Case number: NAIH/2020/1154/9
Antecedent: NAIH/2019/8402

Re: Decision partially sustaining the complaint

The Nemzeti Adatvédelmi és Információszabadság Hatóság (Hungarian National Authority for Data Protection and Freedom of Information, hereinafter: **Authority**) brings the following decisions in the data protection procedure of the Authority launched upon the petition submitted by the […] complainants (hereinafter jointly referred to as: **Complainants**) through […] representing them against **Mediarey Hungary Services Zártkörűen Működő Részvénytársaság** (address: 1061 Budapest, Andrássy út 12, Trade Registry number: 01-10-140295; hereinafter: **Obligee**) concerning unlawful processing of data in relation to the printed and electronic versions of Forbes Magazin (hereinafter: Forbes) published by the Obligee and inadequately guaranteeing the exercise of the rights of the Complainants' as data subjects:

I. The Authority

IN ITS DECISION

1. **Partially sustains** the petition of the Complainants

1.1. and **establishes** that the Obligee inadequately carried out the assessment of interests in relation to the printed and on-line versions of the publication listing the largest family undertakings published in September 2019 **(Processing 1)** and the printed and on-line versions of the Forbes publication listing the 50 richest Hungarians published in January 2020 **(Processing 2)** and it failed to inform the Complainants in advance about its own legitimate interests and those of a third party (the public) and the results of comparing them with the interests of the Complainants infringed Article 6(1)(f) of the General Data Protection Regulation.

1.2. Further, the Authority **establishes** that through failing to provide appropriate information in relation to Processing 1 and Processing 2 to the Complainants about all the essential circumstances of processing and of the Complainants' right to object to the processing of their personal data, and furthermore, it failed to provide information on the possibilities of enforcing the rights of the Complainants in its answers to the Complainants' requests aimed at exercising their rights as data subjects, the Obligee infringed Article 5(1)(a), Article 5(2), Article 12(1) and (4), Article 14, Article 15 and Article 21(4) of the General Data Protection Regulation.

1.3. The Authority **condemns** the Obligee on the grounds of unlawful data processing, and at the same time **instructs the** Obligee

1.3.1 to fully meet its obligations to inform the Complainants in connection with data processing, including the interests taken into account in the course of interest assessments on the part of both the Obligee and the Complainants, the result of the interest assessment, information on the right to object and information concerning the possibilities of the enforcement of rights within 15 days from the decision becoming final.

1.3.2 if the Obligee intends to use legitimate interest as the legal basis for envisaged future data processing, it shall carry out interest assessment in accordance with the legal regulations and the provisions of this decision, including a second individual interest assessment following objection.

1.3.3 Obligee shall modify its practices related to providing information in advance in accordance with the legal regulations in force and the provisions of this decision.

2. The **Authority rejects** the part of the petition, in which

2.1 the Complainants request the Authority to order the restriction of data processing, the erasure of the personal data of the Complainants and to ban the Obligee from processing personal data;

2.2 the Complainants request the Authority to restrict data processing and prohibit the disclosure of personal data by interim measure.

3. The Authority **rejects** the part of the petition on levying a data protection fine, but because of the established infringements, the Authority levies

a data protection fine of
HUF 2,000,000, i.e. two million forints

ex officio on the Obligee.

Procedural costs did not arise in the course of the procedure of the Authority, hence the Authority did not provide for who should bear them.

The data protection fine shall be paid to the targeted forint account for the collection of centralised revenues of the Authority (10032000-01040425-00000000 Centralised collection account IBAN: HU83 1003 2000 0104 0425 0000 0000) within 15 days from the expiry of a period open for initiating a review by the court, or if a review was initiated, following the decision of the court. Upon transfer of the amount, reference shall be made to the NAIH/2020/1154/9 BÍRS number.
If the Obligee fails to pay the fine when due, it shall pay a penalty for delay. The rate of the penalty for delay is the legal interest rate corresponding to the central bank base rate quoted on the first day of the calendar half year affected by the delay.

The Obligee shall verify the performance of the obligations required under Section 1.3.1 of the decision, submitting the substantiating evidence in writing to the Authority within 30 days from the communication of the decision.

The Obligee shall verify the measures it has taken in order to meet the obligations set forth in Section 1.3.3 of the decision in writing, submitting the substantiating evidence to the Authority within 30 days from the communication of the decision.

In the event of failure to pay the fine and the penalty for delay and to meet the obligations set forth, the Authority shall launch the enforcement of the decision.

There is no legal remedy against this decision through the administrative route, but it can be attacked in an administrative lawsuit with a petition addressed to the Fővárosi Törvényszék (Budapest Tribunal) within 30 days from its communication. The petition is to be submitted to the Authority electronically, which it shall forward to the court together with the documents of the case. The request to hold a hearing must be indicated in the petition. For those who are not subject to full personal exemption from levies, the levy on the review procedure by the court is HUF 30,000; the lawsuit is subject to the right of prenotation of duties. Legal representation is mandatory in a procedure in front of the Budapest Tribunal.

II. With regard to the part of the petition aimed at the establishment of infringement concerning data processing prior to 25 May 2018, the Authority **terminates** the data protection procedure

IN ITS WARRANT

because the General Data Protection Regulation is not applicable to this period.

There shall be no administrative legal remedy against this warrant, but it can be attacked in an administrative lawsuit with a petition addressed to the Fővárosi Törvényszék (Budapest Tribunal) within 30 days from its notification. The petition is to be submitted to the Authority electronically, which shall forward it to the court together with the documents of the case. The petition must indicate if there is a request for holding a hearing. For those who are not subject to full personal exemption from levies, the levy for the court review procedure is HUF 30,000; the lawsuit is subject to the right of prenotation of duties. Legal representation is mandatory in a procedure in front of the Budapest Tribunal.

JUSTIFICATION

I. The facts of the case

I.1. The period studied in the course of the procedure

The Obligee included the "[…] family" in its compilation "Largest Hungarian family undertakings" for the first time in the August 2015 issue of Forbes. After this, the […] owned by "[…] family" was included in the compilation "Largest Hungarian family undertakings 2019" in the September 2019 issue. Then, […] was also included in the compilation "Richest Hungarians" in the January 2020 issue. As a result of […] the Obligee recalled the January 2020 issue of Forbes, showing the list of the 50 richest Hungarians and in the on-line version of the lists related to Processing 1 and Processing 2, it replaced the phrase […] and the […] name with the phrase […].

The Authority conducted this data protection procedure in relation to the data processing activities of the Obligee after 25 May 2018, in particular in relation to the processing of the Complainants' personal data (name, family name, assets) and inadequate ensuring of the exercise of the data subject's rights. Data processing prior to 25 May 2018 was carried out before the effective date of Regulation (EU) 2016/679 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 (hereinafter: General Data Protection Regulation), hence the rules of the General Data Protection Regulation are not applicable to them, a petition requesting data protection procedure from the Authority cannot be submitted and the Authority has no competence to examine compliance with the provisions of the General Data Protection Regulation with regard to such processing within the framework of this data protection procedure.

I.2. The data disclosed in relation to the Complainants in the publications studied in the course of the procedure

The Complainants objected to data processing related to the following publications and lists:

- Printed and on-line versions of the September 2019 issue of Forbes containing the largest family undertakings **(Processing 1).** [The on-line version is accessible through the link *https://forbes.hu/extra/csaladi-lista-2019/#/* and the concrete entry is accessible here *[…]* .]
- The printed and on-line versions of the January 2020 issue of Forbes containing the 50 richest Hungarians, which was subsequently […] recalled **(Processing 2).** [The on-line version is accessible through the link *https://forbes.hu/extra/50-leggazdagabb-magyar-2019/* and the concrete entry is accessible here *[…]* .]

In the case of Processing 1, the following content was displayed:

- The printed version showed the family name ([…] family) the name ([…]) of the undertaking in which they held interests, the estimated value of the undertaking ([…]), the registered office of the undertaking ([…]), the year of foundation of the undertaking ([…]) and the number of generations with interests in the undertaking ([…]) . The entry contained the following description:
  […]
- Initially, the name of the family was shown in the on-line version; this, however, was removed as a result of […] and was replaced by the phrase […]. In addition, the name of the undertaking, its estimated value, the year of foundation and the number of generations with interests in the undertaking were shown. The on-line version has a shorter description, the entry contains no more than this:
  […]
- The full names of the Complainants were not displayed either in the printed or in the on-line versions, and other family members were not named either. Neither the printed, nor the on-line version showed or shows the portraits of the Complainants.

In the case of Processing 2, the following content was published:

- In the printed version only […] was named of the Complainants, the publication contained neither direct, nor indirect reference to any other member of the family. The publication showed the amount of the estimated assets ([…].) of […], the source of the estimated assets ([…]), as well as his age ([…]). The entry contained the following description:
  […]
- The box entry describing the purpose of the MNB Growth Bond Programme was also included in the printed version, which also contained the name of […], as well as the volume of issue ([…]).
- Initially, the on-line version also displayed the name of […]; this, however, was removed as a result of […] and was replaced by the phrase […]; in addition, the estimated value of the assets was also shown. The description in the on-line version was shorter and somewhat different:
  […]
- Neither the printed, nor the on-line versions showed or shows the portraits of the Complainants (including […]).

The data processed and published by the Obligee in relation to Processing 1 and Processing 2 are not among the special categories of personal data according to Article 9 of the General Data Protection Regulation (personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade union membership, genetic and biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation).

The publicly accessible data of the […] Trade Registry included that […] and […] held managerial positions in the undertaking and that […] and […] were members (that is, owners) of the undertaking at the time of the compilation and publication of the lists objected to. As a result of a change in the data of the members (owners) of […] and in the persons of the members (owners) registered on the day of […] were modified, and […] and […] were replaced by […] and […], this development is not relevant to the case because the publications and lists were compiled on the basis of the data and information accessible at that time.

Over and above the data constituting part of the certified public Trade Registry and/or the data in the reports and the website of the undertaking in which the Complainants held interests accessible on pages […] […] and […], the estimated value of […] in the case of Processing 1 and the estimated

assets of […] (after the modification in the case of Processing 2: […]) originating from his activities in the undertaking were indicated.

Although the (estimated) value of the business organisation held by the Complainants and the (estimated) amount of the assets of […] / […] are not part of the Trade Registry, they are not data accessible on public interest grounds, at the same time, the publications do not present the amount of the personal assets (e.g. inherited, presented, obtained via marriage, etc.) of the Complainants to the readers, but estimate the value of the undertaking or the amount of the assets collected as a result of the business activities, concerning which the Obligee drew its conclusions from publicly available company data, information, company reports and the communications of the company itself. The Obligee collected these data from public sources for making the estimates, evaluated them on the basis of a specific method and published them as its opinion.

I.3. Correspondence between the Complainants and the Obligee

In relation to Processing 1 and Processing 2, correspondence between the Complainants and the Obligee took place on several occasions. The Authority studied and evaluated this correspondence detailed under Section III.4 of the decision in relation to the exercise of the rights of data subjects in the context of the Obligee's obligation to provide information in advance, the interest assessment carried out by the Obligee and the compliance of the answers given to the requests of the Complainants aimed at the exercise of their rights as data subjects with the relevant provisions of the General Data Protection Regulation.

I.4. The course of the procedure, the statements of the Complainants and of the Obligee made in the course of the procedure

In their petition sent electronically on 6 December 2019 and by mail received by the Authority on 12 December 2019 and in the supplement to their petition sent electronically on 17 December 2019 and by mail received by the Authority on 19 December 2019 objected to Processing 1 and Processing 2 and in relation to them, to the inadequate ensuring of the exercise of the rights of the Complainants as data subjects, thus the right to be informed in advance to access, to rectify and to object and initiated a data protection procedure by the Authority against the Obligee.

The Complainants presented the following in the petition and in the supplement thereto:

- The Obligee collected data in 2016 for the first time, when it wished to include the Complainants in its publication summarising the largest family-owned companies based on the data collected concerning the financial position of the Complainants. The Complainants strongly objected to the processing of their data at that time, as a result of which Obligee then refrained from the publication of the data.
- The Complainants learned from an electronic mail sent by the Obligee on 26 August 2019 that the Obligee wished to present "[…] family" in relation to […] in the case of Processing 1 by disclosing the financial position of […] on the basis of the public company data of the companies held by the family and the calculation methods of the Forbes editorial board.
- It was also from the letter sent on 26 August 2019 by the Obligee that the Complainants learned that *"[…] was not included in the family company lists of Forbes in the preceding years because in our view, based on the data of the given year and our estimates made on that basis, they were not among the 25 largest companies."* The Complainants concluded from this that the Obligee collected data about them even in the preceding years, but failed to inform them in any way about this.
- According to the Complainants, the use of the term "[…] family" is misleading and untrue and the use of this phrase in this context infringes the rights of those members of the […]

family who are not members of […] and also refers to underage children. Based on the data of the trade registry, the owner of […] is not the "[…] family", but […] and […], […] and […] are not owners, but only managing directors of the company, hence according to the Complainants a conclusion drawn from the profitability of […] with regard to the financial circumstances of the managing directors is false.

- On 30 August 2019, the Complainants submitted a request to the Obligee, in which they objected first and foremost to the processing of their personal data, and secondly, they requested information concerning the processing of their personal data and also requested that Obligee rectify the inaccurate personal data.
- In its response to the request to exercise their rights as data subjects, the Obligee - according to the Complainants - failed to give them all the information listed in Article 15 of the General Data Protection Regulation, and did not provide any information concerning their rights related to the processing of their personal data and about the legal remedy available against such processing.
- The Complainants also presented that in its response, the Obligee failed to indicate the legal basis of processing their personal data, it did not indicate that it based the processing of the data on its legitimate interests, and it failed to provide them with the results of the interest assessment test. The Obligee indicated providing information to the public as the purpose of data processing; according to the Complainants, however, this purpose does not create legitimate interest on the part of the Obligee on the basis of which it could lawfully process personal data, and that the right of the Complainants to privacy enjoys priority vis-a-vis the eventual legitimate interest of the Obligee. The Complainants stated that they had paid particular attention to the separation of their private and business lives and to the confidential nature of their privacy, they do not make statements in the press and their eventual statements were strictly focused on business aspects.
- The Complainants presented that following the September 2019 publication of the issue containing the largest family undertakings, persons identified as having criminal records appeared around the family estate as confirmed by information provided by the Police. While tThe family used to be able to successfully defend its privacy; in their view, the Forbes list published in September 2019 directed the attention of criminal circles to the Complainants.
- In its electronic mail sent on 6 November 2019, the Obligee informed the Complainants that it wished to include the Complainants as private individuals also in the case of Processing 2.
- Similarly to the earlier correspondence, this letter also failed to include the mandatory information required under Articles 13-14 of the General Data Protection Regulation, it did not include the person(s) to be included in the list and the concrete data, nor any information on the legal basis of disclosing personal data concerning the Complainants set by Forbes on the basis of certain calculations, which concerned the financial positions of the Complainants as private individuals. The file name of the excel table enclosed with the letter referred to "[…] family", thus according to the Complainants, the Obligee was processing data concerning the Complainants expressly as private individuals. According to the Complainants, the "[…] family" is inaccurate personal data, as it refers to every member of the family including children, while the ownership in […] is limited to […] and […]. Furthermore, according to the Complainants an undisclosed method of calculation was the basis of the establishment of the data concerning their alleged financial position based on the public company data of the company held by […] and […] and the proprietary calculation methods of the Obligee. Concerning the calculation, the Obligee only disclosed an excel table, which in contrast to the text of the letter sent on 6 November 2019 did not include a presentation of the method of calculation.
- In the cease and desist letter sent by their attorney on 15 November 2019 to the Obligee, the Complainants strongly objected to the data processing carried out by the Obligee affecting the Complainants on the basis of Article 21 of the General Data Protection Regulation and prohibited their access to any personal data concerning them, to collect their data or to carry

out any other data processing activity, including publication. They also prohibited their presentation in the issue directly or indirectly whether by name or by reference to the family and they called upon the Obligee to immediately erase the personal data of the Complainants and to refrain from any kind of data processing operation in relation to them. Based on Article 18(1)(a) and (d) of the General Data Protection Regulation, the Complainants also asked for the restriction of processing and emphatically called upon the Obligee to refrain from the disclosure of data concerning the Complainants until the clarification of the circumstances specified under Article 18(1)(a) and (d) of the General Data Protection Regulation and as a result of their objection also beyond it.

