

Case number: NAIH-4495-1 / 2021.

(NAIH / 2020/477.)

Subject: Application in part

decision granting it

## DECISION

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

at the request of [...] (hereinafter referred to as the "Applicant"), represented by J.-P.

on 10 January 2006, registered in [...] (registered office: [...]; hereinafter referred to as [Company1]) and

[...] ([...]; Company registration number: [...]; hereinafter: [Company2]) by the Applicant as dispatcher

data relating to the recording and use of telephone calls

the following decisions in the data protection authority proceedings concerning

I. The Authority grants the Applicant's request in part and finds that [Company1]

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)

The principle of accountability set out in Article 5 (2),

Article 6 of the General Data Protection Regulation and Article 5 (1) of the General Data Protection Regulation.

and Article 13 (1) to (2).

II. The Authority shall instruct [Company1] to comply with the accountability requirement

only be handled or forwarded to the dispatchers of [Company2] if there is an appropriate legal basis

[Company2] and provide general data protection on data processing

transparent information in accordance with Article 13 (1) to (2) of this Regulation

III. The Authority rejects the remainder of the Applicant's application.

ARC. The Authority finds of its own motion that, in the absence of proof of the [Company2] legal basis

processed the Applicant's personal data in breach of Article 5 of the General Data Protection Regulation.

the principle of accountability under Article 6 (2) and Article 6 of the General Data Protection Regulation.

and infringed Article 5 (1) (a) of the General Data Protection Regulation

and Article 13 (1) to (2).

V. The Authority will ex officio instruct [Company2] to be accountable

should only be handled by dispatchers if the appropriate legal basis is met

and the sound recording thereof, as well as the data processing

transparent in accordance with Article 13 (1) to (2) of the General Data Protection Regulation

information.

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VI. The Authority

1. ex officio [Company1]

HUF 500,000, ie five hundred thousand forints

data protection fine,

2. ex officio [Company2]

HUF 200,000, ie two hundred thousand forints

data protection fine

obliges to pay.

VII. The Authority orders HUF 10,000, ie ten thousand forints, for the Applicant

payment to the bank account of your choice due to the deadline being exceeded

by bank transfer or postal order.

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A II. and [Company1] and [Company2] to take the measures provided for in points V and V within 30 days of its notification in writing - supporting evidence to the Authority.

Data protection fines shall be imposed within 30 days of the final adoption of this Decision

Authority's centralized collection account for centralized revenue collection (1003200001040425-000000000 Centralized collection account IBAN: HU83 1003 2000 0104 0425

0000 0000). When transferring the amounts, NAIH / 2020/477. JUDGE. for should be referred to.

If [Company1] and [Company2] fail to comply with their obligation to pay the fine within the time limit, they are required to pay a late fee to the above account number. Rate of late payment a statutory interest, which is valid on the first day of the calendar half-year affected by the delay equal to the basic interest rate.

The II. and V, respectively, data protection fines and penalties for delay

in the event of non-payment of allowances, the Authority shall order enforcement of the decision.

There is no administrative remedy against this decision, but from the date of notification within 30 days of the application lodged with the Metropolitan Court

can be challenged in a lawsuit. The enhanced defense does not affect the time limit for bringing an action. THE

the application must be submitted to the Authority, electronically, together with the case file

forward it to the court. The request to hold a hearing must be indicated in the application. THE

during the period of enhanced defense, the court shall act out of court, including on appeal

procedures. For those who do not benefit from full personal exemption a

the fee for an administrative lawsuit is HUF 30,000, the lawsuit is subject to the right to record material fees. The Capital Legal proceedings are mandatory in proceedings before the General Court.

EXPLANATORY STATEMENT

I. Procedure and clarification of the facts

1. The Applicant has applied through the authorized legal representative of the

To the Authority, alleging that his former employer, [Cég2],

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on the basis of the legal relationship on September 23, 2019 between 5:00 and 6:00 am [Company1]

An employee of the Chief Dispatcher Service initiated a telephone conversation with the

Applicant through his office telephone and this telephone conversation with the consent and

recorded with an unknown voice recorder without informing the

[Company2]. [Company2] initiated an investigation with the Applicant based on the sound recording

and then initiated the termination of his employment as a result of the investigation,

as the communication it carried out did not correspond to the service and professional activities of [Company2]

expectations. The Legal Representative of the Applicant in writing on 9 October and 2 December 2019

requested information on the processing of his personal data and made a claim to [Cég1]. THE

[Company1] disputed the infringement in its replies of 14 November and 18 December 2019

and refrained from complying with the stated requests, but did not dispute that

without the consent and information of the Applicant

took place. In its reply, [Company1] further informed the Applicant that

Concluded between [Company1] and [Company2] and effective from 1 November 2016, [a]

hereinafter referred to as the Service Control Technology Agreement).

However, according to the Applicant, he was not aware of the fact and content of this agreement and

it did not provide it despite the express request of [Company1]. In addition, the

[Company1] informed the Applicant about the processing of his personal data and the circumstances

and sent the Applicant a copy of the sound recording he objected to, stating that

that it has also informed the Applicant that it is expected to be enforced by the Applicant

the deletion of the phonogram was waived for the needs of the

restricted access.

In its request, the Applicant requested the Authority to establish the existence of the infringement, conduct that constitutes an infringement, or condemn [Company1] in general breach of the rules of the Data Protection Regulation, ie due process of law and due process breach of the principle of transparent data management, the principle of purposeful data management and breach of the principle of data protection. Also because the

According to the applicant, [Company1] is the appropriate legal basis or in the absence of its consent handled your personal data and did not receive any prior information about your data processing did not receive adequate information on the processing of his personal data at his request.

In addition, the Applicant requested the Authority to assess the nature and gravity of the the extent of the damage caused by the infringement and the intentional nature of the infringement and the impose an administrative fine by considering the fact of non-compensation.

2. In its order to initiate the procedure, the Authority notified [Cég1] and invited it to make a statement and provide information in order to clarify the facts.

According to the statement of [Cég1], in the case of the Applicant - and in general - a the purpose of data processing related to voice recording between [Company1] and [Company2] November 2016 Is the implementation of a service control technology agreement in force from day 1, based on Article 6 (1) (f) of the General Data Protection Regulation, a

A legitimate interest in the performance of a contract concluded between [Company1] and [Company2]. So In his opinion, the Applicant erroneously indicated the data subject as the legal basis for the data processing consent.

According to the statement of [Company1], the Applicant, as a former employee of [Company2] and service control is also necessarily known by the router dispatcher technology agreement between the transport manager and the customer ([Company1]) and the quality and quantity parameters of the ordered service between your service provider ([Company2]) lays down and lays down all the rules according to which the transport manager shall compliance with the parameters agreed with the service provider and the parties

(the express purpose of the inspection is to violate the terms of the agreement

support for a penalty claim).

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According to the statement of [Company1], the service control technology agreement states that

that the transport manager is in breach of the agreement is not appropriate

You can also prove your performance or irregular work by recording the personality

rights. Given that the recording of sound is the service control

technology agreement includes additional contributions from the companies involved

no longer required by employees. According to the statement of [Company1], the Applicant must

was necessarily aware of the fact of the agreement, its relevant content, since -

In its view, it is difficult to imagine that

would not have been aware of this in his job and the duties and responsibilities of a traffic manager

without it he could have done it properly. According to the statement of [Cég1], the content of the service control technology

agreement and the job of the Applicant

information was the responsibility of [Company2] as an employer. According to the statement of [Company1] a

information is justified and necessary, but it was not the task and duty of [Company1], therefore

in its view, its procedure, including the making of the sound recording, was lawful.

According to the statement of [Company1], [Company1] and [Company2] together provide a public service

the dispatchers of the two companies play a prominent role in the provision of public services,

who are primarily responsible for providing the appropriate technical background for the public service. They are responsible

also to ensure that the right number of vehicles is available to the crowd,

therefore, they are the key points in the implementation of the contract. According to the statement of [Company1] a

the function and job of the dispatcher is essential for any disputes between the two companies,

or public service disputes and all related disputes, including passengers

Their conduct and

their employee performance. Thus, the legitimate interest is not limited to [Company1] and [Company2]

but in connection with the Applicant's employment in relation to provability

there is also a legitimate interest of the passengers affected by the public service that the

the dispatcher function and duties are properly loaded and performed. Statement by [Company1]

according to which those interests, both individually and collectively, establish the legitimate interest which

justifies the fundamental rights of the Applicant arising in the course of his employment

restriction of rights.

