

Case number: NAIH / 2020/1866/5.

NAIH / 2019/2314.

Subject: Infringement decision

DECISION

Before the National Data Protection and Freedom of Information Authority (hereinafter: the Authority), the Hungarian Debt settlement against the Private Limited Liability Company (registered office: 1023 Budapest, Bécsi út 35. 6th floor 71., hereinafter: the Debtor)

in a procedure in which the Authority is responsible for the data management of the data subject CXII of 2011 on the right and freedom of information Act (hereinafter: the Information Act) and the on the protection of individuals with regard to the processing of personal data and on the on the free movement of such data and repealing Directive 95/46 / EC

Examined compliance with the provisions of Regulation (EU) 2016/679 (hereinafter: GDPR), a

Authority shall take the following decisions:

In its decision, the Authority shall:

I. finds that the Debtor

(1) has handled and manages personal data without a legal basis, and therefore for the period before 25 May 2018

Infotv. Section 5 (1) of 25 May 2018

Article 6 (1) of the GDPR for the period after

(2) before the start of data processing did not provide adequate information about personal data

and did not obtain all personal data from the data subjects

therefore express for the period before 25 May 2018

violated the principle of lawful and fair data management, ie Infotv.

§ 4 (1), as well as the Infotv. § 3, point 3 b) and Infotv. Section 20 (2)

Article 5 (1) of the GDPR for the period after 25 May 2018

(a) the principle of "legality, due process and transparency" and the GDPR

Article 12 (1) and Article 13 (1) of the GDPR,

(3) did not prepare a data management register and a data processing contract with which the 2018.

Infotv violated the Infotv. Section 10 (4)

Article 28 and Article 30 of the GDPR for the period after 25 May 2018.

Article 1 (1).

II. The Authority shall order the - seized by the Magyar Nemzeti Bank in its market surveillance proceedings restrictions on the processing of personal data processed without a legal basis.

III. The Authority prohibits the Debtor from engaging in official proceedings against him uses personal data processed without a legal basis.

ARC. The Debtor shall be liable by the Authority for any unlawful processing of data by him

5,000. 000 HUF, ie five million forints

data protection fine

obliges to pay.

2

No procedural costs were incurred during the official proceedings and therefore no costs were incurred provided by the Authority.

The time limit for bringing an action shall be the time limit for bringing an action for judicial review

within 15 days of the expiration of the Authority's centralized revenue collection target

forint account (10032000-01040425-00000000 Centralized collection account IBAN: HU83

1003 2000 0104 0425 0000 0000) shall be paid for. When transferring the amount a

NAIH / 2020/1866. JUDGE. number should be referred to.

If the Debtor fails to meet its obligation to pay the fine on time, it shall be in arrears

must pay a supplement. The rate of the late payment interest is the statutory interest, which is in arrears

equal to the central bank base rate valid on the first day of the calendar half-year concerned. The fine and the

in the event of non-payment of the late payment allowance, the Authority shall order the enforcement of the decision, the fine

and the recovery of late payment in the manner of taxes. Fines and penalties for late payment

shall be recovered by the National Tax and Customs Administration.

There is no administrative remedy against this decision, but from the date of notification within 30 days of the application to the Metropolitan Court in an administrative lawsuit can be challenged. The application must be submitted to the Authority electronically, which is the case forward it to the court together with his documents. Indicate the request for a hearing in the application must. For non-personal tax exemptions, judicial review the fee for the proceedings is HUF 30,000, the lawsuit is subject to the right to record fees. Before the Metropolitan Court legal representation is mandatory in these proceedings.

The Authority shall issue this decision on the Authority's website for the identification of the Debtor publish.

EXPLANATORY STATEMENT

I. Procedure and clarification of the facts

I.1.A Magyar Nemzeti Bank (seat: 1054 Budapest, Szabadság tér 9 .; hereinafter: MNB)

has notified the Authority of its ex officio market surveillance proceedings against the Debtor; and

infringement of the law relating to the processing of personal data of which he is aware

Act CXXXIX of 2013 on the Magyar Nemzeti Bank on the circumstances indicating the occurrence of with reference to Section 44 (1) of the Act.

On 13 September 2018, the employees of the MNB carried out an on-site inspection

Debtor, where there were a number of documents related to his activities that the MNB closed it.

The MNB forwarded the documents seized from the Debtor together with its notification to the Authority copies of which contained the following documents and personal data:

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Documents entitled Mandate Contracts (hereinafter: Mandate Agreements)

contract) in which the debtors entrust the Debtor or the Debtor

persons in an employment relationship to "debt settlement, so-called

other consultancy activities "in which clients

In order to reduce or optimize the debt of the Trustee, the Trustee shall

of the debt settlement solutions described above is the most suitable for the Client

select the method, negotiate with the creditors, representing the interests of the Client,

prepare receivables purchases with the involvement of appropriate financial service providers; and

if necessary, to represent it. "

agreements with banks and receivables managers and related

correspondence, documentation, authorizations,

title deeds, land registry decisions,

documents related to the income situation (employer's certificates, utility bills,

bank statements),

health data (findings, medical opinions) for requests for fairness,

documents relating to enforcement proceedings,

loan agreements and their terminations, documents on assignment,

settlements in connection with loan agreements,

records of litigation against creditors,

Decisions of the Financial Conciliation Board.

Under the assignment contracts, the debtors are required to work with the Debtor or with the Debtor

persons in a legal relationship (by proxy) are entitled to

to amend their previous contracts with financial institutions on their behalf and on their behalf

act.

