

Case number:

Antecedent:

Object:

NAIH-2307-8 / 2021.

NAIH / 2020/5039.

decision ex officio

data protection authority

procedure

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

hereinafter referred to as the "Customer" between 25 May 2018 and 26 June 2020, between [...] and [...]

data management practices in connection with the website (hereinafter: websites)

in an official procedure initiated ex officio on 26 June 2020

decision.

The Authority

1.

2.

notes that Customer's handling of data in connection with the [...] Website

infringed the right of natural persons with regard to the processing of personal data

the free movement of such data and repealing Directive 95/46 / EC

Regulation (EU) 2016/679 (hereinafter referred to as the General Data Protection Regulation)

or GDPR) in Article 5 (2) and Article 24;

due to the above violation, the Customer is subject to a data protection fine of HUF 1,000,000, ie HUF 1 million

order payment within 30 days of the date on which this decision becomes final;

The fine is accounted for by the Authority's forint settlement account for the collection of centralized revenues

(10032000-01040425-00000000 Centralized direct debit account IBAN: HU83 1003 2000 0104

0425 0000 0000) must be paid by bank transfer. When transferring the amount, NAIH-2307/2021.

JUDGE. number should be referred to.

If the Customer fails to meet the obligation to pay the fine on time, it shall be delayed

must pay a supplement. The rate of the late payment interest is the statutory interest, which is in arrears equal to the central bank base rate valid on the first day of the calendar half-year concerned. The delay the surcharge shall be paid to the forint account of the Authority for the collection of centralized revenue (1003200001040425-000000000 Centralized collection account).

In the event of non-payment of the fine and the penalty payment, the Authority shall order the and the enforcement of the late payment allowance.

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

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

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

forward it to the court together with his documents. During the tightened defense, the court is hearing

acting outside the scope of this Regulation, including redress procedures. Not in full personal exemption

for the beneficiaries, the fee of the administrative lawsuit is HUF 30,000, the lawsuit is subject to the right to record material fees. THE

Legal representation is mandatory in proceedings before the Metropolitan Court.

No procedural costs were incurred in the proceedings.

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EXPLANATORY STATEMENT

## I. Procedure

### I.1. Test procedure

A notification was received by the Authority on 16 May 2019, in which it objected to the data processing of the Client. the notifier. On the basis of the applicant's complaint, on 11 July 2019, NAIH / 2019/4289. with case number an investigation procedure has been initiated against the Client.

The Authority shall issue NAIH / 2019/4289/2 dated 11 July 2019. in document no Act CXII of 2011 on the right to information self-determination and freedom of information. Act (a hereinafter referred to as Section 54 (1) (a) and (c) of the Information Act, and Article 58 (1) of the GDPR requested the Client to inform the Authority of its data management practices connection. The Client replied to the Authority's letter on 22 July 2019, which contained it the Authority again made a request to the Client in accordance with NAIH / 2020/48/4. with letter no. NAIH / 2020/48/4 sent to the Customer. inquiry no returned to the Authority, due to which the Authority viewed the Client 's company data at in the company register and found that the name of the company had changed.

The Authority considered that the facts could not be clarified in the context of the investigation procedure and therefore Infotv. Pursuant to Section 55 (1) (b) and Section 60 (1), the investigation procedure closed and ex officio initiated proceedings NAIH / 2020/5039. on 25 May 2018. for the purpose of examining its data management practices between

### I.2. Official procedure

The Authority is dated 26 June 2020 - NAIH / 2020/5039. number - by ordering clarification of the facts invited the Client to make a statement for this purpose. According to the return receipt, NAIH / 2020/5039. Order No. was received by the Client's representative on June 30, 2020.