According to the statement of [Cég1], based on what happened on 23 September 2019, [Cég2] did not

complied with the requirements of the service control technology agreement between the companies, a

The applicant had no proceedings as an employee of the chief dispatcher service

it was firm, it was not fast, and no decision or action was taken on its part.

All this took place in a situation where [Cég2] significantly underperformed the number of vehicles it undertook to carry out public service tasks.

endangered. In view of the above, the framework for the service control technology agreement for the production and use of sound recordings is appropriate for its implementation.

data processing purpose and legal basis

in its view, it cannot commit an infringement. The [Company1] is the service control

Annex 1 to the Technology Agreement, in particular Articles 1.1.1, 1.1.2. and the

service control technology agreement 10.1. referred to points

include the following.

Section 1.1.1 of Annex 1 to the Service Control Technology Agreement. point a

behavioral expectations of employees of companies party to the agreement

thus states that the requirement is "defined by law and specified by the Transport Manager,

in the internal (corporate) instructions concerning the handling of traffic and accepted by the Service Provider a

compliance with work regulations. "

Section 1.1.2 of Annex 1 to the Service Control Technology Agreement. point a

requirements relating to the provision of service include the 'extraordinary event

decisive, rapid decision-making in the event of

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The Service Control Technology Agreement 10.1. In addition, according to

They undertake to intensify their commitment to cooperate in order to comply with this Agreement. "

According to a further statement from [Company1], the job of dispatcher and dispatchers

records of his conversations and statements made in the course of providing the service - so the present

also a sound recording that is the subject of a procedure - a characteristic of the job and everything

the person holding the position of dispatcher must be aware of his / her position due to his / her position

about this. Without it, this job cannot be filled, as dispatcher statements are important

recallability and use as evidence. Consequently, the

According to [Company1], there can be no case where a dispatcher a

he does not know about sound recording while working. The Applicant's service control

had to implement the provisions of the Technology Agreement and therefore

including the fact of making the sound recordings — he must have known.

Voice recording is done all through the desk phones of [Company1] dispatchers

conversation, including between the dispatchers, the dispatcher and the driver.

and between the dispatcher and other employees of the service provider, as

all incoming and outgoing calls are recorded. The [Company1] chief dispatcher service

operated by [Cég3] on 23 September 2019 from 5:00 to 6:00

[...] Recorded with the Applicant through a PBX voice recording system service

telephone conversation. In order to establish a legitimate interest in the fixation of sound,

bus passenger transport as defined in the service control technology agreement

in order to control the service and to clarify the subsequent dispute.

Regarding the transmission of the sound recording to [Company2], [Company1] stated that

that the service control technology agreement is "Service Activity

control of traffic control by traffic controllers



transmission of work reports. For transmission to the service control

between the two companies involved in the technology agreement, not an external one

and [the company2] involved in the transfer is also the company that would otherwise be the

As an applicant's employer, he also has an additional legal basis for handling personal data

had. The transmission of voice recording is therefore a service control technology

[Company1] enforced its own contractual rights

However, any further disputable use and data processing is no longer

the facts which arise in its area of interest or responsibility.

In connection with the provision of personal data of the Applicant to the Requesting Authority

on the basis of the documents submitted by [Cég1] on 9 October 2019 and 2 December 2019

by letters dated 14 November 2019 and 18 December 2019

informed him. Of these two letters, the information about the Applicant's personal data is the Applicant

The letter of 9 October 2019 and the letter of 14 November 2019 from [Cég1] shall apply. A [Company1]

in this letter he informed the Applicant about the purpose and legal basis of the data processing, the data subject

personal data, the identity of the data controller, the duration of the data processing,

enforcement options and that the Applicant is expected to

waived the deletion of the phonogram in view of the needs to be enforced

restricted access to it. In addition, [Company1] sent it to the Applicant

a copy of the sound recording complained of.

3. Having regard to the statement of [Company1] that the service control technology

Information on the content of the agreement and the position of the Applicant in [Company2] as

was the responsibility of the employer, the Authority found that the matter was the right and legitimate interest of [Cég2]

therefore directly affected by the CL of 2016 on General Administrative Procedure. Act (a

hereinafter: Ákr.) provided him with the status of a client, and a

called on him to make a statement in order to clarify the facts.

According to the statement of [Cég2], traffic management in respect of its own activities, and in the performance of passenger transport tasks in the [...] agglomeration. The daily level communication and communication between the participants in the traffic management on fixed telephones (fixed and / or mobile). None of the telephones regularized for traffic users have a sound recording recording function installed as it is in the [Company2] current traffic control practice does not require.

In the performance of tasks related to its own activities, [at Company2] a involved in the management of daily traffic in the performance of traffic management activities actors include the chief dispatcher service, the scene of the accident, the service provider, the traffic service provider and the bus or coach service provider. THE [Company2] expects employees involved in traffic management to have with information necessary for daily work, such as that occurring in the area of operation source of danger, transport infrastructure and railway traffic technology, types of buses operated, timetables, working and rest time of bus drivers the availability and capacity of available storage space, and with information on geographical location. The [Company2] has these expectations internally regulators, which are paid to employees in the usual way at the company for publication. However, no regulator has been issued that would require the production of sound recordings in the context of traffic management, such as [Company2] 's own does not even happen within its competence.

According to the statement of [Cég2], the central traffic management is performed by the head dispatcher service. THE The main tasks of the chief dispatcher service include, in particular, the supervision and management of the company's traffic management process, taking into account weather and road conditions. accompanying, informing traffic areas in case of forecast of extraordinary weather conditions, monitoring of external conditions affecting the traffic management process, in particular in view of the extraordinary events in the area of operation, the weather

forecasts, road conditions, border crossing traffic, co-services

reports. The chief dispatcher also provides troubleshooting based on the operational traffic service signal

in the event of a disturbance, arrange for the reallocation of buses and coaches,

ordering an exemption flight, using the assistance of co-transport centers,

allow deviations from the timetable (departure time, route, frequency) and

if necessary, the external space required for the marketability of buses shall be provided

performing repairs, providing parts and materials.

According to the statement of [Cég2], the process of traffic management and troubleshooting is [...]

in the field of passenger transport in agglomerations, similarly to

the daily traffic management and troubleshooting is performed by the [Company1] traffic management of the "Courier"

using a traffic management system. The bus drivers involved in the task [Company2] a

in the course of its traffic management, is primarily involved in the traffic management of [Cég1]

instructions of the staff of the organizations. [Company2] has limited tasks and responsibilities in its day-to-day traffic

management. The task

primarily to ensure the smooth running of day-to-day traffic a

preparation of vehicle and driver turns and controls on the basis of the ordered schedule, a

the necessary daily vehicle expenditure and the provision of emergency vehicle and driver replacements.

The main dispatcher of [Cég2] is responsible for [...] agglomeration passenger transport

during a traffic management activity, whether the on-site dispatcher or the [Company1]

take action with the [Company2] on-site staff member on the basis of an indication from the Chief Dispatcher

on the basis of an indication from the Chief Dispatcher of [Company1]

take measures to rectify the disturbance in consultation and cooperation with the dispatcher. Based on these a

According to the statement of [Cég2], it can be stated that the traffic management, traffic management

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does not record audio during a single stage of the traffic management process

sem.

According to the statement of [Cég2], [Cég2] has been concluded with the Hungarian State since January 1, 2005 on the basis of a public service contract in force

passenger transport tasks. Government Resolution [...] on [...] and [...] on [...]