About 300 Hungarian natural persons can be identified from the documents under seal

have had a contract of assignment with the Debtor or are bound to the Debtor

a power of attorney has been granted to a natural person. The records of about 300 Hungarian natural

documents that can be linked to a person, ie concluded with the Debtor as listed above

their assignment agreements, loan and credit agreements, their settlements, their terminations, and assignment agreements, agreements with their creditors, the title deed of their real estate and related land registry decisions, employers their certificates, utility bills, enforcement against natural persons proceedings or litigation.

Personal identification and address data in the file, for income and financial situation, workplace, litigation against creditors and other, mainly enforcement, proceedings data on Infotv. Personal data pursuant to § 3 (2) and Article 4 (1) of the GDPR, as well as information and findings on the state of health in the Infotv. Section 3 (3) and a Health data pursuant to Article 4 (15) of the GDPR.

The Authority considered it appropriate to examine the above data processing ex officio initiate an official inspection in view of the number of persons involved in the activities of the Debtor presumably large and the available data were insufficient to assess whether the Debtor has fully complied with the provisions of the Information Act and the GDPR obligations. On August 8, 2019, NAIH / 2019/2314. number, launched official the Authority closed the inspection and on 9 October 2019 ex officio initiated against the Debtor.

I.2. Description of the Debtor's activity

According to the public company data, the Debtor has been operating since October 24, 2016, as of the main activity from 06.04.2017 other ancillary financial activities.

4

The Debtor has also promoted the service provided on its website, according to which negotiates on behalf of the debtors for a specified fee on behalf of the debtors with various financial institutions in order for them to modify their dealings with customers previous contracts. However, the Debtor performs this activity as a financial intermediary and broker It was carried out without the permission of the MNB, and it did not have data management information on its website.

I.3. Agency contract

Among the documents seized are the documents entitled the contracts of assignment, which are the contractual relationship between the data subjects and the Debtor was regulated by the customers contain the following personal data: name, birth name, place of residence, identity card number / tax number, customer contact details (telephone number, e-mail address, mailing address).

In the document called the Contract of Assignment, the data of the parties, the service, the fee in point 7, the so-called "Confidentiality Provisions and restrictions on competition "in relation to the processing of personal data there are provisions in part, but not in this part provisions.

Text of clause 7 of the agency contract:

"7.1. Unless the Parties expressly classify the information otherwise, this Agreement

preparing

by concluding

by fulfilling

by modifying

or

termination

all information relating to the contract which has been provided or become known in the context of (including oral information obtained through communication) from the storage medium and the regardless of the form, shall be considered a business secret of the Parties. The Client and the Agent are the other Party with the exception of statutory exceptions, this Agreement shall apply without the consent of content or trade secret of the other party may not be made available or made available to third parties may not be used by a party for any purpose other than this Agreement.

7.2. Customer declares that its legal statements made during the negotiations leading to the conclusion of this contract they correspond to reality, to the extent necessary for the activities of the Agent, in full

contains information about the case. Customer expressly agrees to be entrusted with the necessary to fulfill the purposes of this contract to the extent and for the duration, to make copies of them and to make the same conditions.

7.3. Data and documents provided to the Agent shall terminate this Agreement for 5 years after. After the expiration of the custody period, the documents handed over to the Customer at the place of central administration. If Customer is not for the documents they shall be destroyed by the Agent. "

1.4. The Authority shall comply with NAIH / 2019/2314/5. in order to clarify the facts invited the Debtor to make a statement, with reference to which the Debtor provided the following information: sent:

According to public company data, Bagi-Albert Mona Hydrangea is the senior executive (a hereinafter 'the Chief Executive Officer'), however, the Chief Executive Officer claimed that whereas, from the summer of 2017, [...] will be a full-time senior official, by proxy. A copy of the power of attorney has not been sent to the Authority.

The Chief Executive Officer also stated that he was not at his disposal due to the above all information. According to the statement, the provisions of the GDPR began in the summer of 2018

5

and a data protection consultant and auditor were asked in the second half of the year to do this, who assessed the Default of the Debtor and made a proposal for data protection compliance with the regulations, but was not available to the Debtor neither resources nor personnel for the actual execution.

The Debtor does not have / had a data management information about personal data does not keep / kept separate records.

The data subject used the google drive service as a data processor subcontractors engaged in data processing activities, whose tasks are performed with customers

communication, data collection for contracting. With data processing contracts

does not have the Debtor.

The MNB launched a on-site inspection during the market surveillance inspection on 13 September 2018

During the audit, the employees of the MNB closed most of the Debtor's documents and then

On March 5, 2019, the Debtor received the MNB's injunction. Consequently

the Debtor is on the verge of bankruptcy and has become insolvent. Currently, the Debtor does not have

employee, does not carry out any activity, his tangible assets have been sold, a

documents were archived.

The data of the customers who have contacted the Debtor can be divided into three groups. One is accounting and

the data required for the conclusion of the contract, which are provided by the provisions of the Accounting Act

should be preserved. The other group of data is the contractual performance of the professional

activity - related data (including, but not limited to, loan agreements, payment

summonses, termination, documents received in enforcement proceedings). The data is third

group of documents generated between the Debtor's service.

I.5. The Authority shall comply with NAIH / 2020/2314/7. again in order to clarify the facts

called on the Debtor to make a statement, as the Debtor was aware of his previous statement

further data processing conditions have become warranted. At the request of the Authority, the Debtor shall:

sent the following information:

Introduction of the GDPR in relation to the processing of personal data of the Obligated employees

data management practices continued after the entry into force of the GDPR. The workers

only the management of the company and the accountant-payer

Head of Personnel. The Debtor also stated that these

have not been enshrined in data protection regulations.

According to the Debtor 's statement, the personal data of the principals have been processed with their consent, as

the clients sent them voluntarily, they were aware that this data

are used.