The 15-day deadline for the obligation contained in the order expired on 15 July 2020. On this within the time limit, the Client has not fulfilled the obligation contained in the order information was not made available to the Authority and therefore the Authority on 23 September 2020 dated, NAIH / 2020/5039/2. order to pay a procedural fine of one hundred thousand forints, and

again required to provide data. The order was received by a proxy on 25.09.2015, however, it did not comply with it either within or beyond the time-limits set out therein. THE Authority therefore decided on 4 December 2020 NAIH / 220/3181/4. In its order No NAIH / 2020/3181/2. enforcement of the procedural fine imposed by Order No.

The Authority issued the CL. Act (hereinafter:

Ákr.) With reference to Section 25 (1) (b) in connection with the case, NAIH-23071/2021. s. and NAIH-2307-2 / 2021. In his documents no

a [...] -t; (hereinafter: Ltd.) as domain registrars.

## II. Clarification of the facts

II.1. By letter dated 22 July 2019, the Client informed the Authority about the investigation procedure that does not hold / held events, does not collect phone numbers, marketing

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subcontracts activities, does not look for anyone by phone, does not handle them  
does not use or transmit personal data and databases, data processors,  
nor does it have a website.

Upon receipt of the reply, the Authority examined the [...] websites and found that  
among other things, that in the case of asking questions under the contact menu item on the [...] website, the  
Customer collects the names, email addresses, and phone numbers of those involved.

The Authority checked the company in the company register and found that the company was named  
changed to [...].

II.2. In the official proceedings, the Authority unsuccessfully sought to clarify the facts  
Customer, no statement has been received from the Customer regarding his calls.

The Authority retrieved the names of the domain users of the websites from the domain.hu registry. THE  
According to the registry, the name of the domain user is [...], and the registrar is Zrt.  
Your domain user name is [...]. according to the register, and the registrar is the Ltd.

At the request of the Authority, the Ltd., as registrar, stated that the domain was registered in May 2018

Used between 25th and 26th June 2020, the domain expired on 28 January 2020, no has been extended. The Ltd. attached the application form belonging to the domain.

According to the Client's company statement, among other things, parcel delivery and internet retail, retail sale of medical products, exercise services, physical fitness services its activity.

### III. Applicable legal provisions

CL of 2016 on General Administrative Procedure. (hereinafter: the Act)

the authority, within the limits of its competence, checks the provisions of the law

compliance with the provisions of this Regulation and the enforcement of the enforceable decision.

Pursuant to Article 2 (1) of the GDPR, the GDPR applies to the processing of data in the present case.

Infotv. Pursuant to Section 2 (2), the GDPR is there

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

Article 4 of the GDPR 1. "personal data" means an identified or identifiable natural person

(Relevant) any relevant information; the natural person who is direct can be identified

or indirectly, in particular by means of an identifier such as name, number, location data,

online identification or the physical, physiological, genetic, mental, economic,

one or more factors relating to its cultural or social identity.

According to Article 4 (2) of the GDPR, "processing" means the processing of personal data or files

any operation or set of operations carried out in an automated or non-automated manner,

thus collecting, recording, organizing, sorting, storing, transforming or altering, querying,

available for inspection, use, communication, transmission or other means

harmonization or interconnection, restriction, deletion or destruction.

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Article 4 (7) of the GDPR defines a data controller as "the natural or

legal person, public authority, agency or any other body that provides personal data

determine the purposes and means of its management, alone or in association with others; if the data management

purposes and means are determined by Union or Member State law, the controller or the EU or national law also lays down specific criteria for the designation of a controller may determine. "

2. The controller shall be responsible for complying with paragraph 1 and shall be able to do so to demonstrate compliance ('accountability'). "

Pursuant to Article 24 (1) of the GDPR, the controller, the nature and scope of the processing, the rights and freedoms of natural persons, appropriate technical and technical measures taking into account the varying probability and severity of the risk implement organizational measures to ensure and prove that personal data shall be processed in accordance with this Regulation. These measures are taken by the data controller review and, if necessary, update it.