Acting on behalf of the Hungarian State in order to comply with the provisions of the Government Resolution

From 1 November 2016, the Ministry of National Development (hereinafter: NFM) amended the public service contract with [Cég2] so that the [...] agglomeration

by providing public bus passenger transport services to [Cég2] as a service provider

entrusted him. The public service contract of [Cég2] expired on 31 December 2019. THE

Innovation and Technology is responsible for the continuity of public service

It was further ordered by the Ministry on the basis of a designation decision as an emergency measure

to carry out the activity. From 1 January 2020, therefore, they are included in the designation decision (s) the prevailing.

The NFM and [...] ('the Municipality')

a cooperation agreement has been concluded on services. This agreement

serves the purpose of [...] and its agglomeration completed by bus

necessary for the operation of a public passenger transport service

tasks (organization and management of agglomeration services, including

transport management and technological tasks). The Municipality a

has appointed [Company1], which is a technological

professional and technical rules for the tasks of [Company2] as a service provider and [Company1]

as separate transport agreements.

According to the statement of [Company2], it is also Annex 14 to the public service contract

has a quality system for public passenger transport in the [...] agglomeration

expectations and rules on penalties and the right to deduct. A [Company2]

in the control of his activities as a service provider in order to protect personal data,

and due to legal compliance with data management and data processing rules:

-

the inspection reports do not include the personal data of [Company2] employees

unless the employee agrees to do so by signing the report,

-

the recordings made by the customer during the inspection with the technical device

managed in a closed manner by an inspection body in charge,

-

inadequate quality or quality of the services provided by [Company2]

personal data during the process of checking quantitative parameters

processing is not carried out, the sanctioning is carried out only in another way

based on identification (eg registration number, track number, date, time,

direction of travel).

According to the statement of [Cég2], the agreement concluded between him and [Cég1] in December 2016 [...]

in the following:

traffic control

technological

agreement)

within the meaning of

the

in an agglomeration

-

[Company1] independently performs complete traffic supervision and troubleshooting,

-

[Company1] together with the organization designated by the NFM and [Company2]

monitoring the fulfillment of uniform service quality parameters.

According to the traffic control technology agreement, the traffic control of [Company1]

directly manages the bus drivers of [Company2]. Under the agreement, [Company2]

the task of the dispatchers is to coordinate the operational tasks, technical troubleshooting of the vehicle

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organization, provision of vehicles and personnel, and by [Company2]

contributing to the elimination of traffic disruptions.

According to the statement of [Cég2], it was also established between him and [Cég1] in December 2016

- according to the statement of [Company1], effective from 1 November 2016 - service inspection

under a technology agreement, the service of [Company1] in the agglomeration

as specified in the Annexes to the Service Control Technology Agreement

according to quality expectations and methodology. According to the statement of [Company2], quality expectations

and control methodologies, however, are not found with dispatcher communication

sanctioned regulations in relation to.

Pursuant to all these contractual provisions, [Cég2] states that [Cég2] is a site

dispatchers and the chief dispatcher were and are only involved as enforcement coordinators

in the performance of this public service task and their activities are not subject to public service

contract and the various (technological) agreements concluded under it

inspections in accordance with

According to [Company2], the Traffic Monitoring Technology Agreement and the

found no provision in the service control technology agreement that a

[Company1] - acting under the control of a service - by the on-site dispatcher of [Company2] or

would require the recording of a conversation with the chief dispatcher by means of a sound recording

[Company1] audio recording data management only between [Company2] and [Company1]

conceivable on a legal basis other than a contractual legal transaction. According to the statement of [Company2] a

voice recorder telephone is operated by [Company1], so conversations on this line

compliance with the data protection rules relating to the recording of his data as a data controller

burden. According to [Cég2], the (main) dispatcher is therefore affected by [Cég1]

not in the course of its data management activities when using telephone lines

identifiable. Consequently, according to [Company2], its data processing

in the absence of such information, no information shall be provided.

In addition, [Company2] stated that [Company1] erred in transmitting the sound recording to it,

whereas the subject of the service control technology agreement is, on the one hand, the [...]

traffic technical coordination of the agglomeration bus public passenger transport service,

on the other hand, monitoring the performance of public service tasks. Traffic engineering

coordination is the responsibility of the traffic monitoring technology agreement, while that of the public service

compliance control of the service control technology agreement

has. These two agreements, although partly related, have a different purpose and object

and their nature.

According to the statement of [Cég2], according to the traffic monitoring technology agreement, [Cég2]

as service provider dispatchers perform the coordination of operational tasks, vehicle technical

organizing troubleshooting, providing staff and vehicle to the schedule

in the event of traffic disturbances affecting subordinate staff or the vehicle

they contribute to the elimination of the disturbance.

According to the statement of [Company2], it appears from the service control technology agreement

that its performance only in accordance with the prescribed parameters of the transport service

(ie the provision of a public service directly to passengers)

communication between dispatchers and thus to control it

however, as it does not contain a provision on the work of dispatchers and its

does not cover its material scope.

The purpose of transmitting the sound recording is unknown to [Company2] because the sound recording is not

it was made by this company, it was not the data controller and it did not request the transfer of the recording.

According to [Cég2], the purpose of transmitting the phonogram is to [Company1]

may have been informed that an employee of [Company2] spoke in an inappropriate tone  
[Company1] employee.

According to the statement of [Cég2], the transfer was not in a civil law sense  
contractual basis, as it does not constitute a control of services between the parties  
irregularity or defective performance under a technology agreement, while  
from a data protection point of view, in accordance with Article 6 (1) of the General Data Protection Regulation  
[Company2] cannot determine its legal basis as it was not the controller of the personal data,  
or its transmitter.

[Company2], according to its statement, used the sound recording in such a way that it  
heard him and, in the light of what was said, initiated an employer 's proceedings  
Against the applicant as an employee. [Company2] is the sound recording during use  
did not allow anyone to be heard or passed it on to a third party.

According to the statement of [Company2] on September 27, 2019 in connection with the case  
heard the Applicant and informed him that the audio recording was from [Company1]  
became the property of [Cég2] and provided the Applicant with the sound recording  
hearing. [Company2] subsequently, on 30 September 2019, destroyed the  
sound recording.

In addition, the Authority reviewed the service control technology agreement  
and the traffic monitoring technology agreement. The traffic control agreement 2.2.

"The Parties agree that, for the purposes of this Agreement, the  
Technology for "monitoring the fulfillment of uniform service quality parameters"  
Agreement No. 1 the quality and performance indicators set out in Annex I.  
apply. " Based on this, the traffic monitoring technology agreement  
to verify the fulfillment of the tasks set out in Article 1 of this Agreement  
of Annex 1.2.2. to check the performance of the dispatcher tasks detailed in  
the rules of the service control technology agreement shall apply. THE



service control technology agreement 4.1. and on the basis of

transport manager, [Company1] is entitled to the service provided by [Company2],

check at any time during its operation. [Company2] is also obliged to cooperate with [Company1]

with all its inspection staff and representatives, not only during that inspection,

but in the course of its service activities. Service control technology

1.2.4 of Annex 1 to the Agreement. in addition, it defines what qualifies

proven irregular work, such as the 'Transport Organizer

Faulty performance (recorded by sound recording) recorded in traffic control reports "or a

[Company1] is documented by a sound recording made by its competent staff

irregularity.

Service Control Technology Agreement No. 1 referred to by [Company1]

of Annex 1.1.1. with the employees of the companies party to the agreement, including [Company2]

- including dispatchers - that

requirement: "as defined by law and specified by the Transport Manager,

in the internal (corporate) instructions concerning the handling of traffic and accepted by the Service Provider a

compliance with work regulations. " Based on this for dispatchers

may be verified in Annex 1 to the Service Verification Technology Agreement

1.1.2. the requirement of point, in the event of an emergency, the definite, rapid

decision-making or action.

Section 1.2.2 of Annex 1 to the Traffic Monitoring Technology Agreement. point

detailed dispatcher tasks include the [Company2] dispatcher

shall be obliged to receive signals from the control dispatcher of [Company1] to the subordinate

in the event of traffic disruption to staff or vehicles and shall take the necessary action

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measures. For example: replacement of a missing driver in the event of a shortage of staff, accident

in the event of a change of vehicle and any tasks related to the representation of the owner

supply. The [Company2] dispatcher is also obliged to cooperate with the [Company1] controller dispatcher in the performance of the traffic control activity or the receipt thereof shall forward to it within three minutes any information

It is important for the [Company1] traffic controller during traffic control activities may.