- According to the Complainants, the Obligee in its response delivered on 20 November 2019, provided deficient information, thus, for instance, it failed to provide any information concerning the rights of the Complainants in relation to the processing of their personal data and about the legal remedy available to them against the processing of their data. Furthermore, the Obligee indicated Article 6(1)(f) of the General Data Protection Regulation as the legal basis of processing without providing any information on the results of the general interest assessment and the individual interest assessment, which is mandatory after objection. According to the Complainants, the information failed to meet Article 13(2)(f) and Article 14(2)(g) of the General Data Protection Regulation as the Complainants have no knowledge of the logic used to analyse their personal data, or the significance and expected consequences of processing with respect to the Complainants. The information fails to accurately specify the duration of processing; furthermore, the Obligee failed to meet the Complainants' request aimed at the exercise of their right as data subjects under the General Data Protection Regulation, and it failed to restrict processing in view of the fact that according to the notification by the Complainants, the data were not true and failed to meet its erasure obligation.

Over and above this, the Complainants made the following (supplementary) remarks about the data processing carried out by the Obligee with regard to the legal background:

- Paragraph [62] of the justification of the Constitutional Court Decision 7/2014. (III. 7.) of the data protection commissioner stipulates that *"persons exercising public powers and politicians who are public actors also have a right to the protection of personality, if the value judgment affects their persons not in relation to disputes about public affairs, or their public activities, but their private or family life."* Information not related to disputes about public affairs, but related to private or family life qualify as protected also in the case of public actors, thus the disclosure of such information constitutes a severe violation of privacy according to the Complainants.
- According to the Complainants, the satisfaction of the curiosity of society is insufficient basis for privacy intervention, even if it concerns a person participating in social decision-making (BDT2017.3693). According to the Complainants, this protection prevails in particular with regard to persons who cannot be regarded as public actors as their activities are not public, such as in the case of the Complainants.
- With regard to the legal assessment of data processing by the press, the Complainants underlined that the position set forth in earlier decisions by the data protection commissioner, namely that "*legal practice also indicates that newspapers give priority to increasing the number of copies sold, improving their position in market competition and as against this, they insufficiently take the obligation to protect personal data into account" continues to hold.*
- The Complainants also refer to opinion WP 217 of the Article 29 Working Party, consisting of the representatives of the data protection authorities of the European Union, according to which "*the media must not be granted general authorisation to publish any detail on the private lives of public actors, which is not part of the subject matter*".
- According to the Complainants, the legal practice of earlier years has been unambiguous in establishing that being included in lists such as "The 100 richest Hungarians" and other

similar lists, in spite of the objection of the data subject, constituted an infringement (cf. Resolution ABI 1472/A/2003 in relation to a similar list published by Magyar Hírlap or ABI 922/A/2000 in relation to a Playboy's list). According to the earlier resolutions of the data protection commissioner "*with regard to people who are not public actors, only rich people, I do not regard this procedure as lawful, as their names were published in this context without their consent. In my view, the fact that somebody is wealthy in itself does not mean that he is also a public actor. The right of self-determination of the data subject must be guaranteed with respect to the personal data published in the list, in the absence of a consent personal data may not be published."* Although the resolutions referred to were made prior to the entry into force of the General Data Protection Regulation, according to the Complainants, they continue to be governing to this day even though with some differences.

- The Complainants referred to the resolution of the Authority concerning the database consisting of photos unlawfully made public in the entry entitled "A nagy köcsög adatbázis 2" accessible on the website www.deres.tv, according to which the database was suitable for a negative representation of the data subjects, making them targets.
- The Complainants also referred to Resolution NAIH/2018/2618/6/V of the Authority concerning the Soros listing of Figyelő-lap, in which the Authority stated that *" the purpose of the listing was a kind of negative social evaluation of the data subjects with regard to persons who do not qualify as public actors, do not participate in public life and they have no intention to influence public opinion through their activities."*
- With respect to Article 85(3) of the General Data Protection Regulation, Hungary has notified the following relevant legal regulations: Section 2:44 of Act V of 2013 on the Civil Code (hereinafter: Civil Code) (in relation to the free discussion of public affairs); Section 4(3) (principles) and Section 6 (protection of sources) of Act CIV of 2010 on the Freedom of the Press and the Fundamental Rules of Media Content (hereinafter: Press Freedom Act). According to the Complainants, the Obligee could at best refer to the above legal regulations to lay the grounds for legitimate interest according to Article 6(1)(f) of the General Data Protection Regulation in the context of the freedom of the press, otherwise data processing is directly governed by the provisions of the General Data Protection Regulation.
- According to the Complainants, the basis of the infringement is the principle, according to which well-grounded or presumed statements concerning the financial circumstances of a person - irrespective of the magnitude of the assets - are statements within the narrowest circle of a given person and constitute parts of the private sphere due to the person, and they have a direct impact, inter alia, on the evaluation of the given person, his acceptance and in some cases, his safety.
- To safeguard and maintain the safety of the entire family, including its minor members, the Complainants handled their financial position strictly in confidence. They did not hide the success of […], but they never made any statement concerning its details or the magnitude of the assets due to individuals. Any true or false information published in the press may have a direct or indirect effect on the quality of life of the Complainants and other members of the family, because of the various safety measures and the employment of staff. According to the Complainants, safeguarding the life and safety of minor children can only be implemented in a manner that is detrimental to the spiritual development of the children, future implications are unforeseeable and even a single appearance in the press may result in an irreversible sense of dread in the members of the "[…] family", irrespective of whether or not their life, health or assets are endangered by a minor or major direct or indirect threat.
- According to the Complainants, the purpose indicated by the Obligee (informing the public, exercising the right to the freedom of the press) is not a true purpose, because the financial position presented paints a false picture of the natural persons behind the "[…] family" suggesting that the entire "[…] family" is wealthy. According to the Complainants, the presentation of the financial position of certain private individuals (i.e. not public actors), the

processing of their personal data cannot be a lawful purpose, because they fail to inform the public properly through this.

- According to the Complainants, if the Obligee wishes to achieve the purpose of informing the public, it would have to obtain the consent of every single private individual concerned, otherwise, the disclosure of the assets by name, company name and calculated with a unique method constitutes unlawful data processing. According to the Complainants, the purpose of processing does not correspond to the purpose, for which the Trade Registry and the e-report processes the personal data of the Complainants, consequently, the processing of the personal data of the "[…] family" affecting a larger circle of persons by the Obligee is not tied to a purpose, hence it is unlawful.
- A condition for recourse to Article 6(1)(f) of the General Data Protection Regulation (with respect to both Processing 1 and Processing 2) is that the Obligee as controller should carry out an interest assessment test and inform the data subjects of its results. The controller has to demonstrate through the interest assessment test that the processing of the data is a necessary and proportionate intervention in the privacy of the data subject for the enforcement of its legitimate interests. The Obligee failed to make an interest assessment test available to the Complainants.
- The Complainants' position holds with regard to both Processing 1 and Processing 2 when information based on speculation containing untrue data cannot be suitable for informing the public accurately, and data processing also extends to persons with regard to whom there is no interest linked to publicity. The publication of information concerning the outstanding financial position of the Complainants, whether true or not, has a substantial impact on the evaluation of the data subjects, their relationships, acceptance and even personal safety, moreover there are minor children in the "[…] family" whose particular protection is required by Article 6(1)(f) of the General Data Protection Regulation referred to by the Obligee.
- According to the Complainants, even if some of the data originates in public databases, this does not create a legal basis for the processing of the conclusions drawn from this as personal data. The Obligee did not provide any additional information concerning this. According to the Complainants, the processing of data concerning their financial position cannot in any way be deducted from company transparency, from the category of data accessible to the public on the grounds of public interest, because an individual may have property other than holdings in a company, as well as debts.
- According to the Complainants, Obligee published such data concerning "[…] relationship" and "[…] generation", which data could not stem from any public registry.
- According to the Complainants, only Article 6(1)(a) of the General Data Protection Regulation could provide a legal basis for data processing with regard to Processing 2, but the Complainants never made a statement consenting to the processing of their personal data.
- In its response, the Obligee indicated the use of state subsidies or subsidies from other public funds granted to […], their role in its success, thereby informing the public and in a wider sense, the exercise of the right to the freedom of the press, as the purpose of data processing. In relation to this, the Complainants refer to warrant number NAIH/4454/6/2012/V of the Authority *[brought prior to the General Data Protection Regulation becoming applicable]*, which states that public company data including the personal data of the shareholders and senior officials cannot be used for purposes other than that specified by the act providing a legal basis for this (currently, this is Act V of 2006 on Company Transparency, the Trade Court Procedure and Final Settlement; hereinafter: Company Transparency Act). According to the preamble of the Company Transparency Act, these data can be used exclusively in the interest of the constitutional rights of entrepreneurs for the purposes of the safety of economic transactions and the protection of creditor's interests or other public interests. According to the Complainants, the purposes indicated by the Obligee cannot be reconciled with these purposes and the purpose specified by the Obligee cannot provide a legal basis indicated as its legitimate interest for violating the rights of the

Complainants, restricting their privacy and these data in the Trade Registry can absolutely not be used to draw conclusions concerning the financial position of persons who are not shareholders in the company concerned.

- The Complainants notified the Obligee that estimates based on speculation do not give a true result and the data processed do not meet the principle of accuracy. In view of this, according to the Complainants, the Obligee would have been under the obligation of immediately erasing the untrue data processed by it based on Article 17(1)(c) of the General Data Protection Regulation, or at least it would have had to take all reasonable measures in order to immediately erase or rectify the personal data, which were inaccurate from the viewpoint of the purposes of processing the data based on Article 5(1)(d) of the General Data Protection Regulation. The Complainants strongly demanded the erasure of the data based on their objection; however, the Obligee indicated in its response a willingness to rectify the personal data only with respect to the name.
- The Complainants refer to the decision of the Constitutional Court No. IV/1235/2019 rejecting a constitutional complaint, in which the Constitutional Court declared that "*the freedom to express an opinion provides no protection against statements of facts, whose veracity cannot be verified*".
- Primarily, Article 14 of the General Data Protection Regulation specifies the obligation of the Obligee as controller to provide information, because the personal data were not collected from the Complainants. According to the Complainants, Obligee evidently and repeatedly failed to meet this obligation to provide information and it failed to supply the appropriate information. Furthermore, Obligee failed to inform the Complainants of the results of the individual interest assessment, which is mandatory following the objection of the Complainants, which also constitutes an infringement of the obligation to supply information.
- Based on Article 18(1)(a) and (d) of the General Data Protection Regulation, the Complainants requested the Obligee to restrict the processing of their data in the context of disputing the accuracy of the personal data and the objection to processing. According to the Complainants, the Obligee should have restricted the processing of the data affected by the demand for restriction because none of the reasons for continuing the processing are supported by Article 18(2) of the General Data Protection Regulation.
- According to the Complainants, they cannot be regarded as public actors, their activities do not belong to the sphere of being in the public sphere, thus pursuant to Article 21 of the General Data Protection Regulation they rightfully objected to the processing. The Complainants made use of their right to object with regard to both Processing 1 and Processing 2. According to the Complainants, the Obligee failed to prove its legitimate interest of compelling force that would enjoy priority vis-a-vis the rights and freedoms of the Complainants and furthermore, it failed to provide an interest assessment test to the Complainants, which is mandatory following an objection. According to the Complainants, there are no legitimate interest of compelling force on the part of the Obligee, because the Obligee only processes the personal data in order to create a large audience for the website and to increase the sales figures of Forbes. According to the Complainants, these cases are in no respect subject to the exemption established by Article 21(1) of the General Data Protection Regulation.
- According to the Complainants, this case is very similar to Judgment C-131/12 Google Spain SL and Google Inc. v. Agencia Española de Protección de Datos (AEPD) and Mario Costeja González adjudged by the Court of Justice of the European Union (hereinafter: CJEU) under a preliminary ruling procedure, in which CJEU declared that the public has a substantial interest in making the data accessible, if that is verified by the role of the data subject in public life. According to the Complainants, no such circumstance prevailed in the current case similarly to the case referred to, and in spite of the fact that the disclosure of the data in other places was lawful, the processing by the Obligee was unlawful because of the expressed objection.

- Of the Complainants, […] buildings the export markets, […] is present in more than […] countries. Their partner […] was kidnapped three times, his wife once. According to the Complainants, appearance in such lists puts the family and the members of the family on the map even internationally, search engines preposition these lists, whereby there is a higher probability that a member of the family may fall victim even to foreign perpetrators.
- According to the Complainants, Processing 1 directed the attention of criminal circles to the Complainants. To substantiate this, the Complainants sent the correspondence to the Authority in which the security director of […] indicates the introduction of changes in the personal protection tasks affecting the […] family and provides information on the related measures.

In view of the above, the Complainants initiated the conduct of a data protection procedure by the Authority with regard to both Processing 1 and Processing 2 and requested the Authority to establish the fact of unlawful data processing because of infringements of Article 5(1)(a), (b), (d) and (e), Article 6(1)(f), Article 13(2)(f) and Article 14(2)(g), Article 14(1) and (2), Article 15(1)(h), and Article 21(1); to order the restriction of personal data on the basis of Article 18(1)(a) and (d) and then the erasure of personal data according to Article 17(1)(c) and to prohibit the Obligee to process personal data based on Article 58(2)(f).

The Complainants requested the Authority to apply the fine according to Article 83(4) of the General Data Protection Regulation against the Obligee based on Article 61(1)(a) of the Privacy Act.

The Complainants also requested the Authority to restrict data processing and prohibit the publication of personal data by an interim measure in accordance with the provisions of Section 106 of Act CL of 2016 on General Public Administrative Procedures (hereinafter: Administrative Procedures Act), in view of the fact that in its absence the Complainants and their children of minor age (who are also data subjects, although they are not Complainants in this procedure) would sustain inevitable damage and threat and inevitable infringement of personality rights if Processing 2 was to appear.

Based on the complaint, the data protection procedure by the Authority was launched pursuant to Article 57(1)(f) of the General Data Protection Regulation and Section 60 (1) of the Privacy Act.

After the procedure was launched, the Complainants informed the Authority in an e-mail dated 24 January 2020, which was also sent by e-mail on 27 January 2020, and received by the Authority on 28 January 2020, that in parallel with the procedure in progress based on their petition submitted to the Authority for a data protection procedure, a civil procedure was also taking place, in the course of which […] in the first instance ordered the Obligee in its warrant made in the subject matter of an interim measure

- to indicate the personal data processed in relation to the Complainants,
- to process the personal data processed in relation to the Complainants only in the event of obtaining the express written consent of the Complainants,
- to refrain from the disclosure of the personal data processed in relation to the Complainants.

The Complainants furthermore informed the Authority that the Obligee failed to meet its above obligations and published the personal data of the Complainants both on-line and in its paper publication, and has included the Complainants in the list of the richest Hungarians (Processing 2).

On […] […] established the preliminary enforceability of the warrant on the basis of which the provisions of the warrant of the first instance can be enforced independently of the procedure in the second instance.

The Complainants sent the abstract of warrant No. […] to the Authority made in the subject matter of an interim measure by […] and the warrant No. […] establishing the preliminary enforceability of the interim measure.

In its warrant No. NAIH/2020/1154/2 dated 28 January 2020, the Authority notified the Obligee about launching its data protection procedure, and with reference to Section 63 of the Administrative Procedures Act called upon it to make a statement with a view to clarifying the facts of the case. Based on the acknowledgement of receipt returned to the Authority, the warrant was received on 3 February 2020.

On […] Forbes issued a communique in its own website […]. The communique contained, inter alia, the following:

[…]

The entire communique is accessible at URL […].

In its letter dated 6 February 2020, received by the Authority on 12 February 2020, the Obligee informed the Authority as follows:

- The members of the […] family initiated a civil lawsuit against the Obligee. The antecedent of the civil lawsuit was that the Complainants submitted a petition for an interim measure. […] brought a warrant under No. […] in the subject matter of the interim measure, which was approved by […] with its warrant No. […]. A precondition of the petition for the interim measure is that the Complainants submit a petition for the adjudgment of the alleged infringement in merit within 30 days. […] ordered the preliminary implementation of the interim measure subject to the submission of the petition. According to the knowledge of the legal representative of the Obligee, the petition was submitted and its study under procedural law is in progress.
- In view of the fact that there is a procedure in front of the court in progress in relation to the subject matter of the Authority's warrant, according to the Obligee, the complaint which serves as the basis for the Authority's warrant cannot be examined under Section 53(3((a) of Act CXII of 2011 (hereinafter: Privacy Act). *[Privacy Act Section 53(3)(a): The Authority shall dismiss the notification without examining it on its merits, if court proceedings are in progress, or a final and binding court decision has previously been rendered in the given case.]*

The Authority disagreed with the position of the Obligee as Section 53 of the Privacy Act is applicable only to procedures not subject to the Administrative Procedures Act, i.e. procedures that do not qualify as procedures of an administrative authority. In view of all this, in its warrant No. NAIH/2020/1154/4 dated 13 February 2020, the Authority again called upon the Obligee to make a statement. Based on the acknowledgement of receipt returned to the Authority, the warrant was received on 19 February 2020.