Infotv. Pursuant to Section 2 (2), the general data protection decree is indicated therein shall apply with the additions provided for in

Infotv. Pursuant to Section 38 (3) and Section 60 (1), the Authority Section 38 (2) and (2a) the exercise of the right to the protection of personal data within the scope of its responsibilities under paragraph 1 ex officio data protection authority proceedings.

Infotv. 60 / A. § (1) in the data protection authority proceedings of the administrative deadline is one hundred and fifty days.

The Ákr. Pursuant to Section 103 (1) of the Act concerning the procedures initiated upon request provisions of Art. It shall apply with the exceptions set out in Sections 103 and 104.

Infotv. Pursuant to Section 61 (1) (a), the Authority shall comply with Section 2 (2) and (4) defined in the GDPR in relation to specific data processing operations may apply legal consequences.

The Ákr. Pursuant to Section 62 (4), the authority is free to choose the method of proof, and a assess the available evidence in its sole discretion.

Infotv. 75 / A. §, the Authority shall exercise the powers provided for in Article 83 (2) to (6) of the GDPR

proportionality, in particular by providing personal data

legislation or a binding act of the European Union

for the first time in the event of a breach of the rules laid down in

in accordance with Article 58 of the General Data Protection Regulation, in particular the controller or

by alerting the data controller.

Pursuant to Article 58 (2) (b) and (i) of the GDPR, the supervisory authority is corrective

under the authority of the data controller or data processor if it is a data controller

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

shall impose the administrative fine referred to in this paragraph, depending on the circumstances of the case

in addition to or instead of measures.

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Article 83 (3) of the GDPR provides that "if a controller or processor

for the same data processing operation or for related data processing operations,

intentionally or negligently - infringes several provisions of this Regulation, the fine is complete

shall not exceed the amount determined in the case of the most serious infringement. "

Under Article 83 (4) (a) of the GDPR, 'infringement of the following provisions - infringement of

an administrative fine of up to EUR 10 000 000 in accordance with paragraph 1;

up to 2% of the total annual worldwide turnover in the preceding business year

subject to an exponent amount; the higher of the two shall be charged:

(a) Articles 8, 11, 25 to 39, 42 and 43 for the controller and the processor;

obligations set out in Article

According to Article 83 (5) (a) of the GDPR, "infringements of the following provisions shall be

an administrative fine of up to EUR 20 000 000 in accordance with paragraph 1;

up to 4% of the total annual worldwide turnover in the preceding business year

the higher of the two amounts shall be imposed:

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

appropriately."

The Ákr. Pursuant to Section 25 (1), the authority may set another body by setting a deadline of at least five days or search for a person if

(a) there is a procedural step in the case outside the jurisdiction of the requesting authority to perform, or

(b) another person has the particulars or documents required in the proceedings.

ARC. Decision

Considering that the Client and Zrt. Did not respond to the calls of the Authority in the official proceedings therefore, in the absence of these, the Authority made the statements made by the Client in the investigation procedure, a information on websites, in the domain.hu register, in the company register, and took into account the statement of the Ltd.

In the official case, the Authority was not in a position to further clarify the facts because

Customer was not cooperative and as he did not provide access and information, he could not Authority to conduct effective evidence.

IV.1. The data management under investigation and the identity of the data controller

IV.1.1. Data management related to the [...] website

The Authority examined the registration data of the official .hu domain in connection with the websites, from which it has established that the name of the domain user of [...] is [...] and the registrar is Zrt.

Based on the above, it could not be established that the Customer is associated with the [...] website and, in this connection, the data controllers of the Customer pursuant to Article 4 (7) of the GDPR its activity cannot be established.

IV.1.2. [...] Website data management

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The domain user name [...] is [...]., So the name of the Customer before the change of company name according to the register, and the registrar is the Ltd.

At the request of the Authority, the Ltd., as registrar, stated that the domain was registered in May 2018



Used by [...] on 25 January, the domain expired on 28 January 2020 and has not been renewed.