## II. Applicable legal provisions

Pursuant to Article 2 (1) of the General Data Protection Regulation, the general data protection Regulation should apply to personal data in a partially or fully automated manner non-automated processing of personal data which are part of a registration system or which they want to be part of a registration system.

Pursuant to Article 2 (1) of the General Data Protection Regulation, this is the case here the general data protection regulation applies to data processing.

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

Pursuant to Section 2 (2) of the Information Act (hereinafter: the Information Act), the General Data Protection Act This Regulation shall apply with the additions specified in the provisions indicated therein.

Infotv. Pursuant to Section 38 (2), the Authority is responsible for the protection of personal data, and the right of access to data in the public interest and in the public interest monitoring and facilitating the enforcement of personal data in the European Union facilitating the free movement of persons within

Infotv. Pursuant to Section 38 (2a) of the General Data Protection Decree on Supervision authority under the jurisdiction of Hungary in the General Data Protection Regulation and in this Act exercised by the Authority.

Infotv. Pursuant to Section 38 (3) (b), pursuant to Section 38 (2) and (2a) within the scope of his duties as defined in this Act, in particular at the request of the person concerned, and

ex officio data protection authority proceedings.

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

To that end, the Authority shall initiate a data protection authority procedure upon request.

Unless otherwise provided in the General Data Protection Regulation, the application was initiated

for data protection authority proceedings under Ákr. shall apply in the Infotv

with certain deviations.

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

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

may be submitted in the case specified in

According to Article 77 (1) of the General Data Protection Regulation: "Other administrative

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

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

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

processing of personal data relating to personal data infringes this Regulation. "

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According to Article 4 (1) of the General Data Protection Regulation: "personal data" means identified or

any information relating to an identifiable natural person ("data subject"); identifiable

a natural person who, directly or indirectly, in particular any

ID, such as name, number, location data, online ID, or natural

physical, physiological, genetic, mental, economic, cultural or social identity of a person

identifiable by one or more relevant factors. "

According to Article 4 (2) of the General Data Protection Regulation: "processing" means personal data

performed on data or files in an automated or non-automated manner

an operation or set of operations, such as collecting, recording, organizing, segmenting, storing,

modification or alteration, querying, viewing, use, transmission of communication,

by distribution or otherwise making available, coordination or

linking, restriction, deletion or destruction. "

According to Article 4 (7) of the General Data Protection Regulation: "controller" means the natural person or a legal person, public authority, agency or any other body which:

the purposes and means of the processing of personal data, alone or in association with others define; if the purposes and means of the processing are determined by Union or Member State law the controller or the specific aspects of the designation of the controller may be determined by Union or national law. "

According to Article 5 of the General Data Protection Regulation: "Personal data shall:

(a) be processed lawfully and fairly and in a manner which is transparent to the data subject

("legality, fairness and transparency");

(b) collected for specified, explicit and legitimate purposes and not processed

in a way incompatible with those objectives; in accordance with Article 89 (1)

does not constitute incompatibility with the original purpose for the purpose of archiving in the public interest,

further processing for scientific and historical research or statistical purposes

("Purpose limitation");

(c) be appropriate and relevant to the purposes for which the data are processed; and

they should be limited to what is necessary ("data saving");

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

should be done in order to be inaccurate for personal purposes

data shall be deleted or rectified without delay ("accuracy");

(e) be stored in a form which permits identification of the persons concerned only

allows the time necessary to achieve the purposes for which the personal data are processed; the personal

data may be stored for a longer period only if:

archiving in the public interest for the processing of personal data in accordance with Article 89 (1)

scientific and historical research or statistical purposes,

appropriate to protect the rights and freedoms of data subjects

subject to the implementation of technical and organizational measures ('limited storability ');

(f) be handled in such a way that appropriate technical or organizational measures are taken ensure the adequate security of personal data unauthorized or unlawful handling, accidental loss, destruction or including protection against damage ("integrity and confidentiality").

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

Under Article 6 (1) of the General Data Protection Regulation: 'Personal data is lawful only if and to the extent that it is at least one of the following fulfilled:

(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

to treat

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(b) processing is necessary for the performance of a contract to which the data subject is party at the request of the party concerned or before the conclusion of the contract necessary to do so;

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

(d) processing is in the vital interests of the data subject or of another natural person necessary for its protection;

(e) the processing is in the public interest or a public authority vested in the controller necessary for the performance of the task

(f) processing for the legitimate interests of the controller or of a third party necessary, unless those interests take precedence over such interests interests or fundamental rights and freedoms that protect personal data

necessary, in particular if the child concerned. "

According to Article 12 (3) of the General Data Protection Regulation: "The controller is unjustified

without delay, but in any case within one month of receipt of the request

inform the data subject in accordance with Articles 15 to 22. on the action taken in response to a request under Article.

Where appropriate, taking into account the complexity of the application and the number of applications, this shall be

this period may be extended by a further two months. The extension of the time limit is

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

inform the data subject within one month. If the person concerned has submitted the application by electronic means

the information shall, as far as possible, be provided by electronic means, unless

the person concerned requests otherwise. "

Under Article 13 (1) to (2) of the General Data Protection Regulation: '(1) If the data subject

personal data are collected from the data subject, the controller shall process the personal data

provide the following information to the data subject at the time of acquisition

each of them:

(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

legitimate interests of third parties;

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

(f) where applicable, the fact that the controller is in a third country or internationally

personal data to the organization and the Commission

the existence or non-existence of a decision on compliance, or in Article 46, Article 47 or

in the case of the transmission referred to in the second subparagraph of Article 49 (1), a

to indicate appropriate and suitable guarantees and to obtain a copy thereof

reference to the methods used or their availability.

2. In addition to the information referred to in paragraph 1, the controller shall process personal data at the time of acquisition, in order to ensure fair and transparent provide the data subject with the following additional information:

- (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 from the controller the personal data concerning him or her access to, rectification, erasure or restriction of the processing of data, and may object to the processing of such personal data as well as to the data subject the right to data portability;
- (c) information based on Article 6 (1) (a) or Article 9 (2) (a); the right to withdraw consent at any time in the event of data processing, which is without prejudice to the processing carried out on the basis of the consent prior to the withdrawal legitimacy;
- (d) the right to lodge a complaint with the supervisory authority;
- (e) that the provision of personal data is required by law or by a contractual obligation is a basis or a precondition for concluding a contract and whether the person concerned is obliged to a

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personal data and the possible consequences for them failure to provide data;

- (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 data processing and the the expected consequences for the data subject. "

Under Article 15 (1) of the General Data Protection Regulation: "The data subject shall have the right to to receive feedback from the data controller regarding the processing of your personal data whether such processing is in progress and, if such data processing is in progress, you have the right to a

access to personal data and the following information:

- (a) the purposes of the processing;
- (b) the categories of personal data concerned;
- (c) the recipients or categories of recipients with whom the personal data are held have been or will be communicated, including in particular to third country consignees, and international organizations;
- (d) where applicable, the intended period for which the personal data will be stored or, failing that possible criteria for determining this period;
- (e) the data subject's right to request personal data concerning him or her from the controller rectification, erasure or limitation of the handling of such personal data against data processing;
- (f) the right to lodge a complaint with a supervisory authority;
- (g) if the data were not collected from the data subject, all available sources information;
- (h) 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 comprehensible information on the significance of such data processing and the the expected consequences for the data subject. "

According to Article 23 (1) of the General Data Protection Regulation: "The data controller or Union or Member State law applicable to the processor may limit the scope of Articles 12 to 22. Articles 34 and 34 and Articles 12 to 22. in Article in accordance with certain rights and obligations the scope of the rights and obligations set out in Article 5, provided that the restriction respects the essential content of fundamental rights and freedoms and the protection of necessary and proportionate action in a democratic society:

- (a) national security;



b) national defense;

(c) public security;

d) the prevention, investigation, detection or prosecution of criminal offenses,  
and the enforcement of criminal sanctions, including for threats to public security  
protection against and prevention of these dangers;