I.6. The Authority contacted the MNB, as the MNB is publicly available on H-P-J-1/2020.

informed of the decision that the Debtor was subject to ex officio market surveillance

In these proceedings, the MNB issued a decision in which the MNB prohibited the

It is obliged to perform its financial services without the permission of the MNB. The Authority is the general

CL of 2016 on administrative order. Act (hereinafter: the Act) Section 25 (1) b)

requested the MNB to send it H-P-J-1/2020. (hereinafter: the MNB

decision). The MNB has determined that the Debtor is engaged in brokerage activities

without a license to perform financial services activities, therefore the MNB

with its decision immediately prohibited the Debtor from financing without the permission of the MNB

to carry out a service activity and to carry out an activity without his authorization

in this context, ordered the payment of a market surveillance fine.

6

II. Applicable legal provisions

1/1/2018 for data processing after 25 May:

On the protection of individuals with regard to the processing of personal data and

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

Pursuant to Article 2 (1) of Regulation (EU) No 2016/679 ('the GDPR')

the GDPR shall apply to data processing.

Infotv. Pursuant to Section 2 (2), the GDPR is included in the provisions indicated therein

shall apply mutatis mutandis.

The relevant provisions of the GDPR in the present case are the following:

According to Article 4 (1) of the GDPR, "personal data" means identified or identifiable natural data

any information about the person ("data subject"); identifiable natural person who

directly or indirectly, in particular by means of an identifier such as a name, number,

location data, online identification or physical, physiological, genetic,

one or more factors relating to his intellectual, economic, cultural or social identity

identifiable by;

According to Article 4 (7) of the GDPR, "data controller" means a natural or legal person, a public authority body, agency or any other body which processes personal data for the purposes of and determine its assets independently or together with others; if the purposes and means of data management are determined by Union or Member State law, the controller or the designation of the controller specific aspects may be laid down in Union or Member State law;

According to Article 4 (8) of the GDPR, "data processor" means a natural or legal person, a public authority body, agency or any other body which collects personal data on behalf of the controller treats;

According to Article 4 (11) of the GDPR, "consent of the data subject" means the voluntary, specific consent of the data subject and a sufficiently informed and unambiguous statement by which the statement concerned is made or by an act which unequivocally expresses its confirmation that it gives its consent to process personal data concerning him;

According to Article 4 (15) of the GDPR, "health data" means the physical or physical data of a natural person personal data relating to the mental state of a person, including a natural person data on healthcare provided to him carries the state of health of the natural person;

Personal data pursuant to Article 5 (1) (a) to (c) of the GDPR:

(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; not in accordance with Article 89 (1) considered incompatible with the original purpose for the purpose of archiving in the public interest, scientific and further processing for historical research or statistical purposes ("for purposes constraint ");

(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");

7

Pursuant to Article 5 (2) of the GDPR, the controller is responsible for complying with paragraph 1, and must be able to demonstrate this compliance ("accountability").

GDPR Article 6 (1) (a), (b), (c), (f) and (3): Processing of personal data

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

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

treatment;

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

or to take action at the request of the data subject prior to the conclusion of the contract

required;

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

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

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

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

especially if the child concerned.

3. The legal basis for the processing referred to in points (c) and (e) of paragraph 1 shall be the following state:

(a) Union law, or

(b) the law of the Member State to which the controller is subject.

The purpose of the processing shall be determined by reference to this legal basis and in accordance with paragraph 1 (e).

with regard to the processing of data referred to in point (a), it must be necessary in the public interest

or a task performed in the exercise of a public authority conferred on the controller

to implement. This legal basis may include the application of the rules contained in this Regulation

adjusting provisions, including the lawfulness of the processing by the controller

general conditions, the type of data subject to data processing, the data subjects, the entities with which personal data may be disclosed and the purposes of such disclosure, restrictions on the purpose of the data processing, the duration of the data storage and the data processing operations and other data processing procedures, such as lawful and fair data processing measures necessary to ensure compliance, including the other as defined in Chapter for specific data management situations. EU or national law must pursue an objective in the public interest must be proportionate to the legitimate aim pursued.

According to recital 39 of the GDPR, the processing of personal data is lawful and it must be fair. It must be transparent to natural persons that a how their personal data about them is collected, used, viewed or how they are handled, and in connection with the processing of personal data the extent to which they are or will be treated. The principle of transparency requires that it be personal information and communication related to data processing is easily accessible and be clear and in clear and simple language. This is it

This principle applies in particular to the identity of the data subject and the purpose of the processing and further information to ensure that the data subject is provided fair and transparent handling of your personal data and to inform you that data subjects have the right to receive confirmation and information about the data processed about them. THE the natural person about the risks and rules related to the processing of personal data, guarantees and rights and how the data processing can be exercised rights in this regard. The specific purposes of personal data processing are, above all, explicit and lawful, as well as the collection of personal data must be specified at the time of Personal data for the purpose of their processing they must be appropriate and relevant and the range of data required for the purpose should be kept to a minimum. To do this, you must ensure in particular that your personal data

storage should be limited to the shortest possible period of time. Personal information only in case may be managed if the purpose of the data processing cannot be reasonably achieved by other means.

To ensure that personal information is stored for the required period of time

limited, the controller shall set time limits for erasure or periodic review. THE

all reasonable steps must be taken to correct or delete inaccurate personal information

to do. Personal data must be handled in a way that ensures its proper level

security and confidentiality, inter alia, in order to prevent

unauthorized access to personal data and the means used to process personal data

access or unauthorized use.

Pursuant to Article 12 (1) of the GDPR, the controller shall take appropriate measures to that end

in accordance with Articles 13 and 14 on the processing of personal data.

all the information referred to in Articles 15 to 22 and and Article 34

in a concise, transparent, comprehensible and easily accessible form, in a clear and comprehensible manner

particularly in the case of any information addressed to children. The

information shall be provided in writing or by other means, including, where appropriate, by electronic means

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

the identity of the person concerned.

