

Note of NAIH addressed to the Accreditation Committee explaining the constitutional changes in relation to the Hungarian DPA

On the 1st January, 2012 the National Authority for Data Protection and Freedom of Information came into existence in Hungary.

The independent Authority is submitted only to the rule of law and its task is to supervise and to protect the right to the protection of personal data and to freedom of information. Thus the Hungarian traditional model of offering protection for both informational rights simultaneously has been maintained. The set up of the Authority is in direct connection with the constitutional and institutional changes ordered by the Fundamental Law of Hungary.

The adoption of the new constitution of 26th April, 2011 (coming into force by the 1st January, 2012) – in line with international standards of protection of human rights, the rule of law and the principle of democracy – affected the ombudsman system of Hungary, too. Instead of the four independent ombudsmen (parliamentary commissioners) of the former system (1993-2011) the Parliament elects only one ombudsman (commissioner for fundamental rights) and this person would be assigned to choose his/her own deputies. The offices of the special ombudsmen (parliamentary commissioners for the rights of national/ethnic minorities and for the rights of the future generations) have been integrated into the office of the general ombudsman. Thus the till now independent special ombudsmen are going to serve as deputies of the commissioner for fundamental rights.

The office of the parliamentary commissioner for data protection and freedom of information has been reorganized as an independent data protection authority in the sense of the strict criterion of the the Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data and the Charter of Fundamental Rights of the European Union. The new data protection authority is separated from the ombudsman office.

The National Assembly endorsed a new act on 11 July 2011(coming into force by the 1st January, 2012). The scope of the Act CXII of 2011 on Informational Self-determination and Freedom of Information (hereafter: Act) encompasses all data control and data processing activities undertaken in Hungary relating to the data of a natural person, as well as data in the public interest and data made public on the grounds of being in the public interest.

According to the new regulation of the Act - based on the provisions of the Basic Law - the Authority has broader competence compared to the former Parliamentary Commissioner for Data Protection and Freedom of Information.

I. Anyone is entitled to request an investigation from the Authority, on the grounds of infringement of law, in connection with the control of personal data, as well as exercising rights relating to access to data in the public interest or data made public on the grounds of being in the public interest, or in the event of such immediate threat to the above.

II. The Authority is also entitled to launch an official data protection procedure to enforce the right to the protection of personal data if it be presumed that the illegal control of the personal data concern a wide-scope of persons; concern special data, or significantly harm interests or engenders

the risk of damages. The deadline date for administration within the scope of the official data protection procedure is two months. In the decision made within the scope of the official data protection procedure, the Authority may

- a) order the correction of unauthentic personal data;
- b) order the blocking, deletion or destruction of illegally controlled personal data;
- c) prohibit the illegal control or processing of the personal data;
- d) prohibit the transfer of the personal data to other countries;
- e) order notification of the data subject, should the controller have unlawfully refused to, and
- f) impose a fine (which may range from 100,000 HUF to 20,000,000 HUF)
- g) order the disclosure of its decision by disclosing the ID data of the data processor should this be required in the interest of data protection or to protect the rights of a greater number of data subjects.

III. The Authority registers data control undertaken in respect of personal data in a data protection file or registry to facilitate access to information for the data subject.

IV. The Authority is authorised to launch a confidentiality review procedure, should it may otherwise be presumed that national classified information has been illegally classified.

V. Data protection audit is a service provided by the Authority designed to provide high standard data protection and data security on data processing operations carried out or planned through the evaluation of professional standards defined and published by the Authority. Planned data processing operations may be audited should the concept regarding data process enable this.

VI. Data controllers may apply for approval to the Authority respecting their Binding Corporate Rules. Decision is due within sixty days.

VII. The purpose of the conference for internal data protection officers (convened by the president of the Authority at least once a year) is to establish regular professional contacts between the Authority and internal data protection officers with the aim of developing standard legal practices in regard to the application of legislation relevant to the protection of personal data and accessing data in the public interest.

The legislation has built in the law several guarantees of the independent functioning (e.g. strict incompatibility rules for the President of the Authority, obligation of declarations of personal assets of the President and the Vice-President of the Authority within thirty days of appointment, separate budgetary title for the Authority within the budgetary chapter of the Parliament etc.) with the aim to safeguard the obligatory criteria of independence required by the European Union.

From the 1st January, 2012 the Authority also represents Hungary in the joint supervisory data protection bodies and working groups of the European Union.

Budapest, 5th April, 2016

Dr. Attila Péterfalvi

President of NAIH