In its e-mail dated 27 February 2020, but sent on 26 February 2020, the Obligee provided the requested information through its legal representative ([…]) verified by a power of attorney and sent the documents substantiating the statements to the Authority.

In its response to the Authority, the Obligee stated the following:

- Through their legal representative, the Complainants submitted a petition for an interim measure prior to initiating litigation. […] sustained the interim measure in its warrant with the provision that the Complainants may submit a petition requesting […] to examine the merits of the case within 30 days. Until sending the response to the Authority, the petition was not delivered to the Obligee, it only received a warrant in which […] notified the Obligee of the rejection of the petition […] warrant No ….]).

- According to the Obligee, the data protection procedure by the Authority should be suspended because of the court procedure in progress between the Complainants and the Obligee in relation to the processing of the Complainants' personal data. The Obligee argued for its position as follows: under Section 48(1)(a) of the Administrative Procedures Act, the Authority shall suspend the procedure, if decision on the preliminary issue is within the competence of the court. In view of the fact that as a result of the warrant ordering the interim measure, there is a civil litigation as well as a non-litigious proceeding in progress concerning the data processing constituting the basis of the Authority's procedure and there is a possibility that a rejection according to Section 46(1)(b) of the Administrative Procedures Act will be called for, or the examination of a fully identical legal issue in terms of content may prejudice the procedure of the tribunal because if the Authority continues its data protection procedure, a situation may arise that two courts bring decisions on a single legal issue (the processing of the personal data of the Complainants by the Obligee) as there is a procedure in progress under Act CXXX of 2016 on Civil Procedures (hereinafter: Civil Procedures Act) and the clients may request the review of the Authority's decision by the court. This is a function of the court procedure: either it examines the petition in its merits, or it does not bring a final decision from some reason, and the Complainants lose the possibility of enforcing their rights according to the Civil Procedures Act. This is a preliminary issue, which will be decided in the course of the court procedure in progress. In view of all this, the Obligee requested the Authority to suspend its data protection procedure.
- The Forbes magazine is primarily a business magazine, which informs its readers about Hungarian companies, their shareholders, their business activities, their development projects, their impact on the market economy and their eventual relationships with the state, among other things. The Complainants are owners of […] ([…] and […]), and its senior officials ([…] and […]).
- For the first time, Forbes presented the "[…] family" in its compilation of "Largest Hungarian family undertakings" in August 2015 (not in 2016 as stated by the Complainants). After this, […] owned by the "[…] family" was included in the compilation of "Largest Hungarian family undertakings 2019" (Processing 1) in the September 2019 issue. In addition, […] are included in entry […] of the compilation "Richest Hungarians" published in January 2020 (Processing 2).
- The compilations are made by Forbes journalists on the basis of publicly accessible company data. They always send the calculations made on the basis of the public data to the company or person concerned, providing the opportunity to rectify the calculations or to make other remarks. The employees of the Obligee proactively took up contact with the Complainants and provided them with information in advance.
- The information available at URL *[…]* indicate that […] regularly benefited from large amounts of state and EU support amounting to several billion forints over the past few years.
- The processing of personal data cannot be separated from the content published in the Forbes compilations; hence it cannot be separately evaluated legally either. The Forbes compilation presented information related to the company: what state subsidies they received, what marketing activities they conduct and what development projects they implement.
- According to the Obligee, the phrase "[…] family" cannot be regarded as personal data according to Article 4(1) of the General Data Protection Regulation.
- Hungary's Fundamental equally recognizes the right to the protection of personal data and the accessibility of data in the public interest [Article VI(3)], the freedom of the press and the diversity of the press [Article IX(2)] and it declares that Hungary's economy is based on the freedom of enterprise [Article M(1)].
- According to Article 39(2) of the Fundamental Law, every organisation managing public funds shall account for its management of public funds in front of the public. Public funds must be

managed according to the principles of transparency and the purity of public life, and data concerning public funds and national assets are data in the public interest.

- Article 85(1) of the General Data Protection Regulation also shows that Member States reconcile the right to express an opinion and to be informed with data protection. Section 2 of the opinion [WP 227] of the Article 29 Working Party of the European Data Protection Commissioners published on 26 November 2014 formulates the requirement of interest assessment, according to which data protection rights must be interpreted (also) with regard to the right to express an opinion. Paragraph 93 of the judgment of the Court of Justice of the European Union brought in the case of Tele2Sverige AB [C-203/2015.] promulgated on 21 December 2016 contains the following: *"Accordingly, the importance both of the right to privacy guaranteed in Article 7 of the Charter and of the right to protection of personal data guaranteed in Article 8 of the Charter as derived from the court's case law (see to that effect: judgment of 6 October 2015, Schrems, C-362/14, EU:C:2015:650, paragraph 39 and the case law cited) must be taken into consideration in interpreting Article 15(1) of Directive 2002/58. The same is true of the right to freedom of expression in the light of the particular importance accorded to that freedom in any democratic society. That fundamental right guaranteed in Article 11 of the Charter, constitutes one of the essential foundations of a pluralist democratic society and is one of the values on which under Article 2 TEU the Union is founded (see to that effect: judgments of 12 June 2003, Schmidberger, C-112/00, EU:C:2003:333, paragraph 79; and of 6 September 2011, Patriciello, C-163/10, EU:C:2011:543, paragraph 31)."*
- As put by Constitutional Court Decision 7/2014. (III. 7.) *"[the] freedom of the press - which includes the freedom of all types of media - is an institution of the freedom of speech. The press is first and foremost the instrument of expressing an opinion, forming an opinion and obtaining information indispensable for formulating an opinion, even though its activities are increasingly complex and diverse."* (Justification [40]). This role of the press is particularly important for formulating opinions on public life because "*[the] social and political debates to a substantial extent consist in the actors of public life or the participants of public debates - characteristically through the press - criticising one another's idea and, political performance and in relation to that one another's personality. It is the constitutional mission of the press to check those exercising public powers, an organic part of which is the presentation of the activities of persons and institutions forming public affairs"* (Justification [48]).
- As interpreted by the Constitutional Court, the central role of the media in forming democratic public opinion does not lead to "*not having legal regulations applicable to the information activity of the press [...], but when acting and interpreting these, action must always be taken not to prevent or hinder the performance of the constitutional mission of the press, the disclosure of information in the public interest*" {Constitutional Court Decision 3/2015. (II. 2.), Justification [25]}. According to Constitutional Court Decision 28/2014. (IX. 29.) "*so long as information is not an abuse of the exercise of the freedom of the press in the context of the protection of human dignity, reference to an infringement of personality rights rarely provides good grounds for restricting the exercise of the freedom of the press."* (Justification [42]). This interpretation was consistently upheld also in Constitutional Court Decisions 16/2016. (X. 20.), and 17/2016. (X. 20.) in favour of the freedom of the press.
- Pursuant to Article 6(1)(f) of the General Data Protection Regulation, processing is lawful, if it is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject, which require protection of personal data, in particular where the data subject is a child.
- In view of the fact that Hungary is a market economy, the mission of the press cannot be strictly interpreted, so that the public cannot be provided with information in relation to the operation and ownership background of private undertakings held by private individuals at any level. Naturally, this activity also has its limits: the protection of business secrets, the

protection of human dignity, etc.; at the same time, business journalism is a legitimate activity. The Obligee does not process and does not publish any personal data that would constitute a disproportionate violation of privacy. The personal data processed and disclosed by the Obligee (of minimal extent) are closely related to business activity. Essentially, the Obligee processes data related to the ownership background of the company (name). The estimates related to the magnitude of the assets are based exclusively on public data linked to the activities of the undertaking, thus the compilation does not cover the real property private assets of private individuals (e.g. assets obtained through inheritance, by marriage, lottery prizes). Similarly, the Obligee does not process and does not disclose data that would mean severe intervention in privacy. (E.g. a compilation that would forecast changes in the business on the basis of the health data of entrepreneurs would be obviously unlawful.)

- Section 10(1) of the Act on Press Freedom also declares: *"Everyone has a right to be appropriately informed of the affairs of local, national and European public life and events of significance for the citizens of Hungary and the members of the Hungarian nation. The entire media system is responsible for providing credible, rapid and accurate information on these cases and events."*
- Section 10 of the Act on the Publicity of Company Data (Company Transparency Act??) requires the publicity of company data for reasons for public interest. Company data and personal data included in them serve not only the safety of transactions. (The preamble to this act also refers to the protection of public interest.) According to Section 10(2) of this act, company data are fully accessible to the public.
- The task of business journalism analysing a market economy is to explore the nodes of the economy, its internal interrelations, its owners, their contact networks and the role played by the state. According to the Obligee, the paper issued by the Obligee did exactly this in relation to the company held and managed by the Complainants. According to the Obligee, the interpretation of the provisions of the Act on the Publicity of Company Data aligned with the Fundamental Law is that the right of the press to provide information on the operation of the economy must be included in the public interest justifying their transparency. According to the Obligee, a contrary interpretation would result in a situation in which information on the shareholders and senior officials of business organisations could be disclosed exclusively in the event of the consent of the data subject, which would obviously render the "watchdog" role of the press impossible, which cannot be narrowed to checking the public power of the state.
- According to the Obligee, information concerning the assets of the Complainants and their public attachment to the Complainants means that these are personal data accessible to the public on the grounds of public interest in accordance with Section 3(6) of the Privacy Act, the disclosure, availability or accessibility of which is prescribed by an act for the benefit of the general public. Names of the Complainants and the business organisation held by them and its value are available in central, state-run, certified registries accessible to anyone.
- Pursuant to Section 26(2) of the Privacy Act, personal data accessible on public interest grounds shall be disseminated in compliance with the principle of data processing, limited to the intended purpose. The Obligee processes the data of the Complainants for the purpose of exercising its rights stemming from the freedom of the press and to fulfil the informative activities of the press in a democratic society. The Obligee sets forth the richest natural persons and families of Hungary based on databases accessible to the public in every calendar year. The purpose of this is to let Hungarian society know the persons having the greatest economic influence because economic influence itself grants certain persons a substantial role in public life, which is frequently concomitant with other social and political influence. Presenting such power concentration to the society and setting forth the changes taking place in it year after year are within the provision of information for the public interest. Another purpose of the Obligee was to provide information to the Hungarian business community about the owners behind the largest Hungarian-owned companies, contributing

thereby to the transparency and traceability of business life. In addition, the Obligee regards the reinforcement of Hungarian entrepreneurial culture as its tasks through reporting about the activities of successful Hungarian entrepreneurs and the compilation of the annual rich list serves this purpose in part.

- The Obligee regards its activities as being in the public interest. Economic journalism is a legitimate activity in the public interest and within this, the compilation and archiving of the richest persons having the largest (or much larger than average) social influence based on publicly available data according to a reliable methodology serves the public interest. The Obligee compiled the list of the richest persons exclusively on the basis of databases accessible to the public. These registries (land registry, company database generated on the basis of Trade Cxourt data and the communications of the companies themselves to the public) and the personal data included in them are accessible to the public, so that economic life be transparent and the citizens could learn of it. Journalism adds the added value to the public databases by helping to interpret and summarise the gigantic quantity of information accessible to the public for lay citizens. […] held and managed by the Complainants received substantial state support, which in itself justifies presenting the person of the owner behind the investments to the citizens (the readers).
- In relation to Processing 1, the journalist employed by the Obligee contacted the undertaking linked to the Complainants on 16 August 2019. Description presenting the methodology used for the compilation was annexed to the letter, including the sources of the data used for the compilation (company data accessible to the public). An excel table was also attached to the e-mail showing the calculation based on the data of […]. In response to the request by the legal representative of the Complainants, the Obligee sent an answer containing its legal position on 12 September 2019, in which it provided information on the range of data processed; the employees performing the data processing were also named.
- […] was contacted again by Obligee's journalist on 14 November 2019 in relation to Processing 2. The information on methodology and the excel table presenting the business data were again annexed to a letter. On 20 November 2019, the Obligee's employee sent a response to the legal representative of the Complainants presenting the legal position of the Obligee.

Beyond providing information to the Authority, the Obligee requested the Authority to electronically send a petition of the Complainants and its annexes based on Section 33(1) and (4) of the Administrative Procedures Act, in view of the fact that in the knowledge of the petition, the Obligee wishes to make additional observations.

In its warrant No. NAIH/2020/1154/6 dated 16 March 2020, the Authority sustained the request for inspecting the documents with restrictions, without sending the documents that were not to be accessed and sent the petition about conducting a data protection procedure by the Authority and its annexes, the supplement to the petition and its annexes (except for the information sent by the security director of […] concerning the introduction of changes in the personal protection tasks affecting the […] family and the related measures) and the information sent by the Complainants to the Authority on 24 January 2020, as well as its annexes, both by mail and electronically to the Obligee.

In its e-mail sent on 23 March 2020, which was received by mail by the Authority on 26 March 2020, the Obligee made the following supplementary remarks:

- The assessment of the truthfulness or untruthfulness of the facts of the case is not an issue for data protection, it can be evaluated on the basis of the rules of the Civil Code or the Freedom of the Press Act in a procedure aimed at protecting personality rights or rectification by the press. The Complainants did not launch such a procedure. In this context according to the Obligee, it is obviously absurd to include minor children in the term "[…] family" as they do not have the ability to act, hence they cannot be actors in an undertaking.

- The Complainants complain that they did not receive information on their rights and the possibilities of legal remedy. True enough, the response did not include the relevant provisions of the Privacy Act and of the General Data Protection Regulation, but the Privacy Statement was available on the website forbes.hu, providing accurate information on the possibilities of enforcing their rights on the one hand, and on the other hand, the Complainants contacted the Obligee through their legal representative and pursuant to Act LXXVIII of 2017 on the Activities of the Attorneys-at-law (hereinafter: Lawyers Act), the legal representative had the obligation to inform the Complainants of their enforceable rights and the mode thereof. The cease and desist letters expressly refer to the fact that the Complainants would initiate a procedure to enforce their rights. The legal representative cannot make such a statement without informing his clients about the enforcement of their rights.
- According to the Obligee, the statement of the Complainants according to which it is not possible to determine the logic with which the Forbes journalists analysed the data is misleading. Annexed to the responses, a methodological letter was sent, detailing the method of data analysis. In relation to this, the Obligee notes that the journalist has the sovereign right to formulate conclusions after the analysis of the raw data. In the event of inaccuracy in the personal data, the Complainants had the opportunity to make remarks, the Obligee's employee expressly requested a feedback on the calculations.
- According to the Obligee, the other deficiencies of information listed by the Complainants are not verified, the documents sent earlier to the Authority verify that the Complainants were given appropriate information.
- In relation to the resolution of the data protection commissioner referred to by the Complainants *["the fact that somebody is wealthy in itself does not mean that he is also a public actor"]*, the Obligee points out that the basis of the current procedure is the General Data Protection Regulation, it is pursuant to its Article 6(1)(f) that interest assessment has to be carried out. As the Obligee stated in its response earlier sent to the Authority, an argument for publicity is that the personal data were processed in relation to the use of public funds. According to the Obligee, publicity is warranted not because of the fact of being wealthy, but because the state has been supporting the Complainants' undertaking with several billion forints for years.
- The Obligee rejects the parallels drawn by the Complainants between its professional work and homophobic or discrediting government propaganda lists referred to by the Complainants. According to the Obligee, this argumentation is not only tasteless, it is also false, because the lists referred to embodied the processing of special personal data with a view to discrediting the data subjects. Obligee never processed any kind of special personal data about the Complainants and the statements published in Forbes did not appear with a view to discrediting them.
- In relation to the court decision BDT2017.3693 refer to by the Complainants, the Obligee notes that the basis of the facts of the case of the decision was infringement of the right to portrait according to the Civil Code. According to the Obligee, one of the paragraphs of the decision should be underlined. Accordingly: "*in a case of public interest, the person of the claimant was in the forefront of interest, but he may qualify as an actor in public life not in relation to public power, but in relation to economic power, his name recognition is narrower and his appearance in the media cannot be regarded as frequent. Although in this respect, he has a great obligation to tolerate based on the Constitutional Court resolutions referred to, his obligation to tolerate is not the same as that of a person having political or public power. He is not the kind of actor in public life, who should tolerate the publication of the photographs under litigation without good reason."* According to the Obligee, this reveals that persons having economic power also have a greater obligation to tolerate.
- The data processing and the content of the public disclosures based on it does not deal with the private lives of the Complainants, but with the company they own and manage and with

the financial support received from the state; neither the data processed, nor the statements objected to have anything to do with their family and private lives.