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

important economic or financial interests of the Union or of a Member State, including:

monetary, budgetary and tax issues, public health and social affairs

security;

(f) protection of judicial independence and judicial proceedings;

g) in the case of regulated professions, the prevention and investigation of ethical violations,  
reconnaissance and related procedures;

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

control, inspection or regulatory activity related to the provision of

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

(j) enforcement of civil claims. "

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Under Article 58 (2) of the General Data Protection Regulation: "The supervisory authority  
acting in its corrective capacity:

(a) warn the controller or processor that certain data processing operations are planned  
its activities are likely to infringe the provisions of this Regulation;

(b) reprimands the controller or the processor if he or she is acting in a data-processing capacity  
has infringed the provisions of this Regulation;

(c) instruct the controller or processor to comply with this Regulation  
the exercise of his rights under this Regulation;

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

bring this Regulation into line with the provisions of this Regulation

with its provisions;

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

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

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

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

order notification to the addressees in accordance with

with whom or with whom the personal data have been communicated;

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

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

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

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

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

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

suspension. "

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

2. Administrative fines shall be imposed in accordance with Article 58 (2), depending on the circumstances of the case.

shall be imposed in addition to or instead of the measures referred to in points (a) to (h) and (j) of

In deciding whether it is necessary to impose an administrative fine, or a

the amount of the administrative fine in each case

the following must be taken into account:

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

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

the extent of the damage they have suffered;

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

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

any measures taken to

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

Technical and organizational measures taken pursuant to Articles 25 and 32;

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

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

the degree of cooperation to alleviate

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

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

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

in detail;

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

have ordered one of the measures referred to in Article 58 (2),

compliance with the measures in question;

(j) whether the controller or processor has complied with Article 40

approved codes of conduct or an approved certification in accordance with Article 42

mechanisms; and

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

for example, the financial gain obtained as a direct or indirect consequence of the infringement

or avoided loss.

[...]

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

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

an amount not exceeding 4% of its total annual worldwide turnover for the financial year,

with the higher of the two:

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

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

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

Articles 44 to 49. in accordance with Article

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

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

temporary or permanent restriction of the flow of data

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

failure to provide insurance. "

Infotv. 75 / A. §: "The Authority shall, in accordance with Article 83 (2) to (6) of the General Data Protection Regulation,

exercise the powers set out in paragraph 1 in accordance with the principle of proportionality,

in particular by providing for the law or regulation on the processing of personal data

Requirements laid down in a binding act of the European Union

Article 58 of the General Data Protection Regulation

in particular by alerting the controller or processor. "

Infotv. Pursuant to Section 5 (3): "In Section (1) (a), Section (2) (b)

and Article 6 (1) (c) and (e) of the General Data Protection Regulation

in the case of specified data management (hereinafter: mandatory data management)

the types of data, the purpose and conditions of the data processing, the availability of the data, the

the duration or necessity of the processing

its review is determined by the law or local government decree ordering data management

me. "

Act I of 2012 on the Labor Code (hereinafter: Mt.) 11 / A. § (1)

"Within the scope of the employee's conduct in connection with the employment relationship

verifiable. In this context, the employer may also use technical means, a

inform the employee in writing in advance. "

### III. Decision

A natural person according to the definitions in the General Data Protection Regulation

voice of personal data, recording of voice, and performed on personal data

and any operation is considered data management.

#### III. 1. Defining data controller roles

During the examination of data management, he first loaded [Company1] and [Company2] in data management  
its role needs to be examined.

According to Article 4 (7) of the General Data Protection Regulation, the controller is paramount

it is characterized by the fact that it has substantive decision-making powers. The following can be considered as  
main substantive decisions concerning data management:

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-

defining the purpose of data management,

-

determining the duration of data processing,

-

selection of tools used in data management,

-

defining the persons entitled to access personal data,

-

the performance of data management operations (in particular the recording, storage,

use, transmission, deletion),

-

taking data security measures,

-

compliance with the obligation to inform data subjects,

-

selection of the data processor.

The data controller is responsible for data management

obligations. Thus, among other things, the data controller

legislation

-

ensure that the processing of personal data is fit for purpose and

all further principles of data processing [Article 5 of the General Data Protection Regulation],

-

it must also ensure that the appropriate legal basis for data processing

take place [Article 6 of the General Data Protection Regulation],

-

ensure that data security measures are in place [general

Article 32 of the Data Protection Regulation],

-

you must conclude a data processing contract with the data controller (provided that

if you use a data processor for data processing) [General Data Protection Regulation

Article 28],

-

must comply with the exercise of the rights of data subjects [Article 1223 of the General Data Protection Regulation],

-

you must be informed of the relevant circumstances of the data processing prior to the processing

data subjects [Articles 13-14 of the General Data Protection Regulation].

On the basis of the statements, it can be concluded that [Company1] as a transport manager and [Company2]

as a service provider together they provide a public service. They are part of [Company1]

traffic management tasks performed on the basis of which [Company1] and its dispatchers are responsible for providing the appropriate technical background for the public service and for ensuring that: a vehicle that is suitable for both the number and quality of the service. These tasks supply of service control technology agreement between the two companies governs the provisions of Annex 1, paragraph 1.2.4. proven in accordance with point checking the so-called quality parameters is considered irregular work in the course of which [Company1] "has been prepared accordingly by its authorized person (s) an irregularity documented by sound recording '.

Thus, according to the service control technology agreement, [Company1] - up to

You can also check the tasks of [Company2] or its employees

Thus, in the opinion of the Authority, the data controller quality of [Company1] is the service data processing related to the control of [Company1] to [Company2]

checks the quality of the service, which is also the employee of [Company2]

also means the control of the work of the company, but the latter control of the [Company2] matter falling within its competence. Checking with a voice recording made by the traffic control can also be done.

Section 2.5.3 of Annex 2 to the Service Control Technology Agreement. point

according to which [Cég1] the documents and protocols generated during the inspections forward it to the designated contact of [Company2] as the service provider.

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According to the statement of [Company2], the purpose of transmitting the phonogram is unknown to him because the sound recording was not made by him, he was not the data controller and he did not request that the recording be transmitted

sem. According to [Cég2], the purpose of transmitting the phonogram is the [Cég1]

the Applicant, an employee of [Company2], may not have been informed

spoke in tone to an employee of [Company1]. As a result, [Company2] so

he used the sound recording in such a way that he listened to it and it was uttered on it initiated an employer's proceedings with the Applicant as an employee against. That is, [Company2] in terms of the sound recording made by [Company1] used it for its own purposes, initiated an employer procedure against the Applicant, a for its own purposes, contrary to its declaration, it is considered an independent data controller.

The Authority therefore does not agree with the approach of service control technology agreement adequacy of services provided only to passengers regulates the rules and procedures of its control. In the Authority 's view, service control technology agreement with the traffic control technology shall be construed in conjunction with the Agreement and from the combined interpretation of the two Agreements control of dispatcher activity can also be established. Traffic monitoring technology to monitor the fulfillment of the tasks set out in this Agreement 1.2.2 of Annex 1 to the Agreement. Dispatcher tasks detailed in the service control technology agreement shall apply.

On the basis of the above, it can be concluded that [Company1] is [Company2] as a public service operator and if it detects any irregularity in - by sending the sound recording, if any - and the employer [Cég2] to this may act appropriately against its own employee. Thus, [Company2] has a prosecuting employees, following appropriate procedures, where appropriate also using sound recordings.

Based on all this, it can be concluded that it is partly similar to joint data management a construction was created in which the recordings were made by both companies for their own independent and separate purposes use it. [Company1] uses to check the service of [Company2] [Company2] took shots of its employees, while [Company2] provided job discipline



to investigate the liability of the employee concerned

them in the context of employer control. The control by voice recording is performed by [Company1]

selected, the recordings will be used in conjunction with [Company2] for different purposes.