Pursuant to Article 13 (1) to (2) of the GDPR, if the personal data concerning the data subject are

collected from the data subject, the controller shall be the data subject at the time the personal data were obtained

provide each of the following information:

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

(b) the contact details of the Data Protection Officer, if any;

(c) the purpose of the intended processing of the personal data and the legal basis for the processing;

(d) in the case of processing based on Article 6 (1) (f), the controller or a third party

legitimate interests;

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

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

personal data and the Commission's Compliance Office

the existence or absence of a decision in accordance with Article 46, Article 47 or Article 49 (1)

in the case of the transmission referred to in the second subparagraph of

the means of obtaining the guarantees and the means of obtaining a copy thereof, or

reference to their availability.

(2)

In addition to the information referred to in paragraph 1, the controller shall be personal data

at the time of acquisition, in order to ensure fair and transparent data management

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 and to the portability of the data concerned

the right to

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

in the case of data processing, the right to withdraw the consent at any time, which

does not affect the lawfulness of the processing carried out on the basis of the consent prior to the withdrawal;

(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

based on or a precondition for concluding a contract and whether the person concerned is obliged to be personal

data and the possible consequences of providing the data

failure;

(f) the fact of automated decision-making referred to in Article 22 (1) and (4), including:

profiling and, at least in these cases, the logic used

understandable information on the significance of such processing and on the data subject
its expected consequences.

Article 58 (2) (b), (d) and (i) GDPR: In the power of the supervisory authority to rectify
acting:

(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;

(d) instruct the controller or processor to carry out its data processing operations, where applicable
in a specified manner and within a specified period, bring this Regulation into line
with its provisions;

(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;

Article 83 (1) to (2) and (5) (a) to (b) of the GDPR: 1. Each supervisory authority shall ensure that:
infringement of this Regulation as referred to in paragraphs 4, 5 and 6 pursuant to this Article
the administrative fines imposed shall be effective, proportionate and dissuasive in each case
be strong.

2. Administrative fines shall be imposed in accordance with Article 58 (2), depending on the circumstances of the case
It shall be imposed in addition to or instead of the measures referred to in points (a) to (h) and (j). When deciding
whether it is necessary to impose an administrative fine or the amount of the administrative fine
In each case, due account shall be taken of the following:

(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 and the technical and organizational measures taken pursuant to Article 32;
- (e) relevant breaches 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 breach has been reported by the controller or processor and, if so, what in detail;
- (i) if previously against the controller or processor concerned, in the same one of the measures referred to in Article 58 (2) has been ordered orally compliance with revolving measures;
- (j) whether the controller or processor has kept itself approved in accordance with Article 40 codes of conduct or approved certification mechanisms in accordance with Article 42; and
- (k) other aggravating or mitigating factors relevant to the circumstances of the case, such as: financial gain or avoidance as a direct or indirect consequence of the infringement loss.

5. Infringements of the following provisions in accordance with paragraph 2 shall not exceed 20 000

An administrative fine of EUR 1 000 000 or, in the case of undertakings, the preceding financial year amounting to a maximum of 4% of its total annual world market turnover, provided that the the higher of the two shall be charged:

10

- (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

Infotv. relevant provisions:

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

In order to do so, the Authority may initiate ex officio data protection proceedings. The data protection authority

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

Ákr.) Shall be applied with the additions specified in the Information Act and in accordance with the GDPR with differences.

Infotv. Pursuant to Section 61 (2) (a), the Authority may order its decision - the

by publishing the identification data of the data controller or the data processor

if the decision affects a wide range of persons.

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

proportionality, in particular by providing personal data

legislation or a binding act of the European Union

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

in accordance with Article 58 of the GDPR, in particular the controller or processor

shall be warned.

II.2. Data processing prior to 25 May 2018 (text valid until 25 May 2018)

Infotv. Pursuant to Section 3, Clause 9, data controller: the natural or legal person or legal entity

an unincorporated organization which, in law or in the European Union

within the framework set out in a binding legal act - individually or together with others

the purpose of the processing of the data (including the means used)

makes and executes decisions or executes them with the data processor.

Infotv. Personal data pursuant to § 3 (2): data that can be contacted with the data subject - in particular

the name, identifying mark and one or more physical, physiological, mental, economic,

knowledge of the cultural or social identity of the

conclusion on the data subject;

Infotv. Special data pursuant to Section 3 (3): belonging to special categories of personal data

all data, ie racial or ethnic origin, political opinion, religious or worldview

personal data indicating beliefs or trade union membership, as well as genetic

data, biometric data for the unique identification of natural persons, health

data and on the sexual life or sexual orientation of natural persons

personal data.

Infotv. Pursuant to Section 4 (1), personal data is used for a specific purpose only, exercise of a right

and can be managed to meet an obligation. At all stages of data management

must comply with the purpose of the processing, the fair collection and processing of the data, and

must be legal.

Infotv. Pursuant to Section 5 (1), personal data may be processed if

(a) the data subject consents thereto, or

b) it is ordered by.... Act.

11

Infotv. Pursuant to Section 5 (2), special data in the cases specified in Section 6, and

can be handled if

(a) the data subject consents in writing to the processing,

b) in the case of the data contained in Section 3 (3) (a), the international law promulgated by law

a fundamental right required for the performance of a contract or guaranteed by the Basic Law

national security and the prevention or prosecution of criminal offenses

in the interests of national defense or by law, or

c) in the case of data specified in Section 3 (3) (b), for purposes based on the public interest

to order.