- The Complainants cite the serious threat to the rights of minor children as the grounds of their complaint. In relation to this, the Obligee notes that the documents enclosed reveal that the Obligee does not process any data about any minor person and there is no minor among the Complainants, not even through a legal representative.
- The Complainants alleged that the September 2019 compilation directed the attention of criminal circles to the family owing to which they have been living under an ongoing safety risk. According to the Obligee, it is not verified in what way the attention of criminal circles was directed at the family, and what kind of causal relationship is there between the publication of the Forbes list and the actions of criminals. According to the Obligee, such a relationship would be speculative and unverifiable even if - unfortunately - some behaviour was implemented in the recent past to the detriment of the Complainants, infringing Act C of 2012 on the Penal Code (hereinafter: Penal Code).
- According to the Obligee, the CJEU judgment in the case C-131/12. referred to by the Complainants is a misleading reference, because that case specifically determined the criteria for erasing information that is no longer topical (“right to be forgotten”). Paragraphs 70 and 81 of the judgment also require that interest assessment be carried out. According to the Obligee, the information published were topical information on the part of the press, hence the reference by the Complainants is misleading.
- In relation to being tied to a purpose, the Obligee underlines that the purpose of processing the data is to carry out the work of journalism and informing the public on issues of public interest.
- The Obligee did inform the Complainants on the results of the interest assessment; in its view the responses unambiguously reveal a criteria and results of the interest assessment.
- According to the Obligee, the information on the methodology sent to the Complainants, the introductions to the lists and the entries on the Complainants unambiguously revealed that only economic data related to the company were used.
- According to the Obligee, there is no automatic obligation to erase in the case of inaccuracy in the data [particularly not based on Article 17(1)(c) of the General Data Protection Regulation referred to by the Complainants]. Obligee also notes that the Complainants did not exercise their right to rectify guaranteed by Article 16 of the General Data Protection Regulation, even though they had the opportunity to do so.

In the letter sent to the Authority exclusively electronically on 24 April 2020, the Complainants again supplement what they had already stated, and inform the Authority as follows:

- The […] Police has been paying particular attention to the area around […] estate, because according to the report of the security director of […] a known criminal, living in Keszthely, but of Moldavian origin, appeared in the area close to the living quarters of the family, of whom a video recording was made.
- As a result of the events arising in relation to this case, the owners of […] because of the actions taken by the Forbes publisher parted with their business quota they had for 16 years representing significant value by way of a gift contract. […]
- The Complainants withdraw their petition with regard to the publication implemented in relation to Processing 2.
- The Complainants continue to maintain their petitions submitted earlier with regard to Processing 1, i.e. the data processing operations of and before September 2019.

All in all, the Complainants maintain their petition for establishing the fact of unlawful data processing by the Obligee according to Article 5(1)(a), (b) and (e), Article 6(1)(f) (including the failure to carry

out the individual interest assessment following the objection), Article 13 and Article 14(1) and (2), and Article 21(1) of the General Data Protection Regulation with regard to Processing 1 and Processing 2 with the exception of the publication as described above. The Complainants requested the Authority to evaluate the petition submitted within this restricted range.

II. Legal provisions applied

Pursuant to Article 2(1) of the General Data Protection Regulation, this Regulation applies to the processing of personal data wholly or partly by automatic means, and to the processing of personal data by non-automatic means, which form part of a filing system or are intended to form part of a filing system.

Pursuant to Section 2(2) of the Privacy Act, the General Data Protection Regulation shall apply to data processing subject to this Regulation with the additional rules specified therein.

Pursuant to Article 4(1) of the General Data Protection Regulation, “personal data” means any information relating to an identified or identifiable natural person (“data subject”); an identifiable natural person is one, who can be identified directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an on-line identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

Pursuant to Article 4(2) of the General Data Protection Regulation, “processing” means any operational set of operations, which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

Pursuant to Article 4(4) of the General Data Protection Regulation “profiling” means any form of automated processing of personal data, consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning the natural person’s performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements.

Pursuant to Article 4(6) of the General Data Protection Regulation, “filing system” means any structured set of personal data, which are accessible according to specific criteria whether centralised, decentralised or dispersed on a functional or geographical basis.

Pursuant to Article 4(7) of the General Data Protection Regulation, “controller” means the natural or legal person, public authority, agency or other body, which alone or jointly with others determines the purposes and means of the processing of personal data; where the purposes and means of such processing are determined by Union or Member State law, the controller or the specific criteria for its nomination may be provided for by Union or Member State law.

Pursuant to Article 5(1)(a) of the General Data Protection Regulation, personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject (“lawfulness, fairness and transparency”).

Pursuant to Article 5(1)(b) of the General Data Protection Regulation, personal data shall be collected for specified, explicit and the legitimate purposes and not further processed in a manner that is incompatible with those purposes. (“purpose limitation”).

Pursuant to Article 5(1)(c) of the General Data Protection Regulation, personal data shall be adequate, relevant and limited to what is necessary in relation to the purposes for which they are

processed (“data minimisation”).

Pursuant to Article 5(1)(d) of the General Data Protection Regulation, personal data shall be accurate and where necessary kept up-to-date; every reasonable step must be taken to ensure that personal that are inaccurate, having regard to the purposes for which they are processed are erased or rectified without delay (“accuracy”).

Pursuant to Article 5(1)(e) of the General Data Protection Regulation, personal data shall be kept in a form, which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar, as the personal data will be processed solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) subject to implementation of appropriate, technical and organisational measures required by this Regulation in order to safeguard the rights and freedoms of the data subject (“storage limitation”).

Pursuant to Article 5(2) of the General Data Protection Regulation, the controller shall be responsible for and be able to demonstrate compliance with paragraph (1) (“accountability”).

Pursuant to Article 6(1) of the General Data Protection Regulation, the processing of personal data shall be lawful only if and to the extent that at least one of the following applies:

a) the data subject has given consent to the processing of his or her personal data for one or more specific purposes;
b) processing is necessary for the performance of a contract to which the data subject is party, or in order to take steps at the request of the data subject prior to entering into a contract;
c) processing is necessary for compliance with a legal obligation to which the controller is subject;
d) processing is necessary in order to protect the vital interests of the data subject or of another natural person;
e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;
f) processing is necessary for the purposes of the legitimate interest pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject, which require protection of personal data, in particular where the data subject is a child.

Pursuant to Recital (47) of the General Data Protection Regulation the existence of a legitimate interest would need careful assessment, including whether a data subject can reasonably expect at the time and in the context of the collection of the personal that processing that purpose may take place. The interests and fundamental rights of the data subject could in particular override the interest of the data controller where personal data are processed in circumstances where data subjects do not reasonably expect further processing. [...] The processing of personal data strictly necessary for the purposes of preventing fraud also constitutes a legitimate interest of the data controller concerned. The processing of personal data for direct marketing purposes may be regarded as carried out for a legitimate interest.

Article 12 of the General Data Protection Regulation specifies the obligations of the controller in relation to measures for the exercise of the rights of the data subject.

Pursuant to Article 12(1) of the General Data Protection Regulation the controller shall take appropriate measures to provide any information referred to in Articles 13 and 14 and any communication under Articles 15 to 22 and 34 relating to processing to the data subject in a concise, transparent, intelligible and easily accessible form, using clear and plain language, in particular for any information addressed specifically to a child. The information shall be provided in writing, or by other means, including where appropriate by electronic means. When requested by the data subject,

the information may be provided orally, provided that the identity of the data subject is proven by other means.

Pursuant to Article 12(2) of the General Data Protection Regulation, the controller shall facilitate the exercise of data subject rights under Articles 15 to 22. In the cases referred to in Article 11(2) the controller shall not refuse to act on the request of the data subject for exercising their rights under Articles 15 to 22, unless the controller demonstrates that it is not in a position to identify the data subject.

Pursuant to Article 12(3) of the General Data Protection Regulation the controller shall provide information on action taken on a request under Articles 15 to 22 to the data subject without undue delay and in any event within one month of receipt of the request. That period may be extended by two further months where necessary, taking into account the complexity and number of the requests. The controller shall inform the data subject of any such extension within one month of receipt of the request, together with the reasons for the delay. Where the data subject makes the request by electronic form means, the information shall be provided by electronic means, where possible, unless otherwise requested by the data subject.

Pursuant to Article 12(4) of the General Data Protection Regulation, if the controller does not take action on the request of the data subject, the controller shall inform the data subject without delay and at the latest within one month of receipt of the request of the reasons for not taking action and on the possibility of lodging a complaint with a supervisory authority and seeking a judicial remedy.

Pursuant to Article 12(5) of the General Data Protection Regulation, the information provided under Articles 13 and 14 and any communication and any actions taken under Article 15 to 22 and 34 shall be provided free of charge. When request from a data subject is manifestly unfounded or excessive, in particular because of their repetitive character, the controller may either charge a reasonable fee taking into account the administrative costs of providing the information or communication, or taking the action requested, or refused to act on the request. The controller shall bear the burden of demonstrating the manifestly unfounded or excessive character of the request.

Article 14 of the General Data Protection Regulation sets forth a minimum information that the controller has to provide to the data subject, if the personal data have not been obtained from the data subject. Accordingly:

[Article 14] (1): Where the personal data have not been obtained from the data subject, the controller shall provide the data subject with the following information:

a) the identity and the contact details of the controller and the controller's representative, if any;
b) the contact details of the data protection officer, if any;
c) the purpose of the envisaged processing as well as the legal basis for data processing;
d) the categories of personal data concerned;
e) the recipients of personal data and the categories of recipients, if any;
f) where applicable, the fact that the controller intends to transfer personal data to a recipient in a third country or to an international organisation, and the existence or absence of an adequacy decision by the Commission, or in the case of transfers referred to in Article 46 or 47 or the second subparagraph of Article 49(1), reference to appropriate or suitable safeguards and the means to obtain copies thereof, or where they have been made available.

[Article 14] (2): In addition to the information referred to in paragraph (1), the controller shall provide the data subject with the following information necessary to ensure fair and transparent processing in respect of the data subject:

a) the period for which the personal data will be stored, or if not possible, the criteria used to determine that period;
b) where data processing is based on point (f) of Article 6(1), the legitimate interest pursued by the controller or by a third party;

c) the existence of the right to request from the controller access to and rectification or erasure of personal data, or restriction of processing concerning the data subject, or to object to processing, as well as the right to data portability;
d) where processing is based on Article 6(1) (a) of or of Article 9(2)point (a)), the existence of the right to withdraw consent at any time, without affecting the lawfulness of processing is based on consent before its withdrawal;
e) the right to lodge a complaint with a supervisory authority;
f) from which source the personal data originate and, if applicable, whether it came from publicly accessible sources; and
g) the existence of automated decision-making, including profiling, referred to in Article 22(1) and (4), and at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject.

[Article 14] (3): The controller shall provide information referred to in paragraphs (1) and (2):
a) within a reasonable period after obtaining the personal data, but at the latest within one month having regard to the specific circumstances in which the personal data are processed;
b) if the personal data are to be used for communication with the data subject, at the latest at the time of the first
c) communication to that data subject; or
d) if a disclosure to another recipient is envisaged, at the latest when the personal data are first disclosed.

[Article 14] (4): Where the controller intends to further process the personal data for a purpose other than that for which the personal data were obtained, the controller shall provide the data subject prior to that further processing with information on that other purpose and with any relevant further information as referred to in paragraph (2).

[Article 14] (5): Paragraphs (1) to (4) shall not apply where and insofar as:
a) the data subject already has the information;
b) the provision of such information proves impossible or would involve a disproportionate effort, in particular for processing for archiving purposes in the public interest, scientific or historical research purposes, or statistical purposes, subject to the conditions and safeguards referred to in Article 89(1) or insofar as the obligation referred to in paragraph (1) of this article is likely to render impossible or seriously impair the achievement of the objectives of that processing. In such cases the controller shall take appropriate measures to protect the data subject's rights and freedoms and legitimate interest, including making the information publicly available;
c) obtaining or disclosing the data is expressly laid down by Union or Member State law, to which the controller is subject and which provides appropriate measures to protect the data subject's legitimate interests; or
d) where the personal data must remain confidential, subject to an obligation of professional secrecy, regulated by Union or Member State law, including a statutory obligation of secrecy.

Pursuant to Article 15(1) of the General Data Protection Regulation. the data subject shall have the right to obtain from the controller confirmation as to whether or not personal data concerning them are being processed and where that is the case, access to the personal data and the following information:
a) the purposes of data processing;
b) the categories of personal data concerned;
c) the recipients or categories of recipient, to whom the personal data have been or will be disclosed, in particular, recipients in third countries or international organisations;
d) where possible, the envisaged period for which the personal data will be stored, or if not possible, the criteria used to determine that period;

e) the existence of the right to request from the controller, rectification or erasure of personal data or restriction of processing of personal data concerning the data subject, or to object to such processing;
f) the right to lodge a complaint with a supervisory authority;
g) where the personal data are not collected from the data subject, any available information as to their source;
h) the existence of automated decision-making, including profiling, referred to in Article 22(1) and (4), and at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject.

Pursuant to Article 16 of the General Data Protection Regulation, the data subject has the right to obtain from the controller without undue delay the rectification of inaccurate personal data concerning him or her. Taking into account the purposes of the processing, the data subject shall have the right to have incomplete personal data completed, including by means of providing a supplementary statement.

Pursuant to Article 17(1) of the General Data Protection Regulation, the data subject shall have the right to obtain from the controller the erasure of personal data concerning him or her without undue delay and the controller shall have the obligation to erase the personal data without undue delay, where one of the following grounds applies:

a) the personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;
b) the data subject withdraws consent on which the processing is based according to Article 6(1)(a), or Article 9(2)(a) and where there is no other legal ground for the processing.
c) the data subject objects to the processing pursuant to Article 21(1) and there are no overriding legitimate grounds for the processing or the data subject objects to the processing pursuant to Article 21(2);
d) the personal data have been unlawfully processed;
e) the personal data have to be erased for compliance with a legal obligation in Union or Member State law, to which the controller is subject;
f) the personal data have been collected in relation to the offer of information society services, referred to in Article 8(1).

Pursuant to Article 17(2) of the General Data Protection Regulation, where the controller has made the personal data public and is obliged pursuant to paragraph (1) to erase the personal data, the controller taking account of the available technology and the cost of implementation shall take reasonable steps, including technical measures, to inform controllers, which are processing the personal data that the data subject has requested the erasure by such controllers of any links to, or copies, or duplicates of those personal data.

Pursuant to Article 17(3) of the General Data Protection Regulation, paragraphs (1) and (2) shall not apply to the extent that processing is necessary:

a) for exercising the right of freedom of expression and information;
b) for compliance with a legal obligation, which requires professing by Union or Member State law, to which the controller is subject or for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;
c) for reasons of public interest in the area of public health in accordance with Article 9(2)(h) and (i) as well as Article 9(3);
d) for achieving purposes in the public interest, scientific or historical research purposes, or statistical purposes, in accordance with Article 89(1) insofar as the right referred to in paragraph (1) is likely to render impossible or seriously impair the achievement of the objectives of that processing; or
e) for the establishment exercise or defence of legal claims.

Pursuant to Article 18(1) of the General Data Protection Regulation, the data subject shall have the right to obtain from the controller restriction of processing where one of the following applies:

a) the accuracy of the personal data is contested by the data subject for a period enabling the controller to verify the accuracy of the personal data;
b) the processing is unlawful and the data subject opposes the erasure of the personal data and requests the restriction of their use instead;
c) the controller no longer needs the personal data for the purposes of the processing, but they are required by the data subject for the establishment, exercise or defence of legal claims; or
d) the data subject has objected to processing pursuant to Article 21(1) pending the verification whether the legitimate grounds of the controller override those of the data subject.

Pursuant to Article 18(2) of the General Data Protection Regulation, where processing has been restricted under paragraph (1) such personal data shall, with the exception of storage, only be processed with the data subject's consent or for the establishment, exercise or defence of legal claims, or for the protection of the rights of another natural or legal person, or for reasons of important public interest of the Union or of a Member State.