The common point in data management is that in both cases [Company2] employees

personal data is processed and their activities are documented - the employee

technical means, however, it does not mean that it is actually common

it would be a matter of data management, as both companies handle the personal data of the data subjects separately

however, these objectives are interlinked or follow-up. THE

The Authority's position is therefore that both [Company1] and [Company2] are general

shall be considered as an independent controller within the meaning of Article 4 (7) of the Data Protection Regulation.

### III. 2. Purpose and legal basis of data processing

1. Whatever the processing, the controller shall, inter alia, comply with it

principles of data management and have an appropriate legal basis.

According to Article 5 (1) (a) and (b) of the General Data Protection Regulation, personal data

processing of data lawfully and fairly and in a manner transparent to the data subject

and the collection of personal data is limited, clear and

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they may be carried out for a legitimate purpose and shall not be incompatible with those purposes

way.

Data retention under Article 5 (1) (c) of the General Data Protection Regulation

principle that personal data must be processed for the purposes of data processing

they should be appropriate and relevant and limited to what is necessary.

2. In the Authority's view, both [Company1's] monitoring of [Company2's] compliance with its public service obligations and

[Company2's]

checking that your employees comply with the rules for working,

considered as a legitimate data processing purpose.

3. An additional condition for lawful data processing is that [Company1] and [Company2] are general on the basis of a legal basis under Article 6 (1) of the Data Protection Regulation personal data of data subjects in connection with the control of the service, if any the necessity and proportionality of the data processing are justified.

4. According to the statement of [Cég1], the job of the dispatcher and the conversations of the dispatchers, recording the statements made in the course of the provision of the service - thus the subject of the present proceedings sound recording is also a characteristic of the job, and without it the job is not can also be filled in, as the recallability of dispatcher declarations is important, and its use as evidence. According to the statement of [Company1], the dispatchers are responsible for providing the appropriate technical background for the public service and are responsible for it also that a suitable vehicle in terms of number and quality serves the traveling mass. A [Company1] According to the statement, the function and job of the dispatcher is essential for the any disputes or disputes relating to the public service, and all such matters based on passenger complaints their conduct and employee performance.

In the Authority's view, the legal basis for data processing in the case of [Company1] is general Article 6 (1) (e) of the Data Protection Regulation, which states that personal data exercise of public authority or public authority over the controller necessary for the performance of the task.

Of this

reason,

that

[...]

Municipality

in the public interest

tasks

to supply

has appointed [Company1] as the transport manager, which will carry out [...] transport as a public task

One of the tasks related to the organization of [Company2] is to control [Company2] as

the quality of the service of the company entrusted with the provision of the service. That is, the [Company1] a

continue to control the service and related services within the scope of its public interest tasks

data management, ie data management is a task in the public interest and the resulting rights

necessary for the performance of its task.

Data management as a legal basis for data management necessary for the performance of a public interest task

it can be said that according to the domestic legal environment and the practice of the Constitutional Court, the person

concerned

fundamental rights, including the right to self - determination of information, are only necessary and

proportionate, the exercise of a fundamental right or a constitutional value

in the public interest. It is therefore a condition for the application of this plea that

that the controller is necessary for the performance of its task in the public interest

data processing activities for a purpose based on the public interest by law or an EU norm

establish it. However, in many cases this legal provision is only the controller

defines its public task, scope and obligation related to it

no detailed rules for data management operations. If the legislature for these data processing

detailed rules for Infotv. Notwithstanding the provisions of Section 5 (3)

leaving it unchecked, the data controller shall comply with the general data protection rules - in particular the

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principles and the necessity of the legal basis

and justify its legality in accordance with the principle of accountability.

Given that there is currently no legislation on data processing in the present case,

according to the general data protection rules, both [Company1] and [Company2] are obliged to handle data

to carry out its activities.

5. In the Authority's view, [Company2] is related to employee control

the legal basis for data processing is Article 6 (1) (f) of the General Data Protection Regulation

may be the legal basis for a legitimate interest as not directly necessary for the performance of a task in the public interest data handling.

The legal basis for the balancing of interests is in force before the General Data Protection Regulation

data protection directive regarding the processing of personal data of individuals

Directive 95/46 / EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data

The Working Party on Data Protection<sup>1</sup> set up by Council Directive in its Opinion No 2

- which was also interpreted during the period of application of the General Data Protection Regulation

can be served - he dealt in detail. It is important that the controller has this legal basis

reference must be made to a balance of interests. Carrying out a balance of interests is one

means a multi-step process in which the legitimate interest of the controller must be identified,

and the data subject 's interest, the fundamental right concerned, which is the opposite of the weighting;

weighting should be used to determine whether personal data can be processed.

If, as a result of the balance of interests, it can be established that the data controller

legitimate interest precedes the data subject's right to the protection of personal data, so

manageable personal data.

From the principle of accountability under Article 5 (2) of the General Data Protection Regulation

consequently, the data controller must certify that the data processing it uses

compatible with the principle of purposeful data management.

6. [Company1] has a legitimate interest within the meaning of Article 6 (1) (f) of the General Data Protection Regulation

The legal basis for the provision of traffic management services by [Cég2] and

data management related to the control of its dispatchers, including data transmission

as a legal basis. The [Company1] has sent to the Authority the necessary legal basis

a document supporting the balance of interests. The Authority, in addition to finding that:

the legal basis of a legitimate interest on the part of [Company1] is not applicable to the processing of data under the present case -

after reviewing the balance of interests document, found the following.

[Company1] is a balancing test 2.1. explains in paragraph 1 that the contract or the contract

in the case of any claims arising in connection with the performance of a public task, the

without data processing, only statements would be opposed to each other, so where appropriate, a

[Company1] would not be able to justify the breach of contract before a court. However, [Company1]

did not adequately examine in the balancing test whether there was another method

which could trigger telephone communication and is therefore sufficiently effective and retrospective

could be justified.

The identification of the interests and rights of the parties concerned

Furthermore, point 3 did not fully assess the interests of data subjects in data management

The Data Protection Working Party shall, prior to the date of application of the General Data Protection Regulation,

and an independent European advisory body on privacy issues, replaced by the European Data Protection Supervisor

Privacy Board has stepped in.

1

The opinion is available at the following link:

[http://ec.europa.eu/justice/data-protection/article-29/documentation/opinionrecommendation/files/2014/wp217\\_en.pdf](http://ec.europa.eu/justice/data-protection/article-29/documentation/opinionrecommendation/files/2014/wp217_en.pdf)

2

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with regard to. In the Authority's view, in the case of the impugned data processing, where different

The data of the employees of the service provider are also handled by [Cég1], a particularly important guarantee

prior, adequate and transparent information on data management is required. The

According to point 5 of the balancing of interests, predictability and proportionality are enhanced by the fact that [Company1]

and the contractor also provides complete, clear and comprehensible information to the data subject

data management and related information. Contradicts that

however, the fact that neither [Company2] nor the Applicant was aware of the data processing.

Principle of accountability under Article 5 (2) of the General Data Protection Regulation

the data controller must implement the

data management operations in order to be able to comply with data protection rules

to prove. The principle of accountability, so not just in general, at the process level

interpretable, all specific data management activities, a specific data subject

also applies to the processing of your personal data.

It follows from the principle of accountability that the data controller is responsible for what he or she does

for the lawfulness of data processing. To the controller, regardless of the legal basis

base your data management, you must be able to indicate exactly why it is necessary and proportionate

data management must also be able to prove and prove this, as well as data management

should be documented in a transparent manner.

In the present case, the purpose of the data processing and the interest of the employer behind it are legitimate, however

[Company1] is another person who triggers the processing of personal data in connection with the processing of the

Applicant's personal data

did not examine the existence of a method or a comparison of the interests of the data subject and the data controller

has not carried out and does not regulate its data management in a transparent manner, so [Company1]

balancing test does not meet the requirements. Data management concerning the Applicant

due to an improper balance of interests, the Authority finds that [Company1]

breach of Article 5 (2) of the General Data Protection Regulation

principle of accountability or the lack of an appropriate legal basis

infringed Article 6 of the General Data Protection Regulation.

The Authority also draws attention to the balancing exercise of [Company1]

test is about data management that affects the employees of [Company2], but about this test

they or [Company2] itself did not receive any information and [Company2] 's employees

[Company2] may decide on data processing concerning Thus, [Company1] is available to the Authority

on the basis of this information, decided on a data management that neither [Company2] nor its employees did not know.