Infotv. Pursuant to Section 6 (1), (4) and (5), personal data may be processed even if the data subject

obtaining your consent would be impossible or disproportionate and personal data

his treatment

(a) necessary to fulfill a legal obligation to which the controller is subject, or

(b) either in the legitimate interest of the controller or of a third party

necessary, and

the exercise of this interest is proportionate to the restriction of the right to the protection of personal data.

Infotv. Pursuant to Section 10 (4), the contract for data processing must be in writing

Reserve. Data processing cannot be entrusted to an organization that is to be processed

interested in a business using personal data.

Infotv. Pursuant to § 20:

1. The data subject shall be informed of the consent to the processing prior to the processing based on or mandatory.

(2) The data subject shall be clearly and in detail informed before the start of the processing all facts relating to the processing of your data, in particular the purpose of the processing and the data subject and the person authorized to process and process the data the personal data of the data subject pursuant to Section 6 (5) and who can access the data. The information shall cover the the data processing rights and remedies concerned.

III. Decision:

III.1 Period covered by the data processing and the applicable legislation

The Debtor has been operating without a permit since October 2016, the Authority is an official

its inspection procedure began on August 8, 2019, which lasted until October 9, 2019

therefore, the data management period under investigation is the period from October 2016 to 8 August 2019. The

The data protection authority proceedings were initiated ex officio on 9 October 2019.

With regard to the examined data management for the period before 25 May 2018, the

Infotv.

for the period after 25 May 2018, the GDPR and Infotv. applicable shall apply.

III.2. Activities of the Debtor and quality of data management

III.2.1. By its decision, the MNB established that the Debtor has been authorized by the MNB since October 2016 CCXXXVII of 2013 on Credit Institutions and Financial Undertakings.

(hereinafter: Hpt.) pursuant to Section 3 (1) (i) of the Financial Services Act

carried out activities under which credit / loan agreements with financial institutions were concluded acting on behalf of individuals.

12

III.2.2. The Authority has determined that III.2.1. in the context of its activities referred to in the purpose and means of data management were determined by the Debtor independently, therefore the Infotv. 3. § 9. and Article 4 (7) of the GDPR, as the settlement procedures during which the Debtor acted and represented the debtors and the personal data relating thereto handled, stored and used in the Debtor's premises.

III.3. Categories of personal data and number of data subjects affected by the data subject's data processing

III.3.1. The Authority has established that the personal data of the Debtor, including according to special data as well as health data in accordance with the GDPR.

The special data and health data were in the documents provided by the Debtor's customers and substantiated the debtors' fairness claims. These documents include they were handed over to the Debtor because the Debtor also took them into account whether to act on the debtor's case.

A total of about 300 Hungarian natural persons can be identified among the documents under seal either had a contract of assignment with the Debtor or is bound to the Debtor a natural person has been authorized, ie the number of data subjects about 300 people.

III.4. Data processors Infotv. § 10 (4) and Article 28 (3) GDPR

registration of data processing activities under Article 30 of the GDPR

III.4.1. According to the Debtor's statement, data processors have also been used in their data processing, however, no data processing contract has been concluded in this respect, despite the fact that

Infotv. Section 10 (4) and Section 28 (3) GDPR expressly provide for this, therefore the Authority found that the Debtor had violated the Infotv. § 10 (4) and Article 28 (3) of the GDPR paragraph.

III.4.2. According to the Debtor's statement, no records have been kept of their data processing activities, although Article 30 of the GDPR expressly provides for this, given that Article 30 of the GDPR

The exception rule in paragraph (5) shall not apply because the activities of the Debtor are not occasional was therefore of a nature during the investigation period, and the Authority therefore found that the Debtor had infringed the Article 30 (1) of the GDPR.

III.5. The data management information

According to the Debtor's statement, the data of the data subjects are processed on the basis of their consent, therefore proper prior information is particularly important.

In its reply dated 29 August 2019, the Debtor stated that "Our Company does not had a separate data management information. Due to the insolvency of our company a Due to the failure to switch to GDPR, it was not developed later. The data the need for and use of the contract only with the clients referred to in the Treaties. "

In its reply dated 29.10.2019, it stated that the

Our company was no longer able to complete and implement compliance with GDPR, finance ..."

According to the wording of clause 7 of the agency contract:

13

"7.1. Unless the Parties expressly classify the information otherwise, this Agreement

preparing

by concluding

by fulfilling

by modifying

or

termination

all information relating to the contract which has been provided or become known in the context of (including oral information obtained through communication) from the medium and the appearance regardless of the form, shall be considered a business secret of the Parties. The Client and the Agent are the other Party with the exception of statutory exceptions, this Agreement shall apply without the consent of content or trade secret of the other party may not be made available or made available to third parties may not be used by a party for any purpose other than this Agreement.

7.2. Customer declares that its legal statements made during the negotiations leading to the conclusion of this contract they correspond to reality, to the extent necessary for the activities of the Agent, in full contains information about the case. Customer expressly agrees to be entrusted with the necessary to fulfill the purposes of this contract to the extent and for the duration, to make copies of them and to make the same conditions.

7.3. Data and documents provided to the Agent shall terminate this Agreement for 5 years after. After the expiration of the custody period, the documents handed over to the Customer at the place of central administration. If Customer is not for the documents they shall be destroyed by the Agent. "

III.5.1. The period before May 25, 2018

The rules of prior information are set out in Infotv. Section 20 contains.

If the purpose of the data processing based on consent is prior to a written contract with the data controller as well as its implementation and liaison, in which case the contract must contain all the information required for the processing of personal data under this law, the data subject must know, in particular the data to be processed the duration of the data processing, the purpose of the use, the the fact, the recipients, the fact of using a data processor. The contract is unambiguous

shall include a statement that the data subject consents to the data specified in the contract

according to

The facts referred to above, the documentary evidence obtained and available and the Debtor

Based on the statement of the Debtor, only the Contract of Assignment is named in the documentation of the Debtor

Document 7 (hereinafter referred to as the "Contract of Assignment") contains data management information in accordance with Article 7.

and only in part, and the consent of the data subject

statement.