Pursuant to Recital (67) of the General Data Protection Regulation, methods by which to restrict the processing of personal data could include, inter alia, temporarily moving the selected data to another processing system, making the selected personal data unavailable to users, or temporarily removing published data from a website. In automated filing systems, the restriction of processing should in principle be ensured by technical means in such a manner that the personal data are not subject to further processing operations and cannot be changed. The fact that the processing of personal data is restricted, should be clearly indicated in the system.

Pursuant to Article 21(1) of the General Data Protection Regulation the data subject shall have the right to object on grounds relating to his or her particular situation at any time to processing of personal data concerning him or her, which is based on Article 6(1)(e) or (f) including profiling based on those provisions. The controller shall no longer process the personal data, unless the controller demonstrates compelling legitimate grounds for the processing, which override the interests, rights and freedoms of the data subject, or for the establishment, exercise or defence of legal claims.

Pursuant to Article 21(2) of the General Data Protection Regulation, when personal data are processed for direct marketing purposes, the data subject shall have the right to object at any time to processing of personal data concerning him or her for such marketing, which includes profiling to the extent that it is related to such direct marketing.

Pursuant to Article 21(3) of the General Data Protection Regulation, when the data subject objects to processing for direct marketing purposes, the personal data shall no longer be processed for such purposes.

Pursuant to Article 21(4) of the General Data Protection Regulation, at latest at the time of the first communication with the data subject, the right referred to in paragraphs (1) and (2) shall be explicitly brought to the attention of the data subject and shall be presented clearly and separately from any other information.

Pursuant to Article 77(1) of the General Data Protection Regulation, without prejudice to any other administrative or judicial remedy, every data subject shall have the right to lodge a complaint with a supervisory authority, in particular in the Member State of his or her habitual residence, place of work or place of the alleged infringement, if the data subject considers that the processing of personal data relating to him or her infringes this Regulation.

Pursuant to Section 38(2) of the Privacy Act, the Authority shall be responsible for monitoring and promoting the enforcement of rights to the protection of personal data and access to data of public

interest and data accessible on public interest grounds, as well as promoting the free movement of personal data within the European Union. The tasks and powers of the Authority are detailed in Article 57(1), Article 58(1)-(3) of the General Data Protection Regulation and Article 38(2)-(4) of the Privacy Act.

Pursuant to Section 60(1) and (2) of the Privacy Act, to ensure that the right to the protection of personal data is enforced, the Authority shall commence an administrative procedure for data protection at the application of the data subject and may commence an administrative procedure for data protection ex officio. An application for commencing an administrative procedure for data protection may be submitted in the cases under Article 77(1) of the General Data Protection Regulation and Section 22(b) of this Act.

Unless otherwise provided for in the General Data Protection Regulation, the provisions of the Administrative Procedures Act shall apply to the administrative procedure for data protection launched by application with the differences specified in the Privacy Act.

Pursuant to Section 61(1)(a) of the Privacy Act, in its decision adopted in admnistrative procedures for data protection, the Authority may apply the legal consequences specified in Article 58(2) of the General Data Protection Regulation concerning the data processing operations specified in Section 2(2) of the Privacy Act. Accordingly, acting within its corrective powers, the Authority:

a) issues warnings to a controller or processor that intended processing operations are likely to infringe provisions of this Regulation;
b) issues reprimands to a controller or a processor where processing operations have infringed provisions of this Regulation;
c) orders the controller or the processor to comply with the data subject's request to exercise his or her rights pursuant to this Regulation;
d) orders the controller or processor to bring processing operations into compliance with the provisions of this Regulation, where appropriate, in a specified manner and within a specific period;
e) orders the controller to communicate a personal data breach to the data subject;
f) imposes a temporary or definitive limitation, including a ban on processing;
g) orders the rectification or erasure of personal data or restriction of processing pursuant to Articles 16, 17 and 18, and the notification of such actions to recipients to whom the personal data have been disclosed pursuant to Article 17(2) and Article 19;
h) withdraws a certifice or orders the certification body to withdraw a certifice issued pursuant to Articles 42 and 43, or orders the certification body not to issue a certifice, if the requirements for the certification are no longer met;
i) imposes an administrative fine pursuant to Article 83, in addition to or instead of measures referred to in this paragraph depending on the circumstances of each individual case; and
j) orders the suspension of data flows to a recipient in a third country or to an international organisation.

Pursuant to Article 83(1) of the General Data Protection Regulation, each supervisory authority shall ensure that the imposition of administrative fines pursuant to this article in respect of infringements of this Regulation referred to in paragraphs (4), (5) and (6) shall in each individual case be effective, proportionate and dissuasive.

Pursuant to Article 83(2) of the General Data Protection Regulation, administrative fines shall, depending on the circumstances of each individual case, be imposed in addition to, or instead of, measures referred to in Article 58(2)(a)-(h) and (j). When deciding whether to impose an administrative fine and deciding on the amount of the administrative fine in each individual case due regard shall be given to the following:

a) the nature, gravity and duration of the infringement taking into account the nature, scope or purpose of the processing concerned, as well as the number of data subjects affected and the level of damage suffered by them;
b) the intentional or negligent character of the infringement;
c) any action taken by the controller or processor to mitigate the damage suffered by data subjects;
d) the degree of responsibility of the controller or processor taking into account technical and organisational measures implemented by them pursuant to Articles 25 and 32;
e) any relevant previous infringements by the controller or the processor;
f) the degree of cooperation with the supervisory authority in order to remedy the infringement and mitigate the possible adverse effects of the infringement;
g) the categories of personal data affected by the infringement;
h) the manner in which the infringement became known to the supervisory authority, in particular whether, and if so, to what extent the controller or processor notified the infringement;
i) where measures referred to in Article 58(2) have previously been ordered against the controller or processor concerned with regard to the same subject matter compliance with those measures;
j) adherence to approved codes of conduct pursuant to Article 40 or approved certification mechanisms pursuant to Article 42; and
k) any other aggravating or mitigating factor applicable to the circumstances of the case, such as financial benefits gained, or losses avoided, directly or indirectly, from the infringement.

Pursuant Article 83(5) of the General Data Protection Regulation, infringements of the following provisions shall, in accordance with paragraph (2), be subject to administrative fines up to EUR 20,000,000, or in the case of an undertaking up to 4% of the total worldwide annual turnover of the preceding financial year, whichever is higher:
a) the basic principles for processing, including conditions for consent - pursuant to Articles 5, 6, 7 and 9;
b) the data subjects' rights pursuant to Articles 12 to 22.

Pursuant to Article 83(7) of the General Data Protection Regulation, without prejudice to the corrective powers of supervisory authorities pursuant to Article 58(2), each Member State may lay down the rules on whether and to what extent administrative fines may be imposed on public authorities and bodies established in that Member State.

Pursuant to Section 61(1)(bg) of the Privacy Act, in its decision adopted in administrative procedures for data protection, the Authority may impose a fine.

Pursuant Section 75/A of the Privacy Act, the Authority shall exercise its powers specified in Article 83(2) to (6) of the General Data Protection Regulation according to the principle of proportionality, in particular by primarily issuing, in compliance with Article 58 of the General Data Protection Regulation, a warning to the controller or processor for the purpose of remedying the infringement when the provisions laid down by law or a binding legal act of the European Union on the processing of personal data are first infringed.

Pursuant to Section 17 of the Administrative Procedures Act, the authority shall examine its powers and competency ex officio in every phase of the procedure. If the authority notes the absence of either, and the authority having competence in the case can be established excluding any doubt, the case shall be transferred; in the absence of this, the petition shall be rejected and the procedure shall be terminated.

Pursuant to Section 47(1)(a) of the Administrative Procedures Act, the Authority shall terminate the procedure, if the petition should have been rejected, but the reasons for this came to the knowledge of the authority only after launching the procedure.

Pursuant to Section VI(1) of the Fundamental Law, everyone shall have the right to have their privacy, family life, home, contacts and reputation respected. The freedom of expression and the exercise of the right of assembly may not involve the violation of the privacy, family life and home of others.

Pursuant to Sections 1-2 of Act LIII of 2018 on the Protection of Privacy (hereinafter: Privacy Protection Act) everyone shall have the right to have their privacy, family life, home and contacts (hereinafter: right to privacy) respected. The right to privacy is part of the right to the free unfolding of personality, pursuant to which the individual shall have freedom to responsibly and independently develop their life, to create and safeguard their family, home and human relationships. […] This right may only be limited to enforce some other fundamental right or to protect a constitutional value to the extent strictly necessary, proportionately to the purpose to be achieved, while respecting the essential content of the right to privacy and human dignity. The substance of the right to privacy is that others should not be able to infringe it, in spite of the will of the individual, with exceptions specified in a separate Act. When exercising the right to privacy, everyone shall respect the rights of others.

Pursuant to Section 8(1)-(2) of the Privacy Protection Act, a purpose of the right to respect privacy is in particular the protection of the right to bear a name, personal data, private secrets, photo and sound recordings, honour and reputation. Misuse of personal data, secrets, photos, sound recordings that the individual wishes to safeguard particularly in relation to private life, or a violation of honour and reputation may constitute infringements of the right to respect privacy.

Pursuant to Section 9(1)-(3) of the Privacy Protection Act, everyone shall have the right to the increased protection of family life as the medium of privacy. The right to respect family life shall be due to the individual and their family member jointly. The unauthorised violation or disturbance of the family life of others, or an unauthorized intervention in the family life of others constitute infringements of the right to respecting family life.

Pursuant to Section VI(3) of the Fundamental Law, everyone shall have the right to the protection of their personal data and to accessing and disseminating data in the public interest.

Pursuant to Section 1 of the Privacy Act, the purpose of this Act is to lay down, in the areas falling within its scope, the fundamental rules for data processing in order to ensure that natural person's right to privacy is respected by controllers and to achieve the transparency of public affairs through the enforcement of the right to access and disseminate data of public interest and data accessible on public interest grounds.

Pursuant to Section 3(6) of the Privacy Act, data accessible on public interest grounds means any data, other than data of public interest, the disclosure, availability or accessibility of which is prescribed by an Act for the benefit of the general public.

Pursuant to Section 26(2) of the Privacy Act, personal data accessible on public interest grounds shall be disseminated in compliance with the principle of data processing, limited to the intended purpose.

The preamble of the Company Transparency Act declares that its purpose is to determine the order of company foundation and registration in accordance with the regulations of the European Union by establishing a modern legal framework, and to ensure the full accessibility of the data of the public Trade Registry directly or electronically in order to protect the constitutional rights of entrepreneurs, the security of economic transactions, creditor's interests or other public interests.

Pursuant to Section 10(1) of the Company Transparency Act, the Trade Registry consists of the list of companies and annexes verifying data in the list of companies, as well as other documents, the

submission of which is required by law to protect public interests, the safety of transactions and creditors' interests (hereinafter jointly: company documents).

Pursuant to Section 10(2) of the Company Transparency Act, the existing and erased data of the list of companies and the company documents, including electronically submitted company documents or those transformed into electronic documents, shall be fully accessible to the public. Following the successful completion of the tax registration procedure according to the Act on the Rules of Taxation, the already submitted, but not yet evaluated registration application and its annexes shall also be fully accessible with the provision that the Trade Registry shall refer to the fact that the evaluation of the registration (change registration) application is in progress. Pursuant to the provisions of this Act, the documents of the supervisory procedure for compliance shall be accessible to the public.

Pursuant to Section 24(1)(b), (f) and (h) of the Company Transparency Act, the list of companies shall, for each company, include the name of the company, its registered capital, the name of its senior officer or of the person authorised to represent the company, its tax identification number, in the case of a natural person their place of residence, date of birth, their mother's name at birth, in the case of legal entity, its registered office and Trade Registry number or registration number, the office of the persons authorised to represent the company, the date of the generation of this legal relationship in the event of representation for a specific period of time as well as the date of the termination of the legal relationship, or if the termination of the legal relationship took place prior to the date indicated in the Trade Registry, the actual date of termination and the fact whether the signature specimen of the company representative attested by a public notary or countersigned by an attorney-at-law or solicitor (members of the Bar Association) was submitted.

Pursuant to Section 27(3)(a) and (e) of the Company Transparency Act, over and above the data specified in Sections 24-26, the list of companies shall include in the case of limited liability companies

a) the names of the members, in the case of natural persons: place of residence, date of birth, mother's name at birth; in the case of a legal entities: the registered office and the Trade Registry number or registration number and the fact if the voting rights of a member exceed 50 percent, or if the member has an influence of a qualified majority.
e) in case of a jointly held business quota, the names of the shareholders, in the case of natural persons: the place of residence, date of birth, mother's name at birth; in the case of legal entities: their registered office, Trade Registry number or registration number.

Pursuant to Section 5(1)-(2) of Act CVI of 2007 on State Assets (hereinafter: State Assets Act), all the data concerning the management of state assets that do not qualify as data of public interest shall be accessible on public interest grounds. The body or person managing state assets or having disposal over state assets shall qualify as a body or person performing public duties in accordance with the act concerning the accessibility of data of public interest.

Pursuant to Section 27(3) of the Privacy Act, as data accessible on public interest grounds, the following shall not qualify as business secret: the budget of the central government and the local governments; furthermore, data related to the use of European Union funds, to benefits and allowances involving the budget, to the management, possession, use, utilisation and the disposal and encumbrance of central and local government assets, and the acquisition of any right in connection with such assets, as well as data, the accessibility or publication of which is prescribed on public interest grounds by a specific Act. Disclosure, however, shall not entail access to data, to protected knowledge in particular, the knowledge of which would cause disproportionate harm with respect to the performance of business activities, provided that this does not prevent the possibility of access to data accessible on public interest grounds.

Pursuant to Section IX(1), (2) and (4) of the Fundamental Law, everyone shall have the right to the freedom of expression. Hungary recognises and protects the freedom and diversity of the press and guarantees the conditions of free information needed for the development of democratic public

opinion. The exercise of the freedom of expression may not be directed at violating the human dignity of others.

Pursuant to Article 85(1) of the General Data Protection Regulation, Member States shall, by law, reconcile the right to the protection of personal data pursuant to this Regulation with the right to the freedom of express and information, including processing for journalistic purposes and the purposes of academic, artistic or literary expression.

Pursuant to Article 85(2) of the General Data Protection Regulation, for processing carried out for journalistic purposes or for the purposes of academic, artistic or literary expression, Member States shall provide for exemptions or derogations from Chapter II (principles), Chapter III (rights of the data subject), Chapter IV (controller and processor), Chapter V (transfer of personal data to third countries or international organisations), Chapter VI (independent supervisory authorities), Chapter VII (cooperation and consistency) and Chapter IX (specific data processing situations), if they are necessary to reconcile the right to the protection of personal data with the freedom of expression and information.

Pursuant to Recital (65) of the General Data Protection Regulation, […] the further retention of the personal data should be lawful where it is necessary for exercising the right of freedom of expression and information, for compliance with a legal obligation, for the performance of a task carried out in the public interest, or in order to exercise official authority vested in the controller, on the grounds of public interest in the area of public health, for achieving purposes in the public interest, scientific or historical research purposes or statistical purposes or for the establishment, exercise or defence of legal claims.

Pursuant to Recital (153) of the General Data Protection Regulation, Member States' law should reconcile the rules governing freedom of expression and information, including journalistic, academic, artistic and/or literary expression with the right to the protection of personal data pursuant to this Regulation. The processing of personal data solely for journalistic purposes, or for the purposes of academic, artistic or literary expression should be subject to derogations or exemptions from certain provisions of this Regulation, if necessary to reconcile the right to the protection of personal data with the right to freedom of expression and information as enshrined in Article 11 of the Charter. This should apply in particular to the processing of personal data in the audio-visual field and in news archives and press libraries. Therefore, Member States should adopt legislative measures, which lay down the exemptions and derogations necessary for the purpose of balancing those fundamental rights. Member States should adopt such exemptions and derogations on general principles, the rights of the data subject, the controller and the processor, the transfer of personal data to third countries or international organisations, independent supervisory authorities, cooperation and consistency and specific data processing situations. Where such exemptions or derogations differ from one Member State to another, the law of the Member State to which the controller is subject should apply. In order to take account of the importance of the right to freedom of expression in every democratic society, it is necessary to interpret notions relating to that freedom, such as journalism, broadly.

Pursuant to Section 4(3) of the Freedom of the Press Act, the exercise of the freedom of the press may not entail a crime or an incitement to commit a crime, it may not violate public morality, nor infringe the personality rights of others.

