

Warsaw, day 26

July

2022

Decision

DKE.561.12.2022

Based on Article. 104 § 1 of the Act of June 14, 1960 Code of Administrative Procedure (i.e. Journal of Laws of 2021, item 735, as amended) in connection with Art. 7 and art. 60 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2019, item 1781) and pursuant to art. 58 sec. 2 lit. b) Regulation of the European Parliament and of the EU Council 2016/679 of April 27, 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 regulations on data protection) (Journal of Laws UE L 119 of 04/05/2016, p. 1, as amended), after conducting administrative proceedings regarding the imposition of an administrative fine on [...] Closed-End Investment Fund (national identifier: [...]), President of the Office for Personal Data Protection

admonishes [...] Closed-End Investment Fund (national identifier: [...]), represented by F. TFI S.A., for violation of the provisions of Art. 31 and Art. 58 sec. 1 lit. a) and e) of Regulation EU 2016/679 of the European Parliament and of the Council and 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) (Official Journal EU L 119 of 04/05/2016, p. 1, as amended), consisting in the lack of cooperation with the President of the Office for Personal Data Protection in the performance of his tasks and failure to ensure access to information necessary for the President of the Office for Personal Data Protection to carry out his tasks in the proceedings under reference number [...].

Justification

Facts

1. In the proceedings conducted by the President of the UODO, reference number [...], taken on the basis of a complaint by Z. S., in a letter of [...] August 2020, the President of the UODO summoned [...] Closed-End Investment Fund (hereinafter also referred to as the "Fund"), represented by F. Towarzystwo Funduszy Inwestycyjnych ARE. (hereinafter also referred to as "F. TFI S.A.") to submit explanations in the case within 7 days from the date of delivery of the letter. The letter was delivered [...]

on August 2021. The fund did not respond to this call.

2. By letter of [...] September 2021, the President of the UODO again called on the Fund to provide explanations in the case within 7 days from the date of delivery of the letter. The letter was delivered [...] October 2021. The letter contained an instruction that the lack of an exhaustive response to the summons may result in the imposition of an administrative fine on the Fund pursuant to Art. 83 sec. 5) letter e) Regulation of the European Parliament and of the EU Council 2016/679 and EU Council 2016/679 of 27 April 2016 on the protection of natural persons 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) (Official Journal EU L 119 of 04.05.2016, p. 1, as amended) (hereinafter also referred to as "GDPR"). The fund did not respond to this call either.

3. In view of the above, in a letter of April [...] 2022, delivered [...] on May 2022, the President of UODO initiated these administrative proceedings regarding the imposition of an administrative fine for violation of Art. 31 and Art. 58 sec. 1 a) and lit. e) of the GDPR, consisting in the lack of cooperation with the President of the UODO and the Fund's failure to fulfill its obligation to provide the President of the UODO with the information necessary to perform its tasks. In this letter, the authority also called on the Fund to present the Fund's financial statements for 2021 or, in the absence thereof, a statement on the amount of turnover and the financial result achieved by the Fund in 2021 - in order to determine the basis for the administrative fine herein. In addition, the content of the letter contains an instruction that if the Fund provides in writing - within 7 days from the date of delivery of information on the initiation of the proceedings - exhaustive explanations in the proceedings with reference number [...] and will justify the earlier lack of response to the summons, this circumstance may have a mitigating effect on the amount of the administrative fine imposed in these proceedings or may lead to a withdrawal from its imposition.

4. On [...] May 2022, the authority received a letter from F. TFI S.A., in which responses to the requests of the President of the UODO were provided in the proceedings [...]. The content of the letter indicated that the lack of response to the summons resulted in the incorrect classification of correspondence from the President of the UODO on the part of F. TFI S.A., managing the Fund - the correspondence was not forwarded to the appropriate managing department, and therefore the appropriate response was not provided within the time limit set by the authority. The occurrence of the error described above was caused in particular by an increased number of incoming correspondence regarding debtors, combined with temporary staff shortages caused by the ending holiday period and increased incidence of coronavirus. Moreover, a significant impact on the reorganization of the internal units of F. TFI S.A. carried out at the turn of the third and fourth quarter of 2021 also had a similar

situation. managing the Fund, responsible for the day-to-day management of investment funds. F. TFI S.A. he also indicated that he had taken internal explanatory actions in order to avoid similar situations in the future. At the same time, the letter emphasized the incidental nature of the Fund's lack of cooperation with the authority and the fact that all answers required by the authority were provided, which should justify waiving the imposition of an administrative fine on the Fund. The letter was accompanied by financial information requested by the President of the UODO in order for the authority to assess a possible administrative fine in these proceedings.

Legal justification

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

1. Pursuant to art. 57 sec. 1 lit. a) GDPR, the President of the UODO - as a supervisory authority within the meaning of art. 51 of the GDPR - monitors and enforces the application of this regulation on its territory. As part of his competence, the President of the UODO considers, among others: complaints by data subjects, conduct investigations into these complaints to the extent appropriate and inform the complainant of the progress and results of these investigations within a reasonable time (Article 57(1)(f)). In order to enable the implementation of such tasks, the President of the UODO is entitled to a number of tasks specified in art. 58 sec. 1 of the GDPR, the rights in the field of conducted proceedings, including the right to order the controller and the processor to provide all information needed to perform its tasks (Article 58(1)(a)) and the right to obtain from the controller and the processor access to any data personal data and any information necessary to perform its tasks (Article 58(1)(e)). It should also be pointed out that the controller and the processing entity are obliged to cooperate with the supervisory authority as part of the performance of its tasks, as provided for in art. 31 GDPR.

