

NAIH may impose financial sanctions reaching HUF 20 million from October 2015

The fines imposed by the Hungarian National Authority for Data Protection and Freedom of Information on companies infringing data protection rules may reach HUF 20 million from October 2015 – warns the legal expert of Kovács Réti Szegheő Attorneys at Law. According to Dr Zita Tamás an exhaustive overview of the NAIH monetary penalty practice over the past three and a half years may produce highly instrumental insights, with view to the forthcoming legislative changes. In this article the expert examines the number and frequency of the cases in which financial sanctions were levied and explains the authority’s main considerations when applying the rules on fines. She also presents the main areas of past audits.

The Hungarian National Authority for Data Protection and Freedom of Information (Hungarian abbreviation: NAIH) may impose pecuniary fines since 1st January on those errant data controllers who are confronted with a breach of the rules affecting personal data control. At present, the amount of the fine ranges from a minimum of HUF 100,000 to a maximum of HUF 10,000,000 which limit however will rise up to HUF 20 million from October.

It is yet to be seen how exactly that will affect the NAIH fining practice, but the tendencies of the past few years indicate that both the complexity of the inspections conducted by the authority and the fines imposed are increasing – said the expert of Kovács Réti Szegheő Attorneys at Law.

When can the NAIH impose fines?

The NAIH has the power to impose monetary penalty exclusively if it initiates a data protection procedure. Since the authority may initiate such investigation procedures only ex officio, it is not automatically bound to do so upon notification.

The reason for that is that the NAIH does not function as a public administration body in the traditional sense, since it is vested with ombudsman-like powers originating from the times when it was the data protection commissioner’s responsibility to ensure that the rules of data protection and freedom of information are complied with.

When the authority exercises its ombudsman-like powers, practically it only calls on the party in breach to process the data in compliance with the rules or makes recommendations, and may also put forward legislative proposals.

Although as a matter of course the administrative proceeding is a possible measure for the NAIH to take, there are some situations in which opening the proceeding is mandatory – pointed out dr. Tamás Zita.

Opening an official proceeding is mandatory for example if some pieces of evidence suggest unlawful processing of personal data, the unlawful processing concerns a large segment of the population, categories of sensitive data are involved (e.g. data consisting information as to political opinion, physical or mental health or condition, sexual orientation, criminal record), or it is likely to cause serious harm or damage.



NAIH practice in the past

Since 2012 the authority conducted 30-40 proceedings per year on average. In year 2012 it imposed fines in 11 cases of 16 closed proceedings, while the same ratio in years 2013 and 2014 was 35 of 36 and 16 of 18 respectively.

The volume of the fine reached some millions of HUF only in three of all the cases in which fines were imposed in 2012, while in the remaining eight cases it amounted to some hundred thousand HUF. In 2012 a large majority of the cases was initiated upon notifications, and only a few cases were initiated ex officio with no warning at all.

In 2013 however, the authority designated some top priority fields of investigation in which it conducted the majority of its official proceedings. One of these priority fields is the inspection of website operators' data processing and registration procedures, with special attention to the processing of children's data.

Dating and debt collection websites

To that end the authority's investigations targeted mainly dating sites. As a result, a number of infringements came to light, in which the authority imposed monetary penalty of HUF 5.9 million in a total of nine cases in 2012 and 2013 –said the expert of Kovács Réti Szegheő Attorneys at Law.

The NAIH investigation strategy involved two further prioritised areas, those of the personal data processing operations conducted by collection agencies and the electronic disclosure of persons falling into arrears with the payment of their local taxes on local municipalities' websites.

The authority investigated more than a hundred and seventy local municipality websites and opened a proceeding in four cases, of which three were fined to some hundred thousand HUF, while the majority of debt collector agency cases continued into the coming years.

The financial penalties levied in year 2013 varied widely: in half of the cases it amounted to some hundred thousand HUFs (between one hundred thousand and one million HUF), in ten cases the statutory minimum or no penalty at all was levied, while in seven cases the fine reached some millions of HUF.

Increasing fines from 2014

Year 2014 has seen further changes in the authority's penalty issuance practice, as the fines levied were getting heftier. The penalty amounted to HUF 10 million in two cases, while in more than half of the cases it ranged from HUF 1 million to HUF 10 million.

The latter was mainly levied on companies offering debt collection services and product demonstration organisers. These two fields were given high priority in 2014, together with direct marketing companies and database providers.

According to dr. Tamás Zita the proceedings of the authority involve a detailed and comprehensive investigation extending to the entire practice of the data processing even in cases opened upon notification. Additionally, on-the-spot checks and IT expert assessments are also frequently used tools.



When considering what level of penalty to impose, the authority considers the nature, gravity and frequency of the infringement, the annual global turnover of the company, as well as the scope and number of data subjects affected, on top of which the authority will also consider the preventive nature of the sanction, namely the amounts levied should be dissuasive enough to deter other data processors from such infringements.

In the first half of 2015 the tendency of sanctions reaching several millions of HUF continued. The publicly available resolutions of the authority indicate that the fine amounted to some millions of HUF in five of seven proceedings resulting in financial sanctions, two of which reached the maximum of HUF 10 million. The majority of these cases involved database trade, product demonstrations and debt collection.

Legal remedy

Although the resolutions in which the authority levies financial sanctions may be challenged in court, at that point the court may only consider whether the proceeding was conducted in compliance with the regulations but may no longer resolve to reduce the fine.

However if the court rules that the authority did not sufficiently explore the facts of the case, or its decision does not specify the ground based on which the decision was brought, the court may repeal the decision and order the authority to reopen the proceeding.

It remains to be seen how the NAIH sanctioning practice will change in the future when the top limit may reach HUF 20 million, we are awaiting these changes with interest – concluded the expert of Kovács Réti Szegheő Attorneys at Law.