Pursuant to Section 10 of the Freedom of the Press Act, everyone shall have the right to be appropriately informed of the affairs of local, national and European public life and of events of significance for the citizens of Hungary and the members of the Hungarian nation. The entirety of the media system is responsible for providing credible, rapid and accurate information on these affairs and events.

Pursuant to Section 13 of the Freedom of the Press Act, linear media services providing information shall provide balanced information on the local, national and European events in the public interest, as well as those of significance for the citizens of Hungary and members of the Hungarian nation, and on disputed issues in their informative or news programmes. The detailed rules of this obligation are stipulated by the Act in accordance with the requirements of proportionality and ensuring a democratic public opinion.

Pursuant to Section 2:44 (1)-(3) of the Civil Code concerning the protection of the personality rights of public actors, the exercise of fundamental rights ensuring the free discussion of public affairs may limit the protection of the personality rights of the public actor to a necessary and proportionate extent without infringing human dignity; this, however, may not violate his or her privacy, family life and home. A public actor shall have a protection against communication or behaviour outside the scope of the free discussion of public affairs identical to that due to a non-public actor. Activities or data concerning the private or family life of the public actor do not qualify as public affairs.

Article 8 of the Charter of the European Convention on Human Rights states that everyone has the right to respect for his or her private and family life, home and communications. An authority may intervene in the exercise of this right only in cases specified by law when it is necessary in a democratic society in the interest of national security, public safety or the economic wellbeing of the country, to prevent disturbances or criminal acts, to protect public health and morals, or to protect the rights and freedoms of others.

Pursuant to Article 10(1) of the Charter of the European Convention on Human Rights, everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

III. The decision of the Authority

III.1. The person of the controller

According to the definitions provided in the General Data Protection Regulation, any information relating to an identified or identifiable natural person qualifies as personal data, any operation, which is performed on personal data qualifies as processing, while the natural or legal person, public authority, agency or other body, which alone or jointly with others determines the purposes and means of the processing of personal data qualifies as controller.

With regard to the processing under study, the full name, family name and the data concerning the economic situation of the complainants qualify as personal data pursuant to Article 4(1) of the General Data Protection Regulation, while the publisher of the press product collecting, processing, listing and publishing the data qualifies as controller pursuant to article 4(7) of the General Data Protection Regulation in respect of both the contents and publications whether published on-line or in a printed form, and the personal data disclosed in them in view of the fact that the publisher of the press product determines the purpose of the (re)use of the personal data and their publication.

Pursuant to Article 2(1) of the General Data Protection Regulation, Processing 1 and Processing 2 are subject to the scope of the General Data Protection Regulation, consequently the rules of the General Data Protection Regulation must be applied to these instances of processing.

In view of the above, the Obligee as the Hungarian publisher of Forbes qualifies as controller with respect to the data processing acts objected to.

III.2. The persons of the Complainants

The Complainants mentioned in their statements made in the course of the procedure and in their correspondence with the Obligee that they were not public actors.

In its Decision 3145/2018. (V. 7.), the Constitutional Court underlined that as a result of the changed social relations, particularly the spreading of telecommunications, an expansion in the category of public actors could be observed, thus persons who had earlier not been covered by the concept of public actors also have a possibility to actively shape public debates. These persons are termed as exceptional public actors. *{3145/2018 (V. 7.) Constitutional Court Decision Justification [46]}*

The freedom of expression protects first and foremost the expression of opinion related to the criticism of public powers, but as interpreted by the Constitutional Court, the range of issues in public life is broader than political speech or the criticism of the activities of persons exercising public power. Accordingly, public debate embraces not only the entirety of the operation of the state and local governments and the institutions of public power, but also issues of the social responsibility of businesses and issues of public life seen in increasing numbers in the business world (such as environment protection, energy efficiency, work and labour safety and transport safety issues). *{3145/2018 (V. 7.) Constitutional Court Decision Justification [31]-[32]}*

According to the decision of the Constitutional Court, the following criteria should be considered when deciding on the criteria of being a public actor:

- whether the public disclosure expressing an opinion reflects a position expressed in a debate of public interest,
- whether the public disclosure concerns public speaking,
- whether the public disclosure is a statement of facts or a value judgement,
- whether the public disclosure violates the human dignity or reputation (honour) of the data subject.

Whether someone is a public actor is tied to the fact of public speaking being concomitant with the debate of issues in public life, which should be assessed individually based on specific criteria: the mode and circumstances of the publication of the disclosure, the subject matter and context of the opinion (e.g. the type of the medium, the apropos of the disclosure, its content, style, purpose and topicality or the reactions to it) as stated by the Constitutional Court.

The existence of the freedom of expression can only be verified in the cases in which the participants decide to shape public opinion more actively than others at their own volition, undertaking to make evaluations and criticism in front of the public concerned. Because of this, they have to be more tolerant with respect to expressions of opinion, which affect or qualify them, or attack them in their person while discussing public affairs. *{3145/2018 (V. 7.) Constitutional Court Decision Justification [48]}*

The Complainants emphasized that they have always wished to separate their private life from their life as entrepreneurs, and although the foundation of an undertaking is voluntary, this in itself does not mean that the owners and senior officers of the undertaking would become public actors and the fact in itself that somebody is rich is not necessarily a sufficient condition for restricting privacy, that is just one component of being influential.

At the same time, the circumstance that […] became market leader in several countries as a consequence of state subsidies and state or other public funding cannot be disregarded in the case of the Complainants. The Complainants had to reckon with the fact that in the case of a successful company generating great wealth, they would become active shapers of the world of business as a segment of public life, accepting the concomitant evaluations and criticisms for which they have to have greater tolerance.

In the present case, it can be established that of the elements of content of the disclosures under study, the names of the Complainants, their positions as managing directors and owners must be regarded as data accessible on public interest grounds because of the following:

- Pursuant to Section 10(2) of the Company Transparency Act, the existing and erased data of the list of companies are fully accessible to the public. Thus, the data in the company documents, including the personal data, which the data subjects provide in the course of registration in the Trade Registry, in accordance with the purpose of the Trade Registry in the knowledge of full disclosure are accessible to anyone. The existing and erased data of the list of companies and the personal data in the company documents are data accessible on public interest grounds, qualifying both as personal data and as data accessible on public interest grounds.
- Section 24(1) of the Company Transparency Act and - in the case of limited liability companies, such as […] – Section 27(3) of the Company Transparency Act provide for the mandatory content of the list of companies. The legal regulations referred to stipulate that the list of companies contain, among others for every company, the name of the senior officer of the company, and the name of the person authorised to represent the company, the positions of those authorised to represent the company, and in the case of limited liability companies, the names of the members and in the case of jointly owned business quotas, the names of the shareholders.
- According to the preamble of the Company Transparency Act, the accessibility of data in the list of companies also serves purposes in the public interest and the legislator deemed that this interest overrides the interests of data subjects.

It should also be mentioned that the information disclosed in relation to […] in the publications can on the one hand be found in the reports and the website of […], and on the other hand, […] has carried out various expansions and capacity developments using state subsidies, which is data accessible on public interest grounds pursuant to Section 5(1)-(2) of the State Assets Act, and Section 27(3) of the Privacy Act.

III.3. The lawfulness of data processing

The subject matter of this case is not a general analysis of economic journalism for data protection and, although the Authority makes general statements also on account of the nature and circumstances of the case, it should be underlined that the Authority examined the data processing acts related to the specific publications issued by the Obligee (“products”) in this procedure.

Pursuant to the provisions of the General Data Protection Regulation, a number of requirements must be met if data processing is to be lawful.

Article 5 of the General Data Protection Regulation contains the main principles, which must be taken into account when processing personal data and asserted throughout data processing. These principles include, inter alia, the principles of lawfulness, fair procedure and transparency, purpose limitation, data minimisation, accuracy and storage limitation [Article 5(1)(a)-(e)]. It follows from the principle of accountability [Article 5(2)] that the controller is responsible for compliance with the principles of data protection, and in addition, the controller must be able to demonstrate compliance with them. Accordingly, the controller must be able to demonstrate the purpose for which he processes personal data and also why the processing of personal data is absolutely necessary for this data processing purpose; moreover the controller must take all reasonable measures in order to immediately erase or rectify personal data that are inaccurate for the purposes of processing, and the controller has to document and keep records of the processing, so that its lawfulness can be verified subsequently.

The controller must have the legal grounds aligned with Article 6 of the General Data Protection Regulation for lawful processing and must be able to demonstrate that he has processed personal data based on the consent of the data subject, or in accordance with a legal regulation, or that the processing was necessary for the enforcement of the legitimate interests of the controller or a third party, and that the processing restricted the right of the data subject in proportion to the protection of their personal data.

There is no doubt that the names and the data related to the financial position of the Complainants qualify as their personal data, but in view of their activities related to the company they hold, their data in the Trade Registry are data accessible on public interest grounds, together with the company data according Section 10(1) of the Company Transparency Act.

Naturally, the quality of the data in question as company data does not mean that the data in the Trade Registry could be used in any circle: they can be used while respecting the principle of purpose limitation based on the appropriate legal grounds and to guarantee the right to informational self-determination, while appropriately ensuring the rights of the data subject.

According to the statement of the Obligee, the purpose of processing was to exercise the rights arising from the freedom of the press and fulfilment of the mission of the press to provide information in a democratic society. Another purpose of the Obligee was to provide information to the Hungarian business community about the owners behind the largest Hungarian-owned companies, contributing to the transparency and traceability of business life. In addition, the Obligee regards the reinforcement of Hungarian entrepreneurial culture as its tasks through reporting about the activities of successful Hungarian entrepreneurs and the compilation of the annual rich list serves this purpose in part.

The Obligee linked […] to the "[…] family" in the publications. According to the position taken by the Authority, it follows from the context of the publications that the word "family" should be interpreted as a synonym to family undertaking, and although there is no legal definition of a family undertaking in Hungary, according to interpretation by the profession, business organisations, whose majority control is concentrated in the hands of a family or families, family members with common lineage, so that control is enforced through the strategic and/or operative activities and decisions of at least two owners and/or senior officer family members, qualify as family undertakings or business organisations under the control of a family, irrespective of their size and profits.

Of the Complainants only […] was named in the case of Processing 2, and albeit in the case of Processing 1 it was stated that […] generations of the family have an interest in the business activities, the publications did not name any other family members whether specifically or by indirectly referring to them. Based on information in the Trade Registry, it is unambiguous which members of the […] family belong to this circle of persons.

Consequently, the position of the Complainants, according to which the "[…] family" would be inaccurate personal data, because it refers to every family member, including minor children, is incorrect. Neither the printed, nor the on-line version of the lists contains any direct or indirect reference to minor children, hence the Obligee does not process any data related to the minor members of the family, and such data cannot be found in the list of companies either. It follows that the minor members of the […] family cannot be regarded as data subjects of Processing 1 and Processing 2.

It should also be taken into account that the Forbes magazine is a press product containing articles and compilations on economic and business subject matter, thus according to the position of the Authority, disclosure and dissemination of data and information stemming from registries accessible to anyone and from the public disclosures and reports of the companies themselves does not infringe the principle of purpose limitation.

It should also be underlined that the estimation of assets stemming from economic activities and of the value of a business organisation using a specific method is unambiguously subject to the freedom of expression. The Obligee collected data from various public sources to make the estimates and then evaluated these data based on a specific methodology.

In the case of Processing 1, the following methodological description can be found in both the printed and the on-line versions:

> *"We considered the undertakings where the owners and the senior managers are blood relatives as family undertakings (that is, companies owned by spouses were not taken into account, if other relatives were not members of the management team). The companies were evaluated based on the American Forbes methodology. Wherever possible, we calculated on an EBITDA basis, as this is best suited to demonstrate the cash generating capabilities of the companies. We used industry multipliers and the liabilities of the company were deducted from the value obtained this way and we added the cash.*
>
> *In all cases, we worked from information accessible to the public; wherever possible, we used consolidated data, where they were not available, we ourselves consolidated results based on accessible information. The collections of Bisnode PartnerControl helped us in our work, while the staff members of Concorde MB Partners advised us on company evaluation."*

In the case of Processing 2, the following methodological description can be found in the printed and the on-line versions:

> *"Company evaluation was based on the methodology of our American parent. Wherever possible, we calculated on an EBITDA basis, and took the Trade Registry data into account. In accordance with international company evaluation practice, we applied industry multipliers. Here, we used the list of Aswath Damodaran, professor at New York University as our point of departure, but together with experts in company evaluation and our sister papers in the region we tailored the multipliers to the region, and to the Hungarian market, where this was necessary. We added the cash available to the company to the value obtained in this way and deducted credits (in the case of the larger holdings, we always based our calculations on the consolidated report).*
>
> *In the case of real estate, asset management or financial undertakings, we studied the assets accumulated in the companies (the value of real property, assets and investments) and took all the liabilities into account in accordance with the methodology of the American Forbes.*
>
> *We deducted taxes from dividends, and wherever we could, we assessed the financing requirements of the other interests of the billionaires and deducted those too from the dividends, and we included a part of the dividends of past years. We always worked from data accessible to the public.*
>
> *We always based our calculations on most recent accessible data for most – non-public - companies, this means the annual reports submitted for the business year from 1 January 2018 to 31 December 2018, In the case of shares, we made calculations with the most recent data. The asset estimation was closed on 10 December 2019.*
>
> *Bisnode PartnerControl assisted us in collecting the data. M&A experts of consulting firms helped us in the evaluation of the companies.*

A methodology description similar to the above can be found in all the similar publications of Forbes (both in the printed and the on-line versions). In addition, based on the statements and the documents sent to the Authority, it can be established that the Obligee sent the asset or value estimates produced on the basis of the methodology to the Complainants in every case at the time of compiling the relevant lists, but before issuing the publications, and in each case they requested them to provide feedback and if necessary, a rectification of the data. *(Correspondence between the Complainants and the Obligee were presented in detail under Section III.4. in relation to the rights of the data subject.)*

It follows from this that the statement of the Complainants that they did not know what logic the Forbes journalists used to analyse the data is not true.

Without indicating it specifically, the Obligee essentially referred to Article 6(1)(e) of the General Data Protection Regulation as the legal ground of data processing and specifically indicated Article 6(1)(f) of the General Data Protection Regulation. The Obligee justified this by stating its position, namely that the activity carried out by the Obligee, i.e. economic journalism and within this, the regular collection of information about the richest persons who also have the largest (or greater than average) influence on society based on data accessible to the public and the evaluation, interpretation and archiving of the data and information are activities serving the public interest, and that [...] has received substantial state subsidies, which in itself warrants the presentation of the owner behind the investments to the citizens (the readers).

Furthermore, the Obligee referred to Hungary's Fundamental Law, which in addition to the right to the protection of personal data also protects the transparency of data in the public interest, as well as the freedom and diversity of the press as well as to Section 10 of the Freedom of the Press Act, Article 85 of the General Data Protection Regulation and decisions brought by the Constitutional Court in cases expressly related to data processing by the press and the exercise of the freedom of the press, or the freedom of expression.

Hungary's Fundamental Law names the right to the protection of personal data, the freedom of the press and the freedom of expression among the fundamental rights, thus the enforcement of the freedom of the press and the freedom of expression as constitutional fundamental rights must be implemented together with the protection of the constitutional fundamental right linked to the protection of personal data.

In its decision on issues of media law 165/2011. (XII. 20.) AB, the Constitutional Court summarised its approach to the foundations of the freedom of speech and of the press, and beside the freedom of expression, it underlined the importance of forming democratic public opinion by the citizens. In its decision, the Constitutional Court stated that "*the freedom of expression equally serves the fulfilment of individual autonomy and the possibility of creating and maintaining democratic public opinion on the part of the community. [...] The press is the institution of the freedom of speech. Thus, freedom of the press, if it serves the free expression of speech, communication and opinion, its protection is also has a dual definition: in addition to the subjective legal nature on the part of the community it served the creation and maintenance of democratic public opinion. [...] By exercising the right to the freedom of the press, the holder of the fundamental right is an active shaper of democratic public opinion. In this capacity, the press controls the activities of the actors and institutions of public life and the process of decision-making and provides information on these to the political community, the democratic public (the »watchdog« role).*"

In case C-73/07 referred to the court for a preliminary ruling in case *Tietosuojavaltuutettu v. Satakunnan Markkinapörssi Oy and Satamedia Oy,* CJEU dealt with the notion of journalistic activity pursuant to Article 9 of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data - which was replaced by Article 85 of the General Data Protection Regulation - and in its judgment of 16 December 2008 declared the following:

- *"In order to take account of the importance of the right to freedom of expression in every democratic society, it is necessary first to interpret notions relating to that freedom, such as journalism broadly. Secondly, and in order to achieve a balance between the two fundamental rights, the protection of the fundamental right to privacy requires that the derogations and limitation in relation to the protection of data [...] must apply only insofar as is strictly necessary."* [CJEU, C-73/07. case, Judgment *paragraph* 56.]

