

A username and password are being transmitted

The site says: "Member Site"

Username: |

Password:



Nemzeti Adatvédelmi és  
Információszabadság Hatóság

## Surveillance at work

# Perspectives in the supervision by the new Data Protection Authority

Pécs, 3 April 2012



# Status and independence of the Data Protection Authority



## New DPA in Hungary

Fundamental Law:

„The exercise of the right to the protection of personal data and the access to data of public interest shall be supervised by an independent authority”



## Regulatory solution

The authority shall be an autonomous public administration organ



## The elements of legal autonomy

- Organizational
- Operational
- Personnel
- Budgetary and fiscal



## The elements of legal autonomy

Organizational and operational and independence

*“The Authority shall be independent, subordinated only to Acts; it may not be given instructions as to the performance of its tasks, and shall perform its tasks separately from other organs, free of any outside influence. Tasks for the Authority may only be established by an Act.”*



## The elements of legal autonomy

*The Authority shall be a central budgetary organ with the powers of a budgetary chapter, and its budget shall constitute an independent title within the budgetary chapter of Parliament.*

*The main totals of expenditures and receipts of the Authority for the current budgetary year may only be reduced by Parliament, with the exception of natural disasters endangering life and property as defined in the Act on Public Finances, of temporary measures adopted to relieve the consequences of such disasters, or measures taken by the Authority within its own competence or in its competence as directing organ.”*



# Personal independence

## President

Professional criteria

Conflicts of interest

- political
- economic

Unremovability

- Mandate extends beyond government cycle
- Reason defined in the law
  - Subjective (behavioral reasons)

Remuneration (ministerial salary, salary supplements)

## Vice President

- Appointed by the President of the Authority (for an unlimited time)

- Criteria and status analogous to that of the President

- Significant difference: removability (serves at the pleasure of the President)

## Personnel

- Civil servants, employees

- Rights of employer are held by the President

- Remit to examine (qualifications, education)





## Relationship to other state bodies

### National Assembly:

sets budget, annual report, committee hearings

### President of the Republic:

appointment of the NAIH president

### Government (Prime Minister):

proposal of the NAIH president

### Courts:

may review decisions of NAIH

### Fundamental Rights Commissioner:

limited right of refusal



## Relationship to other state bodies

### All public bodies:

investigations

right to comment on special and unique published lists

### All data processors:

official investigations and penalties

### All legislative bodies:

right to comment on legislation, suggestions

### Courts:

initiate proceedings

interference in the trial

### Public prosecution:

initiate criminal proceedings



## Dual set of tools – ombudsman-type

- Investigate
- Legislative opinions
- Participation in court proceedings
- Annual report
- Recommendations
- International representation



## Dual set of tools – as an authority

- Data protection authority proceedings
- „State Secrets” Authority proceedings
- Data protection register
- Authority sanctions



# Data protection authority proceedings

## Reparative function:

- Order:
  - Correction
  - Blocking, erasure or destruction
  - Informing of relevant parties
  - Make resolution public
- Prohibit:  
illegal data control, data processing,  
transfer abroad



## Data protection authority proceedings

### **Preventative:**

- fine
- range: 100 t – 10 m Ft
- criteria by which the range is applied:  
all circumstances of the case, i.e.:
  - number affected
  - extent of illegality
  - whether the infraction is repeated



# Supervision in the field of data processing at work

## Tendencies and opportunities



# GPS monitoring in company cars





Complaint: a multinational company has installed GPS system in company cars, the surveillance does not differentiate between work time and private/leisure time



## Position of the DPA

- The activity of the company qualifies as **data processing**
- The data transmitted by the GPS trace detector installed in the car shall be considered to be the **personal data** of the driver and/or the persons in the car
- The legal relationship between the data controller and the data subject is an **employment relationship**, the car is given for the purpose of work



The data transmission is only allowed **during the working time.**

It is recommended to equip the cars with an appliance that could be put in operation by the employees (switch button) -> **possibility to switch off**



# Cell identification tracking



Complaint: a company is controlling the actual location of the sales brokers on the basis of cell information of the company's mobile phones. The employees have not received any information either in advance, nor on request from the company, and the service provider denied giving information as well.



## Position of the DPA

- The actual situation of a person is considered as personal data
- Clear legal basis is needed for the processing
- Data transmission only during the working time
- Only reasonable in special cases
- Even with the consent of the person involved the processing is going too far in the light of the purpose limitation principle.



# The use of polygraph (lie detector)



Complaint: The employer subjects its employees to polygraph (=lie detector) examinations typically during a disciplinary procedure





## Position of the DPA

The employment related application of the polygraph fundamentally **do not comply with the democratic principles**, therefore the use of such devices for such a purpose **may not be considered legal**



## What is new and what is not? Novelty in labor law?

- Restrictions of fundamental rights at work shall be in line with general constitutional principles
- Prior consent is not any more requested, but prior notification to the employees is necessary
- Consent of the data subject is a debated legal basis in the context of labor law
- According to the ruling of the Court of Justice of the European Union, Article 7 of the Directive has direct effect



## What we expect

- Investigations on a regular basis
- On the spot investigations
- Investigations without any prior notification
- The status of the Authority in itself raises awareness amongst stakeholders



***Thank you for your attention***

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