However, the Assignment Agreement does not provide information that the Debtor is exactly the person concerned

which handles your personal data, as a lot of personal data can be found in the seized documents,

for example, in relation to the income situation, health data, the handling of which

no mention is made in the Contract of Assignment. Furthermore, the Assignment Agreement does not

because the fact that you can pass on personal data to 'contributors'

cannot be accepted as adequate information as it does not specify who should be

considered as contributors and these persons are data controllers or data controllers

whether they qualify.

Information is necessary for those involved to truly enjoy information self-determination

with their right and with the right information they can really decide whether to consent to it

for data management. The signature of the statement of consent in the contract of assignment is appropriate

in the absence of information does not mean Infotv. the existence of a valid consent under

14

Based on the above, it can be concluded that Infotv. Does not meet the requirements of § 20 a

"Mandate Agreement", which is the only document among the Debtor's documents that

which partly contains the data management rules.

After examining the Debtor's statement and the documents seized in the case, the Authority

found that the Debtor did not provide adequate data management information to the

in connection with the data management activities of the data subjects, therefore it violated the Infotv. § 20

Paragraph 2.

III.5.2. Period after May 25, 2018

If personal data concerning the data subject are collected from the data subject, the personal data of the data controller shall be processed

in order to ensure fair and transparent data management at the time the data are obtained

provide detailed information to stakeholders on the requirements of Article 13 (1) of the GDPR.

Recital 39 of the GDPR requires that information on data processing be provided

should be transparent and made available to stakeholders in an appropriate manner (eg

website) subject to any additional conditions for the legal bases chosen.

Article 12 of the GDPR sets out the formal requirements with which they must comply

to data controllers when they are allowed to exercise their rights, including data subjects

prior information. Based on this, data controllers are concerned with the processing of personal data

all information in a concise, transparent, comprehensible and easily accessible form, in a clear and concise manner

they must provide in a comprehensible manner.

A III.5.1. The following shall apply to the examination of data processing after 25 May 2018

also in the context of:

According to the Authority's findings, it is included only in point 7 of the Mandate Agreement and so on

only partially data protection provisions and the consent of the data subject

statement. However, the Contract of Assignment does not provide information on

concerned exactly which personal data the Debtor handles as the seized documents

Among the many and varied personal data can be found, such as income status, health

data, the handling of which is not provided for in the Contract of Assignment

mention. Furthermore, the Mandate Agreement does not state clearly because it is that the Debtor

transferring personal data to "contributors" is not acceptable

information, as it does not specify who should be considered as contributors and these are

persons are considered to be data processors or data controllers.

Information is necessary for those involved to truly enjoy information self-determination with their right and with the right information they can really decide whether to consent to it for data management. Signing a statement of consent does not mean not being properly informed the existence of a contribution under the GDPR.

Based on the above, therefore, given that the Debtor in the course of his activities clearly data processing related to personal data (including health data) therefore the Debtor should have received appropriate, easily accessible information on 25 May 2018 when concluding a contract with its customers.

Given that the Authority has established it from the Debtor's statement, as well as from the MNB from the file seized and examined by the Authority that the Debtor dated 25 May 2018

15

did not provide adequate information on data processing to data subjects after infringed Articles 12 (1) and 13 (1) of the GDPR.

III.6. Legal basis for data management

III.6.1. Before May 25, 2018

III.6.1.1. Consent - based data management

Infotv. Pursuant to Section 5 (1) (a) and Section 3 (7), data processing is possible if the person concerned is voluntary, firm, well-informed and unambiguous has given his consent for the data controller to process his personal data.

Infotv. § 3 (7) defines the concept of consent, according to which consent is voluntary and firm expression of the wish of the data subject, with appropriate information based on. Accordingly, consent is an important element of prior information based on. Given that, according to the Debtor's statement, also seized from the Debtor on the basis of the documents, the Authority has established that the Debtor has not provided detailed information, whereas clause 7 of the contract of assignment can only be classified as partial personal information

in connection with the processing of personal data, therefore Infotv. Section 3 (7) “preliminary

the requirement of ‘information’ was not met, so it could not address the

In addition to the personal data of the data subjects not specified in the Assignment Agreement, he is obliged to provide additional information

personal data, such as the income situation of the data subject, and the Infotv. Pursuant to Section 3 (3) (b)

special data, which was data on the state of health of the data subject

legally.

According to the Assignment Agreement:

“Customer expressly consents to being entrusted with the data provided to it in this Agreement

to the extent and for the time necessary to achieve the objectives set out in this Article

prepare them and pass them on to their contributors under the same conditions”.

Clause 2 of the Assignment Agreement defines the subject of the agreement, according to which the client

negotiate with creditors to reduce its debt arising from its existing credit transaction,

reach an agreement. The Authority found that it was not even clear what the purpose of the data processing was information can only be deduced indirectly from the subject of the contract.

According to the Debtor 's statement, the personal data of the principals have been processed with their consent, as

the clients sent them voluntarily, they were aware that this data

are used. The Authority does not agree with this position as the contribution is

Infotv. shall be admissible only if it is clear and express

other personal data not mentioned in the Assignment Agreement

did not request the express consent of the Debtor.

Given that the Debtor did not provide adequate information to the persons concerned

in connection with the processing of your personal data and not all personal data

obtained a clear, explicit consent, the Authority therefore concluded that

Its obligatory data management violated Infotv. § 4 (1), ie the lawful and

the principle of fair data management, as well as the Infotv. Section 5 (1) of the Infotv. § 3 point 3 b)

point as well.