7. In view of the fact that [Company2] also participated in the data processing objected to by the Applicant, Authority examined the legal basis of its data processing ex officio. According to the statement of [Company2] a The telephone (s) suitable for voice recording are operated by [Company1] and are therefore operated on this line compliance with the data protection rules relating to the recording of conversations shall also apply only to Charges [Company1] as data controller. According to [Company2], not in this data management is not considered a data controller. The Authority found otherwise in the present case decision III. In point 1 that [Company2] by controlling the work of the Applicant used the sound recordings received from [Company1] in this context, as appropriate also in the case of employees, on the basis of which he has also taken action by his employer, thus it is considered an independent data controller for this data processing purpose. Consequently, on this you must comply with data protection requirements with regard to data processing. Given that that [Company2] did not consider itself to be a data controller, nor a legal basis for data processing the Authority finds that [Company2] has treated the The personal data of the applicant, in breach of Article 5 of the General Data Protection Regulation. the principle of accountability under Article 6 (2) and Article 6 of the General Data Protection Regulation. Article.

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[Company2], in general, as explained above, Article 6 of the General Data Protection Regulation. on the basis of Article 1 (1) (f) in the context of the inspection in the present case.

### III. 3. Information on data management

Based on the above, it can be concluded that two interconnected data processing is performed by the [Company1] and [Company2] [Company1] to check the quality of [Company2] 's service use recordings of telephone calls made by [Company2] employees, while

the [Company2], if he finds an offense of professional discipline, is an employee of the person concerned use them for the purpose of examining the responsibility of the employer, in the context of employer control, such as as in the present case concerning the Applicant.

However, although they are interconnected data processing, their purpose is fundamentally different, therefore, adequate information on both data processing should be provided to data subjects, [Company2] for its employees.

Both the General Data Protection Ordinance and the Mt. require that data subjects, a employees, in this case the Applicant, must be informed in advance of the data processing circumstances. The general information set out in the Mt.

obligation is fulfilled by the content of the general data protection regulation, which defines it the circumstances in which the employer must inform the employees. THE neither the general data protection regulation nor the Mt.

however, the Authority recommends a written format for the reason that - accountability also follows from the principle that the controller must provide prior information has happened.

According to the statement of [Company1], the job of the dispatcher and the conversations of the dispatchers, recording the statements made in the course of the provision of the service arising from the job characteristic and from the job of any person holding a dispatcher position due to the knowledge of the service control technology agreement must be about it. Without it, this job cannot be filled, as the dispatcher is important the recallability of statements or their use as evidence. From this consequently, in the view of [Company1], there can be no case where a dispatcher in the course of his work he does not know about sound recording, so as the Applicant has the control regulatory service control technology agreement including the fact that sound recordings have been made, he had to know.



According to the statement of [Company2], the telephone (s) suitable for voice recording are operated by [Company1], therefore, the data protection rules for the recording of conversations on this line compliance with it is also the sole responsibility of him as data controller. According to [Company2], in this does not take part in data processing, so in the absence of data processing it does so no information may be provided on its part.

The Authority's position on information management is that [Company2] dispatchers by familiarizing themselves with the service control technology agreement they were given detailed information on the control of the service in general by [Company1] their course, rules, and they may have known that by voice recording they can check their work or the service provided by [Company2]. However the the service control technology agreement only contains a general statement that that [Company1] may make a voice recording in connection with the verification of the service, but not separately includes the control of traffic management activities within [Company2] by checking the recorded telephone calls of its dispatchers, hence the agreement according to [Company1] continuously records telephone calls in all cases.

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Furthermore, the service control technology agreement does not include the general data processing pursuant to Article 13 (1) to (2) of the Data Protection Regulation information or did not prove that he would have informed the Applicant (and other stakeholders).

Consequently, the Authority finds that [Company1] did not provide adequate information information on data management for the Applicant - and the dispatchers of [Company2].

Furthermore, given that Annex III to this Decision According to point 1, [Company2] is also a data controller should have also informed the Applicant - and its further dispatchers - of the data management by him.

Fairness under Article 5 (1) (a) of the General Data Protection Regulation and

principle of transparency, in accordance with the provisions of the General Data Protection Regulation (39)

requires the processing of personal data

information is easily accessible and comprehensible and that it is clear and

they are worded in simple language. This principle applies in particular to those concerned with

the identity of the controller and the purpose of the processing

for further information in order to ensure the fair and personal disclosure of the data subject's personal data

transparent treatment and the information that data subjects have a right

receive confirmation and information about the data processed about them.

Given that there are two separate data controllers and two separate data controllers

we are talking about, both [Company1] and [Company2] must provide transparent information

data management for the Applicant. However, based on the statements, the Authority

notes that neither [Company1] nor [Company2] provided transparent information to the Applicant

in breach of Article 5 (1) of the General Data Protection Regulation

(a) and Article 13 (1) to (2).

In general, however, it is not excluded that [Company1] and [Company2] are common

provide the information in a document that is clear and transparent

the two purposes of the data processing and all the data processing purposes

Article 13 (1) to (2) of the General Data Protection Regulation

appropriately. In connection with the provision of information, it may be justified to have a contract between the two companies

provide for the fulfillment of this obligation.

In addition, the Authority considers that, given the nature of the data processing, the control

the data subject shall be informed of the

or data has been recorded or must be able to exercise it

General Data Protection Regulation III. the rights of the data subject under Chapter II, where applicable

protest against the data processing.

III. 4. Informing the Applicant about the processing of his / her personal data

The Applicant's legal representative will provide written information on 9 October and 2 December 2019 on the processing of the personal data requested by [Company1].

In connection with the provision of personal data of the Applicant to the Requesting Authority on the basis of the documents submitted by [Cég1] on 9 October 2019 and 2 December 2019 by letters dated 14 November 2019 and 18 December 2019

informed him. Of these two letters, the Applicant will provide information about the Applicant's personal data

The letter of 9 October 2019 and the letter of 14 November 2019 from [Cég1] shall apply. A [Company1]

in this letter he informed the Applicant about the purpose and legal basis of the data processing, the data subject personal data, the identity of the data controller, the duration of the data processing,

enforcement options and that the Applicant is expected to

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waived the deletion of the phonogram in view of the needs to be enforced

restricted access to it. In addition, [Company1] sent it to the Applicant

a copy of the sound recording complained of.

The General Data Protection Regulation regulates access in the context of data subjects' rights

the right to On this basis, according to Article 15 (1) of the General Data Protection Regulation,

the data subject is entitled to receive feedback from the controller that:

whether the processing of your personal data is in progress and, if such processing is in progress,

has the right to access your personal data and data management information

access.

Regarding how to provide information about data management, your data controllers

obligations are detailed in Article 12 of the General Data Protection Regulation.

Article 23 (1) of the General Data Protection Regulation also sets out that

special cases in the existence of which the rights of the data subject may be restricted, such as right of access.

On the basis of the letter from [Cég1] dated 14 November 2019, it can be concluded that [Cég1]

informed the Applicant of his personal data in accordance with Article 15 of the General Data Protection Regulation and sent him the contested sound recording a copy. [Company1] therefore provided Article 15 of the Applicant's General Data Protection Regulation the Authority will not find an infringement in this respect.

### III. 5. Sanctioning

1. The Authority, granting the Applicant's application in part, hereby approves Annex III to this Decision. In point 2 found that, although [Company1] relied on the general legal basis for its data processing Article 6 (1) (f) of the Data Protection Regulation, the Authority considers that this is not the case applicable legal basis in the case of the contested data processing or data transfer, on the other hand a the balance of interests in the legal basis of the legitimate interest did not justify the Applicant - and [Company2] the need for data management concerning additional dispatchers. Consequently, the Authority found that [Company1] had infringed Article 5 (2) of the General Data Protection Regulation the principle of accountability set out in that it relied on an inappropriate legal basis infringed Article 6 of the General Data Protection Regulation. Article.

