

NAIH invites data controllers to review their prospectus

NAIH proposes to data controllers that they should review their prospectus and adjust it to the content stated in its new recommendation, since it has found that prospectuses most of the times do not comply with the requirements of data protection which may result in unlawful processing of data.

The National Authority for Data Protection and Freedom of Information (NAIH) issued a recommendation regarding the method that should be used to properly inform data subjects if they wish to process their personal data. During audits, the Authority has found that prospectuses most of the times do not comply with data protection requirements which may result in unlawful processing of data. Therefore, NAIH proposes to data controllers that they should review their prospectus and adjust it to the content stated in the new recommendation.

We provide our data to different organisations and individuals again and again in day-to-day life. It happens for example if one registers in an online store or completes a questionnaire. We also provide our data upon entering an office building or when calling up a customer service where the conversation is recorded.

The legislation provides enhanced protection for privacy, and it is required in the Constitution that everyone should be enabled to monitor and check as to who, where, when and for what purpose uses his personal data.

What kind of information must be given and why is it important?

Firstly, everyone can consent to data processing of which he is aware of.

In that sense, it is important that persons or companies desiring to process the personal data of others give prior notification regarding the purpose of, and the method they use for, processing the data, by furnishing all essential particulars.

For example, acting as data controller, information must be given whether the data are given voluntarily or not; the precise data, the purpose and the length of time such data would be processed, whether data will be delivered to other persons – only to mention a few major circumstances. In addition, data subjects must be briefed without exceptions on their rights attached to data processing and to whom they may apply if they have any complaints.

Data protection prospectus also on the website!

The simplest way for data controllers to fulfil their obligations to furnish information is to prepare a data protection prospectus and to make it available to data subjects. This way, prior to providing any data, data subjects can read and get familiarised with the main particulars of data processing.

In its recommendation, the Authority explicitly emphasized that data controllers having a website can now be expected to make their data protection prospectus available on the Internet on a continuous

basis. It also relates to the case when data are recorded in person or using a call centre rather than over the Internet. The prospectus must always be displayed on the opening page so that anyone can find it easily.

The prospectus must be plain

It is an important consideration in making the prospectus that the person to whom it is addressed can understand it. At first, it sounds simple but as experience shows the majority of data protection prospectuses are full with words and statutory regulations that are difficult to understand. In its recommendation, the authority highlights that it is not appropriate, and it goes even further: if the target group to whom one desires to address can be identified, it must also be taken into consideration upon wording and in the format of presentation of the prospectus.

As stated in the recommendation of the Authority, for example, special attention must be paid to the adequate font size in particular if pensioners are addressed or in addition to the Hungarian version, the English version of the prospectus is also expectable when the personal data of non-residents are processed (for example in case of accommodations). Besides, the recommendation specifically refers to how we should help disabled persons (for example visually impaired persons) to have equal access to data protection prospectuses.

Content requirements

The recommendation also goes into detail about the content requirements of the prospectuses. Thus we can have information about for example that the processed data must be listed in the prospectus with particulars and as itemised (for example: name, telephone number, email address, etc.); the precise legislation serving as the basis for data processing must be indicated, the email and home address and the website of the data controller must be provided without exception as well as the contact details of NAIH using which data subjects can lodge complaints.

The Authority also supports that data controllers include in their prospectuses that in case of any problems, data controllers should be contacted first before initiating any administrative or judicial proceedings because, as experience shows, it can help avoid lengthy processes.

The Authority also expects that data subjects are informed about measures in relation to data protection in the prospectus notwithstanding that it is not specifically highlighted in the Data Protection Act. In practice, it means that the measures must be presented in the prospectus which are taken by data controllers to prevent data loss or destruction, or access to them by unauthorised persons.

In case of unlawful data processing, the Authority may also impose a fine!

Data are processed unlawfully if no prior notification is given and also when incomplete information are given, and it exercises significant influence on data subjects in giving their consent. Namely, in such a case, data subjects are not in the position to assess what data processing could present for them.

If the processing of data is unlawful, NAIH – within the framework of its administrative procedure – may impose a fine of even HUF 20 million on the infringer or in severe cases may also order the data to be destructed.



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For this reason, it is recommended that all data controllers should review and amend their data protection prospectus if it fails to comply with the recommendation of the Authority. For the future, it will cure potential shortfalls but will not affect the legality of data processing carried out based on former consents considering that data subjects have given their consent with the knowledge of the old prospectus.

In its recommendation, NAIH emphasized that past shortfalls may only be cured by obtaining new consents.