right to lodge a complaint against the decision with the Provincial Administrative Court in Warsaw, within 30 days from the date of its delivery, via the President of the Personal Data Protection Office (address: ul. Stawki 2, 00-193 Warsaw). A proportional fee should be filed against the complaint, in accordance with Art. 231 in connection with Art. 233 of the Act of August 30, 2002, Law on proceedings before administrative courts (Journal of Laws of 2019, item 2325). Pursuant to Art. 74 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2019, item 1781), the submission of a complaint by a party to the administrative court suspends the execution of the decision on the administrative fine.

In the proceedings before the Provincial Administrative Court, the party has the right to apply for the right of assistance, which includes exemption from court costs and the appointment of an attorney, legal advisor, tax advisor or patent attorney. The right to assistance may be granted at the request of a party submitted prior to the initiation of the proceedings or in the course of the proceedings. The application is free of court fees.

Pursuant to Art. 105 paragraph. 1 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2019, item 1781), the administrative fine must be paid within 14 days from the date of expiry of the deadline for lodging a complaint to the Provincial Administrative Court, or from the date the ruling of the administrative court becomes legally binding, to the bank account of the Personal Data Protection Office at NBP O / O Warsaw No. 28 1010 1010 0028 8622 3100 0000. Moreover, pursuant to Art. 105 paragraph. 2 of the above-mentioned Act, the President of the Personal Data Protection Office may, at a justified request of the punished entity, postpone the payment of the administrative fine or divide it into installments. In the event of postponing the payment of the administrative fine or dividing it into installments, the President of the Personal Data Protection Office shall charge interest on the unpaid amount on an annual basis, using a reduced rate of default interest, announced pursuant to Art. 56d of the Act of August 29, 1997 - Tax Ordinance (Journal of Laws of 2019, item 900, as

amended), from the day following the date of submitting the application.

2020-07-06