The Authority, granting the Applicant's request in part and ex officio, hereby approves Annex III to this Decision. 3. It also stated that neither [Company1] nor [Company2] had provided adequate, transparent information to the Applicant on data management, both companies infringed Article 5 (1) (a) of the General Data Protection Regulation Article 13 (1) to (2) paragraph.

The Authority also instructed [Company1] and [Company2] ex officio to accountability, on an appropriate legal basis, respectively [Company1] transmits the sound of the dispatchers of [Company2] as well as about the data management in accordance with Article 13 (1) to (2) of the General Data Protection Regulation, transparent information.

The Authority shall act ex officio in accordance with Article 58 (2) (b) of the General Data Protection Regulation

III. In paragraph 2, it is also stated that, although [Company2] does not handled the Applicant's personal data, the recording of his / her voice, thus the legal basis for data processing nor did he define himself, however, he used the labor consequences in order to apply it. As a result, [Company2] also became a data controller, managed by Petitioner 's voice, however, in the absence of proof of a plea in law, is also infringed

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the principle of accountability under Article 5 (2) of the General Data Protection Regulation and Article 6 of the General Data Protection Regulation.

The Authority will reject the part of the Applicant's application that the Authority will establish that the [Company1]

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breached Article 5 (1) (b) of the General Data Protection Regulation  
the principle of purposeful data management;

-  
breached Article 5 (1) (c) of the General Data Protection Regulation  
the principle of data saving;

-  
at the request of the Applicant did not provide adequate information about his personal data in breach of Article 15 of the General Data Protection Regulation.

2. The Authority has examined whether it is justified to treat [Company1] or [Company2] imposition of a data protection fine. In this context, the Authority is Article 83 of the General Data Protection Regulation (2) and Infotv. 75 / A. § considered all the circumstances of the case and found that no warning had been given in respect of the infringements detected in the present proceedings is a proportionate and non-dissuasive sanction and a fine should therefore be imposed.

In setting the amount of the fine, the Authority took into account, in particular, that:

Infringement by [Company1] and [Company2] under Article 83 (5) of the General Data Protection Regulation

Infringement falling within the higher category of fines pursuant to paragraph 1 (b)

it counts as.

In addition, the Authority

In determining the amount of the fine, it took into account the technological differences between them

agreements, it was not clear to [Company2] that the Applicant

the impugned data processing also covers the employees of [Company2]. In the Authority 's view,

agreements need to be clarified, avoiding agreements between two companies

different interpretation (Article 83 (2) (k) of the General Data Protection Regulation).

The Authority has imposed a data protection fine on both [Company1] and [Company2].

as an attenuating circumstance in determining the amount of

-

the uniqueness of the data protection scheme, which was examined by the Authority for the first time

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

-

the deterioration of the financial situation caused by the coronavirus epidemic in both companies

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

3. The Authority shall determine the amount of the data protection fine imposed on [Company1]

taken into account as an aggravating circumstance in determining

-

[Company1] has already been convicted of a breach of the General Data Protection Regulation

[Article 83 (2) (e) of the General Data Protection Regulation]. The Authority shall

dated September 3, NAIH / 2020/876/12. in its decision number

found that [Company1] had not informed the

Applicant about the personal data processed about him and the data processing concerning him

or that the Applicant's data processing restrictions have not been complied with

and instructed [Company1] to inform the

Applicant about the personal data processed about him and data management concerning him information. The Authority will also pay a data protection fine of HUF 500,000 ordered [Company1] for the infringements it had committed.

The Authority shall determine the amount of the data protection fine imposed on [Company1] considered as an attenuating circumstance that

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[Company1] and [Company2] are the service control technology agreement and, given that it was not previously established between them agreement on data management, which is also being replaced [general Article 83 (2) (f) of the Data Protection Regulation];

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the Authority has exceeded the administrative deadline [Article 83 (2) of the General Data Protection Regulation paragraph (k)].

The Authority will not impose a data protection fine on [Company1] considered relevant Article 83 (2) (a), (b), (c), (d), (g) of the General Data Protection Regulation, (h), (i) and (j), as they cannot be interpreted in the context of the specific case.

The net sales revenue of [Cég1] in 2019 was in the order of HUF 90,000.00 million, thus, the data protection fine imposed is distant from the maximum fine that can be imposed.

4. The Authority shall determine the amount of the data protection fine imposed on [Company2]

The use of the recordings by [Cég2] took into account as an aggravating circumstance caused damage to the Applicant by losing his job [General Data Protection Article 83 (2) (k) of the Regulation];

The Authority shall determine the amount of the data protection fine imposed on [Company2] considered as an attenuating circumstance that

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to convict [Company2] for violating the General Data Protection Regulation

has not taken place [Article 83 (2) (e) of the General Data Protection Regulation].

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the Authority has exceeded the administrative deadline [Article 83 (2) of the General Data Protection Regulation paragraph (k)].

The net sales revenue of [Cég2] in 2019 was in the order of HUF 49,000.00 million,

thus, the data protection fine imposed is distant from the maximum fine that can be imposed.

### III. 6. Deadline exceeded

In the course of the procedure, the Authority exceeded the Infotv. One hundred and twenty days in accordance with Section 60

/ A (1)

administrative deadline, therefore Ákr. Pursuant to Section 51 b), it pays ten thousand forints to the Applicant.

ARC. Other issues:

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

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

there is an administrative remedy against the decision.

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The Ákr. Pursuant to Section 135, the debtor is in arrears at a rate corresponding to the statutory interest he is obliged to pay a supplement if he fails to meet his obligation to pay money on time.

The Civil Code. 6:48. § (1), in the case of a debt owed, the debtor is in arrears

valid on the first day of the calendar half-year affected by the delay

shall pay default interest at the same rate as the basic interest.

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)

Pursuant to subparagraph (a) (aa), the Metropolitan Court has exclusive jurisdiction. A Kp. § 27

Paragraph 1 (b) in a dispute in which the tribunal has exclusive jurisdiction

competent, legal representation is mandatory. A Kp. Pursuant to Section 39 (6), the application

has no suspensory effect on the entry into force of the administrative act.

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

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

CCXXII of 2015 on the general rules of According to Section 9 (1) (b) of the Act no

the client's legal representative is obliged to communicate electronically.

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

Information on the possibility of requesting a hearing is provided in the CM. Section 77 (1) - (2)

based on.

On the reintroduction of certain procedural measures in the event of an emergency

112/2021. (III. 6.) of the Government of the Republic of Hungary (hereinafter: Veir.), If this decree

the tightening of the defense does not affect the running of the time limits. Section 36 (1) - (3) of the Act

During the enhanced defense, the court shall act out of court, including

review procedures. If a hearing were to be held or requested by either party,

or a hearing has already been scheduled, the trial court will notify the parties out of turn at the hearing

and give the parties the opportunity to make their statements in writing

put forward. Should a trial be held outside the time of the defensive defense,

the plaintiff may then request the court to hear the trial in lieu of an out-of-court settlement

postpone the date of termination of the enhanced defense if:

has not ordered, at least in part, the suspensory effect of an administrative act,

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

(c) no interim measure has been ordered.

The amount of the fee for an administrative lawsuit shall be determined in accordance with Act XCIII of 1990 on Fees. law (hereinafter: Itv.) 45 / A. § (1). From the advance payment of the fee the Itv. Section 59 (1) and Section 62 (1) (h) shall exempt the person initiating the proceedings half.

If the Applicant does not duly prove the fulfillment of the required obligation, the

The Authority considers that it has not complied with the obligation within the time limit. The Ákr. Section 132

if the Applicant has not complied with the obligation set out in the final decision of the authority,

the executable. The decision of the Authority With the communication pursuant to Section 82 (1)

it becomes final. 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.

§ pursuant to the implementation - if by law, government decree or municipal authority

In this case, the decree of the local government does not provide otherwise - the state tax authority

implements. Infotv. Pursuant to Section 61 (7) of the Authority,

to perform a specific act, to behave, to tolerate or

the Authority shall enforce the decision in respect of the standstill obligation

implements.

Budapest, April 27, 2021

Dr. Attila Péterfalvi

President

c. professor