The Ltd. attached the application form belonging to the domain.

Based on the above, the Authority determined that the Customer on July 22, 2019 of the investigation

The statement made in the proceedings that it did not have a website did not correspond to reality, as in 2018.

was registered as a domain user between May 25th and January 28th, 2020.

The Authority examined the [...] Website and found, inter alia, that the link

In case of any questions under the menu item, the Customer will collect the names, e-mail addresses and

telephone number, which also did not match, was sent to the Authority by the Client on 22 July 2019

statement.

The name and address of the data subject is considered personal data pursuant to Article 4 (1) of the GDPR. It's affected an identified or identifiable natural person.

Pursuant to Article 4 (2) of the GDPR, the collection and systematisation of personal data is also for data processing it counts as.

Based on the above, the Authority has established that there is a responsibility of the Client's data controller a

On the basis of the GDPR as a domain user, ie the data controller pursuant to Article 4 (2) of the GDPR

during the period from 25 May to 28 January 2020.

#### IV.2. Infringement of Article 5 (2) and Article 24 of the GDPR

Article 5 of the GDPR contains the basic principles of data management, which include:

also the principle of accountability. This principle stipulates that the data controller is responsible for the others

compliance with this principle and must be able to demonstrate such compliance. That is the principle

thus, by prescribing the ability to demonstrate compliance, it includes that

the data controller shall continuously administer from the planning of data management through its continuation a

Measures taken to comply with the GDPR. Accountability

principle also has a key role to play in the Authority's proceedings, as it is an obligation in itself

stipulates that the data controller must certify, at the request and request of the Authority, the

the lawfulness of its data processing and its compliance with the GDPR.

The principle of accountability is therefore not just an obligation to:

The controller shall ensure, through appropriate technical and organizational measures, that:

processing of personal data in accordance with the GDPR, but also to ensure that this is done

must be able to prove and prove it.

As explained by the Authority in point IV.1.2, it can be stated that the Client is performing the test

data processing, ie as a data controller under the GDPR.

In the context of the data processing under review, the Customer, by a single request from the Authority,

did not reply to his request, did not fulfill this obligation, did not prove that it

its data management complies with the requirements of the GDPR. All contained in Article 5 (2) of the GDPR

principle of accountability and the general data controllers set out in Article 24 of the GDPR

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based on this obligation, the Customer would have been obliged to prove the data processing performed by him

in this context, the manner in which the Authority complies with the provisions of the GDPR

consistently and consistently failed in its proceedings.

On the basis of the above, the Authority found that the Client had infringed Article 5 (2) of the GDPR.

the principle of accountability set out in paragraph 1 when he was unable to demonstrate

that its data processing complies with the requirements of the GDPR. In addition, violated the

Obligation under Article 24 of the GDPR, as it has not implemented the appropriate technical and

organizational arrangements to demonstrate that the processing of personal data is a

It is done in accordance with GDPR.

Due to the above violation, the Authority will notify the Client pursuant to Article 58 (2) (b) of the GDPR.

to condemn.

#### IV.3. Legal consequences

The Authority has examined whether it is justified to impose a data protection fine on the Client. E

Article 83 (2) of the GDPR and Infotv. 75 / A. § considered by the

all the circumstances of the case. In view of the circumstances of the case, the Authority found that the present case

In the case of an infringement detected during the procedure, the warning shall be disproportionate and non-dissuasive sanction, so it is necessary to impose a fine.

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

Infringement of Article 5 (2) of the GDPR under Article 83 (5) (a) a  
constitutes an infringement falling within a higher category of fines.

Based on the simplified annual report of the Client for 2018, the net sales revenue is HUF 387,686,000, the  
According to the simplified report for 2019, it was HUF 65,788,000.

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

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- 
- 

The Client has violated one of the fundamental provisions of the GDPR, and the Authority has infringed the infringement considered serious [Article 83 (2) (a) GDPR].