- *"The exemptions and derogations provided for in Article 9 of the Directive apply not only to media undertakings, but also to every person engaged in journalism."* [CJEU, C-73/07. case Judgment *paragraph* 58.]
- *"The fact that the publication of data within the public domain is done for profit-making purposes does not prima facie precludes such publication being considered as an activity undertaken solely for journalistic purposes. [...] A degree of commercial success may even be essential to professional journalistic activity."* [CJEU, C-73/07. case, Judgment *paragraph* 59.]
- *"[...] Activities relating to data from documents, which are in the public domain under national legislation may be classified as journalistic activities, if their object is the disclosure to the public of information, opinion or ideas, irrespective of the medium which is used to transmit them. They are not limited to media undertakings and may be undertaken for profit-making purposes."* [CJEU, C-73/07. case, Judgment *paragraph* 61.]

CJEU repeated the statements in its judgment brought in case C-345/17 for a preliminary ruling in the case *Sergej Buivids v. Datu valsts inspekcija* of 14 February 2019:

- *"The Court has already held that in order to take account of the importance of the right to freedom of expression in every democratic society, it is necessary to interpret notions relating to that freedom, such as journalism broadly (see to that effect: Judgment of 16 December 2008 Satakunnan Markkinapörssi and Satamedia, C-73/07, EU:C:2008:727, paragraph 56.)"* [CJEU, C-345/17. case, Judgment *paragraph* 51.]
- *"Thus, it is apparent from the legislative history of Directive 95/46/EC that the exemptions and derogations provided for in Article 9 of the Directive apply not only to media undertakings, but also to every person engaged in journalism (see to that effect: Judgment of 16 December 2008 Satakunnan Markkinapörssi and Satamedia, C-73/07, EU:C:2008:727, paragraph 58.)"* [CJEU, C-345/17. case, Judgment *paragraph* 52.]
- *"The case-law of the Court reveals that "journalistic activities" are the activities, whose purpose is to make information, opinions or ideas accessible to the public, irrespective of the mode of disclosure (see in that sense: Judgment of 16 December 2008 Satakunnan Markkinapörssi and Satamedia, C-73/07, EU:C:2008:727, paragraph 61.)"* [CJEU, C-345/17. case, Judgment *paragraph* 53.]

Recital (153) of the General Data Protection Regulation also declares that in order to take account of the importance of the right to freedom of expression in every democratic society, it is necessary to interpret notions relating to that freedom, such as journalism broadly.

The processing of (personal) data stemming from databases in the public domain, the communications and reports of business organisations themselves, activities related to the evaluation of the collected data based on a specific methodology and newly generated data stemming from value estimation are linked to the journalistic activity of the Obligee. The fact that the publication of these data is (also) tied to the purpose of making a profit does not exclude the possibility of regarding it as an activity pursued for the purposes of journalism.

The European Court of Human Rights (hereinafter: ECHR) has a wealth of experience in the development of specific measures applicable to the possibility of restricting expressions of opinion made in the course of discussing public affairs. ECHR's practice made it unambiguous that the increased protection of opinion expressed in relation to public affairs is not limited to political discussions taken stricto sensu and politicians. On the one hand, above and beyond debates of party politics, the right to express an opinion guaranteed by the European Convention on Human Rights protects also the freedom to discuss other issues related to the community with particular force *(ECHR: Thorgeirson v. Iceland, application number: 13778/88, paragraph 64., 1992., decision in merit and on satisfaction)*. On the other hand, ECHR invokes the argument of outstanding significance of discussing public affairs not only in the cases when the disputed expression refers to politicians or official persons, but also if the given issue of public interest (also) affects private individuals. In the latter case, the threshold of tolerance of private individuals must also be raised

(ECHR: Bladet Tromsø and Stensaas v. Norway, application number: 21980/93, paragraph 1999., decision in merit and on satisfaction).

From the viewpoint of applying specific measures what has a decisive role is not in itself the status of the person concerned, but whether or not the opinion is related to public affairs. Namely, what is of significance in relation to the free expression of opinion in relation to public affairs is not whether the person affected by the given report is himself a professional public actor, but the issue on which the speaker expressed his opinion and whether the communication at issue contributes to the public debate.

Although the role of the Complainants in business life, or the use of funds from the state or other public funds, and the related fact-finding articles and reports may truly be linked to debates in public life, the question arises whether this holds also in the case of the rich list published by the Obligee.

The "Markkinapörssi case" already referred to was also examined by ECHR {*Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [Grand Chamber], 931/13. case, 27 June 2017.}, in which decision the Court recalled the criteria of case-law, which must serve as guidelines for the national authorities and ECHR itself, when considering the freedom of expression and the right to respecting privacy. When it is a matter of political speech or debate concerning a case in the public interest, there is little possibility for restricting the right to learn and disclose information, "and this is a fundamental right in a democratic society".

The derogation from the data protection rules for the purpose of journalism enables journalists to have access to personal data, to collect and process them with a view to pursuing their journalistic activities; however, ECHR pointed out that the fact in itself that some information is in the public domain does not necessarily excludes it from the protection granted by Article 8 of the European Convention on Human Rights and the companies as professional actors of the media industry must be aware that the exemption applicable only to journalistic activities cannot be unconditionally applied to the large-scale collection and disclosure of data. When weighing the rights protected by Articles 8 and 10 of the European Convention on Human Rights against one another, ECHR pointed out that free access to official documents (taxation information) could really facilitate the democratic debate on issues in the public interest, but at the same time stated that the disclosure of raw data without any analysis on a large scale was not in the public interest. The data on taxation could enable curious members of the public to categorise individuals based on their economic situation and they could satisfy the desire of the public for information concerning the private lives of others; this, however, cannot be regarded as facilitation of the debate on issues of public interest.

The practice of ECHR was transferred by CJEU in the "Buivids case" already referred to into EU law. *"In that connection it is apparent from that case-law that in order to balance the right to privacy and the right to freedom of expression, the European Court of Human Rights has laid down a number of relevant criteria, which must be taken into account, inter alia, contribution to a debate of public interest, the degree of notoriety of the person affected, the subject of the news report, the prior conduct of the person concerned, the content, form and consequences of the publication and the manner and circumstances in which the information was obtained and its veracity (see to that effect: Judgment of the ECHR of 27 June 2017, Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland, CE:ECHR:2017:0627JUD000093113, 165. §). Similarly, the possibility for the controller to adopt measures to mitigate the extent of the interference with the right to privacy must be taken into account."* [CJEU, C-345/17. case, Judgment paragraph 66.]

In its Decision IV/316/2018 declaring judgment Pfv.IV.20.884/2017/7 of the Curia null and void and in its Decision IV/316/2019 declaring judgment Pfv.IV.21.398/2017/4 of the Curia null and void, the Constitutional Court declared that (IV/1368/2018???). "*as a result of the particular protection of the private and family life, home and relationship of the individual as set forth in Section VI. (1) of the Fundamental Law, close relatives of public actors and non-public actors should also be given particular protection. […] Curiosity and hunger for rumour of the public in itself does not justify*

regarding an issue as being in the public interest. The right of a non-public actor to privacy can be constitutionally restricted in the interest of the freedom of expression in a case of outstanding public interest, also with respect to family relationships of the public actors, if informing the public is absolutely necessary and the data made public is a specific part of the private life of the non-public actor constituting an adequate part related to the case in the public interest." {Constitutional Court Decision IV/1368/2018, Justification [61]; Constitutional Court Decision IV/316/2019, Justification [54]}

Considering the above, the Authority has taken the position that absolutely no circumstance indicates that the compilation of rich lists would be a "watchdog" type activity, and would relate to specific debates in public life. These lists are regularly (annually) published, not related to specific events, but to who became richer and to what extent over a given period, irrespective of the source of that wealth, as the lists are compiled on the basis of a specific methodology and not on the basis of who or which undertaking benefited from state subsidies, thus the compilations include persons and undertakings that have not benefited from state subsidies. While economic journalism could truly have a "mission", the "rich list" as a product is not primarily related to direct debates in public life, but satisfy "hunger for rumour", this is not a case of fact-finding or investigative journalism (characterising the "watchdog" type of journalism), what we have here is that the Obligee estimates the value of undertakings or in the case of persons, the magnitude of the assets stemming from the activities of the undertaking based on information in the public domain according to its own methodology and then ranks the undertakings and persons based on the estimated value or assets.

Reference to economic journalism as an activity in the public interest cannot be accepted as the legal basis of data processing for either Processing 1 or Processing 2. The reason for this is that the legal basis according to Article 6(1)(e) of the General Data Protection Regulation may be linked to a processing activity related to a public duty qualified as such by legal regulation. Although economic journalism is an activity in the public interest, but it is not a public duty (in the terminology of the General Data Protection Regulation: task carried out in the public interest) as the journalist cannot be regarded as a person performing a public duty [cf. Section 459(1) point 12 of Act C of 2012 on the Penal Code].

In the case of Processing 1 and Processing 2 or similar "rich lists", the Obligee does not carry out a public duty as these lists - on account of their nature and because it is not their goal - do not provide a thorough view of any dubious or allegedly dubious transaction.

Journalistic activity is not included among the legal grounds according to Article 6(1)(e) by the General Data Protection Regulation either. This is supported by the fact that Article 17(3)(b) exactly follows the terms used in Article 6(1)(e) [or rather the EU legislator essentially combined the legal grounds according to Article 6(1)(c) and (e), which are in any case close to one another in Article 17(3)(b)]. It is, however, not this point but Article 17(3)(a) that contains the possibility to waive the erasure of data in relation to the right of freedom of expression.

It follows from all this that Processing 1 and Processing 2, the similar "rich lists" and in general all the data processing related to economic journalism not based on consent may be carried out on the legal basis of legitimate interest according to Article 6(1)(f) of the General Data Protection Regulation.

In its statements made in the course of the procedure, the Obligee referred also to the legal grounds of legitimate interest.

Pursuant to Recital (47) of the General Data Protection Regulation, if the legal basis of data processing is legitimate interest, an assessment of interest must be carried out in advance to determine, among others, legitimate interest, the impact on the data subject, whether data processing is necessary and proportionate, and it has to be considered whether the legitimate interest overrides the rights of the data subject.

This means that data processing based on legitimate interest may be carried out only, if the controller carries out the interest assessment test in advance and as a result of the test, the legitimate interest of the controller or a third party overrides the disadvantages that may be sustained by the data subject in relation to the data processing.

The interest assessment test is a three-step process, in the course of which it is necessary to identify the legitimate interest of the controller, the interest of the data subject constituting the counterpoint of weighing, and the fundamental rights concerned, and finally, based on the weighing, it is necessary to establish whether the personal data can be processed. Based on all this, the reference to Article 6(1)(f) of the General Data Protection Regulation can be appropriate and thus the data processing can be lawful, if the conclusion of the interest assessment test is that the legitimate interest of the controller or of a third party overrides the legitimate interest of the data subject, his right to the protection of personal data and the restriction of the rights of the data subject is proportionate to the legitimate interest of the controller or a third party enforced through this restriction.

In the course of this interest assessment, the controller has to consider, inter alia, whether the data subject is a public actor (if so, this reinforces the interest of the controller in data processing), and whether the journalistic activity at issue is of an investigative nature (this would again reinforce the interest in data processing), or it only serves the satisfaction of a hunger for rumour (in this case the interest in protecting personal data is stronger). Also, the interest assessment is successful, if the given article is about subsidies paid from public funds and otherwise contains data accessible on public interest grounds (e.g. company data).

Based on the principle of accountability, the interest assessment test has to be appropriately documented and the data subjects have to be properly informed pursuant to the General Data Protection Regulation about the legitimate interest of the controller, irrespective of whether the personal data are collected from the data subjects [Article 13(1)(d)], or they were not obtained from them [Article 14(2)(b)].

In its statements made in the course of the procedure, the Obligee expounded its position and arguments for the existence of its own legitimate interests and those of a third party (the public) and for restricting the rights and interests of the Complainants; this, however, does not meet the requirements related to interest assessment according to Recital (47) of the General Data Protection Regulation. The Obligee carried out the interest assessment improperly, and - as detailed in Section III.4 of the Decision - failed to provide appropriate preliminary information in relation to this to the Complainants and informed the Complainants of its position only in its responses sent to the legal representative of the Complainants.

In relation to the interest assessment, it should be underlined that there is no way make generalizations as to what extent and from what point of view data processing may have a detrimental impact on a data subject, because data subjects and their circumstances are different in every case, hence this is a subjective value judgment, which means that the same data processing, which one data subject may regard as acceptable in a case can be regarded as detrimental by another data subject in a different case.

The freedom of information and the right to informational self-determination must be enforced respecting each other, thus it has to be considered whether the publicity of the data disproportionately violates the right to privacy. In the present case, it can, however, be established that the processing carried out by the Obligee and the content of the public communications based on them were related not to the private or family lives of the Complainants, but to the activities of the undertaking they had interests in and to the economic results derived from that. It can be clearly established that the data processed within this range and the communications had to deal with results achieved by the Complainants in economic and business life and not to their family or private

lives.

In view of the fact that the compilations were based on the personal data of the Complainants accessible to anyone on public interest grounds on the estimated amount of the assets arising from economic activities and the estimated value of the undertaking, and beyond these, they did not contain additional personal data, moreover, the content of the entries were based on the reports and public communications of [...], the processing does not exceed the necessary and proportionate extent and the archiving of the lists is compatible with the original purpose of processing, the Authority established that the Obligee did not infringe the principles of purpose limitation, data minimisation, accuracy and limited storage according to Article 5(1)(b), (c), (d) and (e) of the General Data Protection Regulation with regard to either Processing 1 or Processing 2.

Based on the principle of accountability, controllers have to carry out data processing operations throughout the entire process of processing, so as to be able to demonstrate compliance with the data protection rules. The principle of accountability is enforced not only generally, interpreted at the level of the process, but also in relation to every specific data processing activity, the processing of the personal data of any specific data subject.

According to the Authority, the legitimate interest indicated by the Obligee is acceptable for both Processing 1 and Processing 2, however, the Obligee by not carrying out the interest assessment appropriately, and by failing to inform the Complainants of the legitimate interest of the public and of the result of comparing these interests with those of the Complainants in advance, infringed Article 6(1)(f) of the General Data Protection Regulation, as well as the principle of accountability according to Article 5(2) with regard to both Processing 1 and Processing 2.

III.4. The rights of the data subjects and the restrictions of exercising these rights

In relation to data subjects rights, the Complainants requested the Authority in their petition to establish the fact of unlawful processing with regard to both Processing 1 and Processing 2 on the grounds of infringement of Article 13(2)(f), Article 14(2)(g), Article 14(1)-(2), Article 15(1)(h), and Article 21(1) of the General Data Protection Regulation, and to order the restriction of the personal data pursuant to Article 18(1)(a) and (d) and then the erasure of the personal data in accordance with Article 17(1)(c).

Naturally, the duality detailed above - according to which certain personal data are also company data accessible on public interest grounds - cannot mean that because of this circumstance the data subject would fully lose their right to self-determination with regard to these data and that the accessibility of the personal data to the public would be concomitant with fully losing the right to privacy without restriction.

Article 12 of the General Data Protection Regulation sets forth the obligations of the controller related to measures concerning the exercise of the rights of the data subjects (including the right to being informed, to object and to erase).

Based on the statements and the available documents, the following correspondence took place between the Complainants (or rather their legal representative) and the Obligee (or rather its journalists) during the period under study.

- The journalist employed by the Obligee contacted the undertaking linked to the Complainants by way of an e-mail on 16 August 2019 concerning Processing 1; a short description of the methodology used to produce the compilation was attached to this letter as follows:

  “Company evaluation was based on the methodology of our American parent. Wherever possible, we calculated on an EBITDA basis, and took the Trade Registry data into account. In accordance with international company evaluation practice, we applied industry multipliers. Here we used the list of Aswath Damodaran, a professor at New

York University, as our point of departure, but together with Hungarian experts in company evaluation and our sister papers in the region we tailored the multipliers to the region, and to the Hungarian market, where this was necessary. We added the cash available to the company to the value obtained in this way and deducted credits. Our detailed calculation is attached in an excel file."

