

Track Changes

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April 2019

POLAND HAS IMPOSED THE FIRST FINE FOR INFRINGEMENT OF GDPR

On 15 March 2019, the Polish supervisory authority issued the first decision imposing an administrative fine in the amount of PLN 943,000 (approx. EUR 220,000) for the infringement of the information obligation stipulated in Article 14 of the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (the "**GDPR**").

Background

The fine was imposed on a company (data broker) which processes, in particular, the data of individuals conducting business activity, as well as of board members. The data was obtained from publicly available registers. The company fulfilled the information obligation only towards approx. 680,000 individuals who had disclosed their e-mail addresses in the registers. All remaining individuals (over 6 million people) were not informed about processing, even though their postal addresses were partially known.

The company sought to apply the exemption of Art. 14.5(b) of the GDPR, arguing that the information obligation can not be complied with, because the operational costs of printing the required information and sending it by post would be disproportional high in comparison to the expected profit. Consequently, the informational clause was only published on the company's website.

The decision of the Personal Data Protection Office

The Polish Personal Data Protection Office disagreed with such approach and imposed the aforementioned fine, as well as ordered the company to fulfill the information obligation by notifying those data subjects whose addresses are known by post. This obligation was therefore not imposed towards board members whose addresses are not disclosed in the registers. The informational clause presented on the website of the company was found by the authority to be insufficient, as in the case of the data subjects whose contact details were known, the company could have complied with the information obligation. Consequently, the authority argued that the concerned individuals were deprived of the

possibility to exercise their rights under GDPR, in particular, the right to object to further processing of their data or to request their rectification or erasure.

Further steps

The company has already informed that it will appeal the decision. It is expected that a question regarding the interpretation of "disproportional effort" within the meaning of Art. 14.5 (b) of the GDPR as an exception to the information obligation will be raised by the court and the matter will be brought before the Court of Justice of the European Union.

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