The violation has been in existence for an extended period of time since Customer took over the first on June 30, 2020 has not responded to any request from the Authority since the request [Article 83 (2) GDPR paragraph (a)].

The data management under investigation may involve a large number of stakeholders, as related to the [...] website the Customer's use of the domain has existed since 25 May 2018 [Article 83 (2) (a) GDPR point].

Infringements are intentional, as indicated by the fact that they are continuous and consistent  
the Client did not respond to the inquiries and invitations received from the Authority  
even though the notice left by the post office at the address contains the identity of the sender. Aware  
it was therefore for the Client to receive documents from the Authority, in particular with regard to  
that the official procedure was preceded by an investigation procedure. That's what he did

compliance of the data management with the GDPR was also intentionally not demonstrated

[Article 83 (2) (b) GDPR].

The extent of the Client's liability related to the infringement is serious, the conduct of the Client

the Authority is not aware that it has taken any action against it

in order to ensure the adequacy of the data processing to the Authority

[Article 83 (2) (d) GDPR].

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The Authority was notified of the infringement on the basis of a notification [Article 83 (2) (h) GDPR].

The Authority considered the following as mitigating circumstances:

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For the first time, Customer violates the rules regarding the handling of personal data

[Article 83 (2) (e) GDPR].

The Authority did not consider Article 83 of the GDPR to be relevant in determining the sanctions imposed.

the criteria set out in Article 2 (2) (f), (g), (c), (i) and (j)

cannot be interpreted.

In view of the above, the Authority concludes that the imposition of a fine

a fine of less than the Customer shall be considered a reasonable and proportionate sanction

4 percent of its net sales, is necessary in order to have sufficient deterrent effect

be in the light of established serious infringements.

## V. Other issues

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

covers the whole country.

The Ákr. § 112 and § 116 (1) and § 114 (1), respectively

there is an administrative remedy against him.

The rules of administrative litigation are laid down in Act I of 2017 on the Procedure of Administrative Litigation (a

hereinafter: Kp.). A Kp. Pursuant to Section 12 (1) by decision of the Authority

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

Pursuant to point (aa) of the Act, the Metropolitan Court has exclusive jurisdiction. A Kp. Section 27 (1)

(b), legal representation is mandatory in litigation falling within the jurisdiction of the Tribunal. A Kp. § 39

(6) of the application for the entry into force of the 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: E-Administration Act), the customer is legal in accordance with Section 9 (1) (b)

representative is required to communicate electronically.

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

reintroducing certain procedural measures in the event of an emergency

112/2021. (III. 6.) of the Government of the Republic of Hungary during the period of tightened defense

the court shall act out of court, including redress procedures. If holding a trial

would be appropriate, or it was requested by either party or a hearing has already been scheduled for the trial court

inform the parties of the fact of the out - of - court settlement and provide an opportunity for the

parties may submit their statements in writing. If the lawsuit is outside the time of the tightened defense

should a hearing be held, the plaintiff may then apply to the court for an extrajudicial adjudication

instead, postpone the hearing until after the cessation of the defensive defense if:

the court did not order the suspensory effect of the administrative act at least in part,

the bringing of an action has suspensory effect and the court has not ordered the suspension of the suspensory effect,

(c) no interim measure has been ordered.

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The Ákr. According to § 132, if the debtor does not comply with the obligation contained in the final decision of the authority

fulfilled, it is enforceable. The decision of the Authority With the communication pursuant to Section 82 (1)

it becomes final. The Ákr. The Ákr. Section 133 enforcement - if you are a law

Government decree does not provide otherwise - it is ordered by the decision-making authority. The Ákr. § 134

enforcement - if by law, government decree or municipal authority matter

local government decree does not provide otherwise - it is carried out by the state tax authority.

Budapest, April 20, 2021

Dr. Attila Péterfalvi

President

c. professor

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