

**NEWSLETTER Nr 15/2016/Legal<sup>1</sup>****ADMINISTRATIVE FINES ACCORDING TO THE PROVISIONS  
OF EUROPEAN REGULATION CONCERNING PERSONAL DATA  
PROTECTION**

Starting from 24<sup>th</sup> May, 2016, regulation (EU) no. 2016/679 of the European Parliament and of the Council of 27<sup>th</sup> 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)<sup>2</sup>, came into force. According to this regulation, **possibility for imposing administrative fines** will be introduced for infringements of the regulation. Despite the fact that the regulation comes into force this year, according to article 99, it will be **applicable starting from 25<sup>th</sup> May, 2018**. Nevertheless it is worth to bring closer some provisions, because **European regulations, according to the article 288 of Treaty on the Functioning of the European Union, have general application, are binding in their entirety and are directly applicable in all Member States, so their application will not depend on implementation and amending present national laws.**

**The competence of imposing administrative fines** is granted to the supervisory authorities acting in the area of personal data protection, which in Poland is **Generalny Inspektor Ochrony Danych Osobowych** (Inspector General for Personal Data Protection). The possibility for imposing them occurs, when there are breached the provisions concerning inter alia the basic principles for processing the data; the rights of persons subject to this data; the transfers of personal data to a recipient in a third country or an international organisation; non-compliance with an order or a temporary or definitive limitation on processing or the suspension of data flows by the supervisory authority. The fines will be also imposed if the decisions issued in the framework of corrective powers of the supervisory authority (concerning inter alia warnings that intended processing operations are likely to infringe provisions, reprimands where processing operations have infringed provisions, communicating a personal data breach to the data subject), will not be carried out.

The minimum of administrative fines is not specified, but the maximum of financial burden that can be imposed on the person infringing the regulation is. In general, the fine **will be up to 10 000 000 euro or 20 000 000 euro** (depending on the type of the infringement), but in the case of an entrepreneur it will be **up to 2% or 4 % of the total worldwide annual turnover** of the preceding financial year (also depending on the type of the infringement). If the maximal fine calculated in that way will be lower than the above fixed amount, the minimal fine will be the higher amount.

---

<sup>1</sup> This Newsletter does not constitute legal or tax advice.

<sup>2</sup> Official Journal of the European Union L 119/1 from 4.5.2016, hereinafter referred to as: "regulation".

The imposition of administrative fines shall in each individual case be **effective, proportionate and dissuasive**. The European legislator introduces some guidelines, which shall be taken into consideration while imposing the fines, such as: the intentional or negligent character of the infringement, the categories of personal data affected by the infringement and **the way of cooperation with the supervisory authority**, the fact if **the controller or processor notified the infringement** and the way of **mitigating the possible adverse effects** of the infringement

The regulation will impose much more severe fines than these, which can be currently imposed. **At present**, the Inspector General for Personal Data Protection, according to the art. 20 § 2 of the Act on Administrative Enforcement Proceedings<sup>3</sup>, is considered to be an enforcement authority in the scope of executing non-pecuniary obligations. It is why the Inspector can impose fines for the purpose of forcing the subjects to fulfil the obligation of accepting some state of facts or obligation of acting in some way. Once, the fine may not exceed 10 000 PLN, whereas in case of legal persons (or entrepreneurs without legal entity) it may not exceed 50 000 PLN, but there is possibility for repeating those fines, but not exceeding **50 000 PLN** for natural persons and **200 000 PLN** for other subjects.

In connection with introducing from 25<sup>th</sup> May, 2018, severe administrative fines for infringement of the duties imposed by the regulation, **it is necessary to put an effort to comply the personal data protection in the company with the regulation, so not to infringe the regulation in two years' time. The risk in this scope had increased**, but a profound acquaintance with the regulation will let avoiding negative consequences. Thus, **we recommend to each entity under the regulation, to carry out an internal audit in order to estimate the changes, which has to be implemented and determine the deadlines and the way to do that.**

Should you have further questions, we remain at your disposal.

---

<sup>3</sup> Act from 17 June 1966, Dz. U. from 2016, item 599, with amendments.