2. Violation of the provisions of Art. 31 and Art. 58 sec. 1 lit. a) and f) of the GDPR referred to above, consisting in the controller's or processor's failure to provide access to data and information, is subject to - in accordance with art. 83 section 5 letter e) in fine of the GDPR - an administrative fine of up to EUR 20,000,000, and in the case of an enterprise - up to 4% of its total annual global turnover from the previous financial year, with the higher amount applicable.

3. The President of the UODO is entitled to a number of items specified in Art. 58 sec. 2 corrective powers, including issuing reminders to the administrator or processor in the event of violation of the provisions of the GDPR by processing operations.

The President of the UODO, acting pursuant to art. 58 sec. 2 lit. b) of the GDPR may consider it justified to issue a warning

regarding the identified violation of the provisions of art. 31 and Art. 58 sec. 1 lit. a) and e) GDPR. Pursuant to Recital 148 of the GDPR, in order to make enforcement of the Regulation more effective, sanctions should be imposed for its violation, including administrative fines - in addition to or instead of appropriate measures imposed by the supervisory authority under this Regulation. If the infringement is minor, the fine may be replaced by a warning. However, due attention should be paid to the nature, gravity and duration of the infringement, whether the infringement was intentional, the actions taken to minimize the damage, the degree of responsibility or any significant previous infringements, the manner in which the supervisory authority found out of the infringement, compliance with the measures imposed on the controller or processor, the application of codes of conduct and any other aggravating or mitigating factors.

4. Referring the above-mentioned provisions of the GDPR to the facts established in this case, it should be stated that the Fund, as the administrator of personal data, being a party to the proceedings with reference number [...] by failing to respond to requests for explanations, violated the provision of Art. 31 of the GDPR through lack of cooperation with the President of the UODO in the performance of his tasks, as well as art. 58 sec. 1 lit. a) and e) of the GDPR by failing to provide the President of the UODO with access to information necessary to perform his tasks.

5. The President of the UODO called the Fund twice to provide explanations. The first of these summons was delivered [...] in August 2021 and the second [...] in October 2021. None of the summons has been answered within the specified time limits of 7 days from the date of their delivery. This omission of the Fund made it necessary to initiate these proceedings regarding the imposition of an administrative fine. As a result of the initiation of these proceedings, the Fund established cooperation with the President of the UODO by submitting detailed explanations in the proceedings [...], which enabled the President of the UODO to conduct further proceedings in the case.

6. In this case, it is not disputed that the organization of the internal circulation of correctly delivered correspondence is the responsibility of the Fund. In the opinion of the President of the UODO, the justification provided by the Fund for the failure to respond to its requests (indicated in point 4 of the justification for the decision) does not relieve the responsibility for this omission. At the same time, however, this explanation is plausible. In the opinion of the President of the UODO, it should be recognized that the Fund's failure to respond to its requests could have caused problems in the flow and handling of correspondence indicated by the Fund, which effects could have been further aggravated by the state of the COVID-19 epidemic, forcing the organization of remote work.

7. In the facts in question, apart from the lack of response to requests for explanations, which was supplemented by the Fund as a result of the initiation of these proceedings, no other indications were found indicating the Fund's lack of will to cooperate with the President of the UODO. In addition, it should be noted that the Fund acknowledged liability for the infringement and provided financial documents that would make it easier for the President of the UODO to assess a possible administrative fine. These circumstances of the case allow us to conclude that the Fund's failure to respond to the requests of the President of the UODO in the proceedings under ref. no. [...] was not intentional.

8. In connection with the above, acting pursuant to art. 58 sec. 2 lit. b) of the GDPR, according to which each supervisory authority has the right to issue a reminder to the administrator or processor in the event of violation of the provisions of this regulation by processing operations, the President of the UODO considered it justified to grant Closed-End Investment Fund (national identifier: [...]), represented by F. TFI S.A., a reminder regarding the identified violation of the provisions of art. 31 and Art. 58 sec. 1 lit. a) and e) GDPR.

9. The permissibility of replacing a fine with a reminder is also justified by recital 148 of the GDPR, which states that sanctions, including administrative fines, should be imposed "to make the enforcement of the provisions of this regulation more effective". The President of the UODO decided that in the case in question, in the light of the criteria set out in Art. 83 sec. 2 of the GDPR, it will be sufficient to issue a reminder.

10. However, it should be noted that in the event of a similar event in the future, each reminder issued by the President of the UODO towards the Fund will be taken into account when assessing the grounds for a possible imposition of an administrative penalty, in accordance with the principles set out in Art. 83 sec. 2 GDPR.

11. In this factual and legal situation, the President of the UODO decided as in the operative part of this decision.

The decision is final. The party has the right to lodge a complaint against the decision to the Provincial Administrative Court in Warsaw, within 30 days from the date of its delivery, via the President of the Office for Personal Data Protection (address: ul. Stawki 2, 00 - 193 Warsaw). A permanent fee of PLN 200 should be made 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 2022, item 329, as amended). The party (natural person, legal person, other organizational unit without legal personality) has the right to apply for the right to assistance, which includes exemption from court costs and the appointment of a lawyer, legal advisor, tax advisor or patent attorney. The right to assistance may be granted at the request of a party submitted before the

initiation of the proceedings or in the course of the proceedings. The application is free of court fees.

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