16

III.6.2. After May 25, 2018

The Chief Executive Officer stated that the GDPR was launched in the summer of 2018.

and in the second half of the year, a Data Protection Adviser and

an auditor was also asked to do this, who assessed the Defendant's deficiencies and made a recommendation

to establish compliance with data protection regulations, however, the Debtor was not entitled to a

have neither the resources nor the staff to carry it out.

In line with the above, the Authority also found the documents seized

based on the study that the Contractor was not amended by the Debtor in 2018.

in order to comply with the provisions of the GDPR applicable from 25 May.

According to recital 171 of the GDPR, the date of entry into force of the Regulation

Data processing started before 2006 had to be brought in line with the Regulation. If

data processing is based on consent and the consent complies with the requirements of the Regulation

conditions, the data subject does not need to be re-authorized in order for the controller to

continue data management. If the consent did not comply with the regulation

requirements, in particular the conditions set out in Articles 7 and 8,

must be obtained from those concerned.

III.6.2.1. Data management on the basis of consent

The Assignment Agreement contains the following data of the clients: name, birth name, place of residence,

identity card number / tax number, customer contact details (telephone number, e-mail address, mailing address),

and personal information on the property and income situation of the clients among the seized documents

data, special personal data, their contracts could be found.

Pursuant to Article 6 (1) (a) of the GDPR, the processing of personal data referred to above

under Article 4 (11) of the GDPR

information in the context of the processing

before a decision is taken to grant an authorization, and clearly state the

their consent.

According to the Data Protection Working Party, "the individual concerned must be informed in a clear and comprehensible manner, accurately and

it must provide full information on all [...] relevant issues, such as processed

the nature of the data, the purpose of the processing, the recipients of the possible transfer and the

on the rights of data subjects. " (Working document stored in the electronic health record,

on the processing of personal data concerning the state of health, WP 131, Brussels, February 2007

15.)

III.5.2 of the explanatory memorandum to this decision. 25 May 2018, with reference to the

It was also established with regard to the data processing after the day of

adequate information, only partially informed the data subjects

therefore in Article 4 (11) of the GDPR

that the consent must be based on adequate information has not been enforced. And so is it

Section 6.1.1. of this Decision has been established. that not all personal information

Obtained a clear, explicit consent for the management of the Debtor, which was issued on 25 May 2018.

also for the data management period after

Due to the above, the Authority found that the Debtor was unlawfully treated by the data subjects

personal data and therefore infringed Article 6 (1) of the GDPR.

17

By the fact that the Debtor, in addition to the partial data management information set out in the "Contract of Assignment"

did not have any other data processing information, in breach of Article 5 (1) of the GDPR

the provision of personal data under this principle

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

("Legality, due process and transparency").

III.6.2.2. Management of special categories of personal data

By handling special categories of personal data, i.e. health data

rules are also contained in the GDPR. On this basis, on the one hand, under Article 5 of the GDPR the processing must comply with the principles of data processing and the legal basis under Article 6 must be based on one of them. Additional legality requirements are set out in Article 9 of the GDPR.

Pursuant to Article 9 (1) of the GDPR, for the unique identification of natural persons

genetic data and the processing of health data - as a general rule - even under the GDPR

Provided that the conditions laid down in Article 6 are met), it is prohibited only in Article 9 (2) may be lawful if a condition is met.

Whether one of the cases referred to in Article 9 (2) arises in this case, and

Thus, the general prohibition on the processing of "special data" in Article 9 (1)

can be dispensed with - only by all the circumstances of the data processing and by the Debtor can be decided with knowledge of the desired goal.

Based on the subject of the contract specified by the Debtor in clause 2 of the Assignment Agreement a

It is obligated to reduce the debt arising from the customer's existing credit transaction

negotiate with creditors in order to reach an agreement, so it is related to this activity

the purpose of data management is set out here. Based on this, the GDPR is included in Article 9 (2)

In such cases, point (a) could be applied to the Debtor 's activity, on the basis of which the

health data may be processed only if the data subject has expressly requested to do so gave his consent.

In the context of the processing of data of the health of data subjects, it can also be stated that a

The condition in Article 4 (11) of the GDPR that consent must be given in an appropriate manner therefore, the Authority found that the Debtor was concerned

health data without consent, ie without a legal basis.

III.6.2.3. Necessary for the performance of the contract and on the basis of an accounting obligation data handling

However, in the statement sent to the Authority by the Debtor in connection with his data processing

did not invoke the legal basis under Article 6 (1) (b) of the GDPR, but the Contract of Assignment contains the following provisions:

"Customer represents that its disclaimers during the negotiations leading up to this contract a to the extent necessary for the activities of the Trustee contains information about the case. Customer expressly agrees to be entrusted with the necessary to fulfill the purposes of this contract to the extent and for the duration, to make copies of them and to make the same conditions. "

In the light of the above, the data subject's processing could be lawful under Article 6 (1) (b) of the GDPR. on the grounds that the processing is a contract in which one of the parties is concerned.

18

In connection with the above, it can also be stated that the Debtor's activities Act C of 2000 on Accounting also provides for the obligation to keep records, therefore, the related data management of the Debtor pursuant to Article 6 (1) (c) GDPR may be legal.

However, in connection with the above, the Authority found that in view of the fact that the MNB H-P-J-1/2020. According to the decision of the Debtor in the brokerage business of financial services without a license to carry out the activity, which is why he was banned from doing so MNB from the performance of this activity, so in the opinion of the Authority, this was done illegally data processing in connection with the activity and its purpose is also illegal.

Based on the above, the Authority found that the Debtor had acted unlawfully infringed Article 5 (1) (a) and (b) of the GDPR in the handling of data relating to its activities (b) and, due to the illegality of the activity, its processing is not cannot be considered lawful by reference to Article 6 (1) (b) and (c) of the GDPR.

An essential condition for the lawfulness of data processing is that it has an appropriate legal basis

be.

Article 6 of the GDPR provides for possible legal bases for the processing of personal data, ie cases where a data processing may be lawful, provided that the other provisions of the GDPR such a legal basis may include, but is not limited to, the consent of the data subject.

The GDPR does not contain any restrictions on the form in which the consent is to be given, only the requirements for its validity - on a voluntary, specific, appropriate basis based on a clear declaration of intent by which the statement or confirmation concerned is made by means of an unequivocally expressive act, he gives his consent to the person concerned to handle data - specify.

Therefore, if the legal basis for the processing is Article 6 (1) (a) GDPR consent, the controller must be able to prove that he has obtained a valid consent from the data subject, the data subject has given his or her consent to the processing. The Authority found that The debtor was unable to prove that the parties concerned had given their appropriate consent to the GDPR for the processing of their personal data, therefore the Authority has also established that the Debtor a It also infringed the principle of accountability under Article 5 (2) of the GDPR.

III.7. Legal consequences

The Authority condemns the Debtor pursuant to Article 58 (2) (b) of the GDPR because

-

violated the Infotv. § 3 point 3 b)

Infotv. § 4 (1), Infotv. § 5 (1), Infotv. Section 10 (4)

and Infotv. Section 20 (2), and

-

infringed Article 5 (2) of the GDPR by processing data after 25 May 2018

Article 5 (1) (a) and (b) of the GDPR, Article 6 (1)

Article 12 (1) of the GDPR, Article 13 (1) of the GDPR, the GDPR

Article 28 and Article 30 (1) of the GDPR.

Pursuant to Article 58 (2) (d) of the GDPR, the Authority instructs the Debtor to limit the processing of the personal data of the data subjects, so that the Debtor has initiated only against him in the context of official proceedings data.

19

The Authority has examined whether it is justified to impose a data protection fine on the Debtor. E Article 83 (2) of the GDPR and Infotv. 75 / A. § considered by the all the circumstances of the case. In view of the circumstances of the case, the Authority concluded that the present case In the case of infringements detected during the procedure, the warning is neither proportionate nor dissuasive a penalty is necessary and a fine must be imposed.

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

In particular, the Authority took into account that the infringements committed by the Debtor

In accordance with Article 83 (5) (a) and (b), it falls within the higher category of fines constitute an infringement.

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

-

The infringement is of a continuous nature, having persisted during the period under investigation, of which a Authority will only impose a fine for the period after the entry into force of the GDPR, ie until 2018. took into account the period after 25 May. [Article 83 (2) (a) GDPR];

-

The breach affects a large number of data subjects involved in the processing of recorded personal data an infringement committed with inadequate information or unlawful data processing number of customers approx. 300 persons [Article 83 (2) (a) GDPR];

-

Failure to provide information on the processing of personal data constitutes a serious breach [Article 83 (2) (k) GDPR].

•

Identified data breaches are considered to be intentional [Article 83 GDPR

Paragraph 2 (b)] and also concern specific categories of personal data [Article 83 GDPR.

Article 2 (2) (g)].

•

The extent of the Debtor's liability for the violations found is high,

since it started a business in accordance with the basic principles of data protection

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

•

The violation committed by the Debtor is not an indication of the Debtor, but one

In connection with the market surveillance procedure, it came to the Authority's attention on the basis of the MNB's signal

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

The Authority did not consider the imposition of a fine to be relevant under Article 83 (2) (c), (d), (f), (i), (j)

conditions set out in

According to the Debtor's consolidated financial statements for 2018, its pre-tax profit is 491,000

Ft.

The Authority shall inform Infotv. Pursuant to Section 61 (2), the decision shall be issued with the identification data of the

Debtor

as the decision affects a wide range of persons.

Based on the above, the Authority has decided in accordance with the operative part.

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 Ákr. Pursuant to § 112 and § 116 (1) and § 114 (1)

and the order is subject to administrative redress.

The rules of administrative litigation are laid down in Act I of 2017 on the Procedure of Administrative Litigation (a hereinafter: Kp.). A Kp. Pursuant to Section 12 (1) by decision of the Authority

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

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

Legal representation in proceedings falling within the jurisdiction of the Tribunal shall be mandatory. A Kp. § 39

(6) of the application for the entry into force of the administrative act

has no suspensive effect.

A Kp. Section 29 (1) and with this regard Pp. Applicable in accordance with § 604, electronic

CCXXII of 2015 on the general rules of public administration and trust services. Act (a

hereinafter: the e-administration Act), the client's legal representative pursuant to Section 9 (1) (b)

obliged to communicate electronically.

The place and time 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. 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 is

Itv. Section 59 (1) and Section 62 (1) (h) shall release the party instituting the proceedings.

If the Debtor fails to duly prove the fulfillment of the prescribed obligation, the Authority shall

considers that it has failed to fulfill its obligations within the prescribed period. The Ákr. According to § 132, if the debtor

has not complied with an obligation contained in the final decision of the authority, it shall be enforceable. The Authority

decision of the Ákr. Pursuant to Section 82 (1), it becomes final with the communication. The Ákr. Section 133

enforcement, unless otherwise provided by law or government decree, a

ordered by the decision-making authority. The Ákr. Pursuant to § 134 - enforcement if law,

a government decree or, in the case of a municipal authority, a local government decree otherwise

does not have - the state tax authority implements it. Infotv. Pursuant to Section 60 (7) a

To carry out a specific act contained in a decision of an authority, specified
the decision as to the obligation to conduct, tolerate or stop
shall be carried out by the Authority.

Budapest, July 23, 2020

Dr. Attila Péterfalvi

President

c. professor