In addition to the methodological description, another attachment to the e-mail was also sent in the form of an excel table, containing the calculation (estimate) based on the data of […].

Based on the above, it can be established that in contrast to their allegation, the Complainants were notified of the fact that Obligee intended to include […] in the Forbes list containing the most valuable family undertakings not on 26 August 2019, but on 16 August 2019. Following the journalist's e-mail, the following correspondence took place between […] and the Obligee in the period between 22-26 August 2019.

- On 22 August 2019 - in response to an e-mail not known to the Authority - Obligee informed the person taking action as a representative of […] (and the Complainants) that the list for each entity will include the company name and the family name, and the entry will include the owners shown in the company registration just as at the time when […] was last included in this list.
- On 26 August 2019 […] requested the Obligee to waive the reference to […] and […] family in relation to Processing 1, similarly to previous years, and not to use the phrase "[…] family" in any compilation.
- In its response sent on 26 August 2019 the Obligee provided the information that in earlier years […] was not included in the Forbes family undertakings lists because based on the data of the given year and our estimates made on their basis they were not among the 25 largest companies in their opinion. Three years ago, the family and the company were included in the list for that year, because according to the calculations made at the time, they were among the 25 largest companies. […] was shown in other Forbes lists in preceding years, for instance in the ranking of the 100 largest Hungarian owned private companies, then mention of the family was waived because that was not warranted.

- In their letter of 30 august 2019, the Complainants turned to the Obligee with a request to exercise their rights as data subjects extending to the right of receiving information in advance in accordance with Article 14, the right to access according Article 15, the right to rectification according to Article 16 (with regard to the phrase "[…] family"), and the right to object according to Article 21 of the General Data Protection Regulation. In the request aimed at exercising the right to object, the Complainants did not explain the reasons for objecting with sufficient detail, all they indicated was that in their view, there was no compelling lawful reason on the basis of which the Obligee would be entitled to process their personal data.
- In its answer to the request to exercise data subject's rights, the Obligee
  - indicated the purpose of processing (informing the public, exercising the right to the freedom of the press), the categories of personal data (names of the owners, their mothers' name, names of senior officers) and the sources of the personal data and the data related to the results of […] (data accessible in the company database, reports downloaded from the website *e-beszamolo.im.gov.hu* and earlier statements and public communications of […]);
  - provided information on the fact that although they do consult external experts, but they only reconcile the industry multipliers with them, the external experts see the specific estimates made only in exceptional cases and personal reconciliation is needed, but the Obligee does not hand over data in the course of personal reconciliations, only the company name, the balance sheet data used for the estimates, the multiplier and the end result of the estimate are shared with them, such a reconciliation, however, never took place in the case of […] or any other holdings of the […] family;

- specified the staff members participating in producing the list, who process the data, underlining that the intern indicated among the authors of the list did not have access to the database created when preparing the list, thus he could not see the data of […] and he carried out his work on the basis of the internship contract supplemented with a confidentiality clause;
- in relation to the period of processing, provided information on the fact that the accessible company data were used to check the criteria of a family undertaking; these, however, were not recorded by the Obligee, the data needed for making the estimates were used to produce the list, and they were erased once the work was completed;
- finally, Obligee also indicated that the magazine displayed the name of […] and of the family exercising control (without separately mentioning any family member) and the estimated company value; the same data were shown in the Forbes.hu website where an abstract of the list was published.

- In November 2019 (*according to the statement of the Complainants: on 6 November, according to the statement of the Obligee: on 14 November - the exact date is not known to the Authority*), Obligee contacted the Complainants (*as to who exactly is not revealed from the statements and documents received by the Authority*) in relation to Processing 2 by e-mail to which a short description of the methodology used for producing the compilation was attaches as follows:

  "Company evaluation was based on the methodology of our American parent. Wherever possible, we calculated on an EBITDA basis, and took the Trade Registry data into account. In accordance with international company evaluation practice, we applied industry multipliers. Here we used the list of Aswath Damodaran, a professor at New York University, as our point of departure, but together with Hungarian experts in company evaluation and our sister papers in the region we tailored the multipliers to the region, and to the Hungarian market, where this was necessary. We added the cash available to the company to the value obtained in this way and deducted credits. The above methodology can best be used in the case of manufacturing companies. In the case of financial service providers or property developers, we also act on the basis of the guidance of our parent magazine: here our point of departure is the value accumulated in the undertaking (largely assets) and deduct all the liabilities. Our detailed calculation is attached in an excel file."

  In addition to the methodological description, another attachment to the e-mail was also sent in the form of an excel table, containing the calculation (estimate) based on business data.

- In the cease and desist letter sent by their attorney on 15 November 2019 to the Obligee, the Complainants strongly objected to the data processing carried out by the Obligee affecting the Complainants on the basis of Article 21 of the General Data Protection Regulation and prohibited their access to any personal data concerning them, to collect their data or carry out any other data processing activity, including publication. They also prohibited their presentation of the Complainants in the issue directly or indirectly, whether by name or reference to family, and called upon the Obligee to immediately erase the personal data of the Complainants and refrain from any kind of data processing operation in relation to them. Pursuant to Article 18(1)(a) and (d) of the General Data Protection Regulation, the Complainants also requested the restriction of processing and emphatically called upon the Obligee to refrain from the disclosure of data concerning the Complainants until the clarification of the circumstances specified under Article 18(1)(a) and (d) of the General Data Protection Regulation and as a result of their objection also beyond it. The Complainants also called the attention of the Obligee to the fact that the conclusion drawn from the data in the Trade Registry concerning the financial position of the Complainants and their family was inaccurate or false as the data concerning the financial situation of the Complainants significantly differ from the actual data, which is also verified by a notarial deed. In the request aimed at exercising their right to object, the Complainants again failed to explain the reasons

for their objection with sufficient detail, all they indicated was that according to their position, the data processing was severely detrimental with respect to the rights and legitimate interest of the Complainants.

- In its response of 20 November 2019, the Obligee
    - indicated Article 6(1)(f) as the legal basis of data processing, justified by the fact that an economic magazine such as Forbes has a legitimate interest in informing the public about Hungarian entrepreneurs and also referred to the state subsidy used by [...] and its participation in the bond programme of the Magyar Nemzeti Bank;
    - with respect to the accuracy of personal data, Obligee requested a recommendation for modifying the name;
    - in relation to the deviation from actual data, the Obligee noted that one of the objectives of the e-mail sent earlier was to enable the Complainants to give an opinion on the value estimate indicating that they would take any data and results aimed at rectification into account when making the estimates, provided that it is professionally warranted and acceptable; the Obligee also noted that the approximate estimates made on the basis of their professional opinion were based on the indicators of the business year closed on 31 December 2018, which were accessible to the public, and informed the Complainants that if there was any business decision or any other circumstance, which would influence their evaluation, the Obligee would consider taking that into account, or reconcile this with the Complainants;
    - the Obligee indicated informing the public and exercising the right to the freedom of the press as the purpose of compiling and publishing the list; according to the Obligee, presenting the mode the companies (and their owners) securing contracts and receiving subsidies from the state or other public funds use these funds is relevant information for the Hungarian business community on the one hand, and constitutes important information in the public interest for taxpayers on the other hand;
    - indicated the categories of personal data (names of the owners) and the sources of the personal data and the data related to the results of […] (data accessible in the company database, reports downloaded from the website e-beszamolo.im.gov.hu and earlier statements and public communications of […]); the entry on […] did not describe in detail what other items of property are in the hands of the family;
    - provided information on the fact that although the Obligee consults external experts, but they only reconcile the industry multipliers with them, the external experts see the specific estimates made only in exceptional cases if personal reconciliation is held, but the Obligee does not hand over data in the course of personal reconciliations, only the company name, the balance sheet data used for the estimates, the multiplier and the end result of the estimate are shared with them, such a reconciliation, however, never took place in the case of […] or any other holdings of the […] family;
    - specified the employees participating in compiling the list and processing the data;
    - in relation to the duration of data processing, the Obligee provided the information that the data needed for the estimates are used until the list is compiled and are erased upon completion.

Articles 13-14 of the General Data Protection Regulation set forth a minimum of the data processing circumstances of which the controller has to notify the data subjects, depending on the fact whether the personal data were collected from the data subjects or obtained from others. In view of the fact that the Obligee collected the data used for compiling the lists not directly from the Complainants, but used information available in various public databases, reports and the public communications of [...], the obligation of the Obligee to provide information in advance is governed by the provisions of Article 14 of the General Data Protection Regulation. Consequently, Article 13 of the General Data Protection Regulation – which specifies the minimum information the controller has to provide to the

data subjects if the personal data are collected from the data subjects - is not relevant in the current case, hence its infringement alleged by the Complainants could not be established.

Of the publications studied in the course of the procedure (Processing 1 and Processing 2), it can be stated that as they are periodically published on the one hand, and based on the methodology used, the Obligee can exactly determine whom it wishes to present in the current list or publication (which means practically profiling), it is the obligation of the Obligee according to the General Data Protection Regulation to provide information in advance to this relatively narrow range of persons covering the circumstances of processing according to Article 14(1)-(2) of the General Data Protection Regulation, paying particular attention to

- the purpose and legal basis of processing,
- the categories of personal data concerned,
- in the case of processing based on Article 6(1)(f) of the General Data Protection Regulation, the legitimate interest of the controller or a third party,
- the rights due to the data subject (rectification, erasure, restriction of processing, objection),
- the right of the data subject to lodge a complaint,
- the source of the personal data and whether the data stem from sources accessible to the public,
- the significance of profiling and its possible consequences to the data subjects.

Although it can be established that the Obligee (through its journalists) always contacted the Complainants prior to the publication of the lists, and informed them that the Obligee wished to include them in the given list, and sent them a short description of the methodology applied, as well as the excel table containing the value or asset estimates made on the basis of the methodology, and enabled the Complainants to make observations and if necessary, to rectify the data, the Obligee did not meet the requirement of providing information in advance appropriately because it failed to provide information on the purpose and legal basis of data processing, the legitimate interest of the controller or a third party and the results of the interest assessment, the expected consequences of profiling, all the rights due to the Complainants as data subjects and the Complainants' right to lodge a complaint.

As the information provided by the Obligee in advance to the Complainants was inadequate, the Authority establishes that the Obligee infringed Article 14 of the General Data Protection Regulation.

Pursuant to Recital (60) of the General Data Protection Regulation, the principle of transparent and fair processing requires that the data subject receive information on the fact and purposes of processing and all information necessary for ensuring fair and transparent processing, taking into account the specific circumstances and context of processing the personal data.

Guideline WP 260 concerning transparency facilitating the application and interpretation of the General Data Protection Regulation - which was adopted by the Data Protection Working Party established on the basis of Article 29 of Directive 95/46/EC, the legal predecessor of the European Data Protection Body (hereinafter: EDPB), which EDPB continued to uphold even after the entry into force of the General Data Protection Regulation - sets forth in the Annex on the information to be made available to data subjects pursuant to Articles 13 and 14 of the General Data Protection Regulation that "*[...] the information provided to data subjects must make it clear that upon request, they can receive information on the interest assessment test. This is indispensable for efficient transparency, if the data subjects have doubts concerning whether the interest assessment test was fair or if they wish to lodge a complaint with the supervisory authority."*

As the Obligee met this requirement inadequately, the Authority establishes that the Obligee infringed the principle of transparency according to Article 5(1)(a) of the General Data Protection Regulation with regard to both Processing 1 and Processing 2.

A distinction must be made between the information provided in advance according to Articles 13-14 and the information provided upon the request of the data subject pursuant to Article 15 of the General Data Protection Regulation. While information according to Articles 13-14 is intended to provide a general, comprehensive view of the processing of the personal data of the data subject, the purpose of the right to access according to Article 15 is expressly to enable the data subject to receive information specifically on the processing of his or her own personal data with a view to establishing and checking the lawfulness of processing.

To enable the exercise of the right to access, the controller has to make the information available to the data subject according to Article 15(1) of the General Data Protection Regulation. In its responses to the requests of the Complainants made in order to exercise their right to access, the Obligee indicated the purpose of processing, the categories of personal data, the source of the data, the staff members participating in compiling the lists and also provided the information that the data needed for the estimation were erased once the given list was compiled. Furthermore, with regard to Processing 2, the Obligee indicated the legal basis of processing [Article 6(1)(f) of the General Data Protection Regulation]. It can be established that the responses of the Obligee to the requests of the Complainants made in order to exercise their right to access do not fully comply with Article 15(1) of the General Data Protection Regulation because the Obligee failed to provide information in its responses on the expected consequences of profiling and all the rights of data subjects due to the Complainants or the right of the Complainants to lodge a complaint.

As the Obligee failed to provide the appropriate information in relation to the Complainants' request aimed at the exercise of their right to access, the Authority establishes that the Obligee infringed Article 15 of the General Data Protection Regulation.

In the event that the processing is in the public interest, or it is done on the basis of the legitimate interest of the controller or a third party, the data subjects may object to the processing of their personal data based on Article 21 of the General Data Protection Regulation. In this case, the controller may not continue the processing of the personal data, except if the controller demonstrates that processing is justified by legitimate reasons of compelling force, which override the interests, rights and freedoms of the data subjects, or which relate to the establishment, exercise or defence of legal claims.

Pursuant to Article 21(4) of the General Data Protection Regulation, the controller must direct the attention of the data subject explicitly to the right to object at the time of its first communication with the data subject at the latest and this information has to be presented clearly and separately from any other information.

In view of the fact that in the course of the first communication with the Complainants in relation to Processing 1 and Processing 2, the Obligee failed to direct the attention of the Complainants to the right to object and this information was not presented clearly and separately from any other information, the Obligee failed to meet its obligation according to Article 21(4) of the General Data Protection Regulation.

This is significant because pursuant to Article 21(1) of the General Data Protection Regulation, the Complainant may object to the processing of his or her personal data based on Article 6(1)(e) and (f) of the General Data Protection Regulation, but he can exercise this right only if properly informed. In this case, the result of the objection is not automatic, it depends on the process of assessing interests, the controller has to demonstrate after such a request is received that the legitimate interest of compelling force arising on the controller's side override the rights and freedoms of the data subject.

If the data subject objects to processing - for instance the publication of an article containing his personal data - the controller may not continue the processing of the personal data, except if the controller demonstrates that processing is warranted by legitimate reasons of compelling force

overriding the interests, rights and freedoms of the data subject. The controller must carry out this assessment taking into account the interests and rights of the data subject exercising his right to object in each case.

The correspondence between the Complainants and the Obligee reveals that although the Complainants made use of their right to object with regard to both Processing 1 and Processing 2, the specific reasons for this (namely the information related to the security situation of the Complainants and their families) were not indicated in their requests to exercise their rights as data subjects dated 30 August 2019 and 15 November 2019; they made general references to the provisions of the Civil Code and the Act on the Protection of Privacy instead and to their view that the Complainants cannot be regarded as public actors. The position of the Complainants submitted to the Authority, according to which the Forbes list of September 2019 directed the attention of criminal circles to the family was therefore unknown to the Obligee, hence the Obligee was not, and could not be, in possession of the information on the basis of which it could have carried out an individual interest assessment with regard to the Complainants.

In relation to this, the Authority notes that although the examination of the allegation that the Complainants who had long since been active in business life, getting their company to the position of market leader and their families would have attracted the attention of criminal circles as a result of the release of the publications is not within the competence and powers of the Authority, but the Authority shares the position of the Obligee according to which it is not verified that the action of the criminals would be the (exclusive) consequence of the release of the publication.

In view of the above, the Authority establishes that the Obligee did not commit an infringement when following the objection by the Complainants, it did not carry out an individual interest assessment. Nevertheless, with regard to the objection, the circumstance brought up by the Complainants (but not disclosed to the Obligee) may have relevance with regard to subsequent processing by the Obligee, namely in relation to the consideration of “reason related to the situation” of the data subject, and the contrasting “legitimate reason of compelling force”. In order, however, to enable the Obligee to perform the second individual interest assessment following the objection in an appropriate manner, it is expected and necessary that the Complainants explain in sufficient detail why and for what reason they object to the processing. It should be underlined that these data can be processed and used exclusively for the evaluation of the request to exercise the right to object and performing the individual interest assessment.

The answers of the Obligee to the requests of the Complainants to exercise their rights as data subjects contain the Obligee’s position related to the data processing objected to by the Complainants, in which it refers, inter alia, to the processing being in the public interest and the subsidies granted to [...] from state or other public funds.

Nevertheless, the Obligee in its answers to the Complainants did not specifically cover the Complainants’ request to exercise the right to object and to restrict processing, it neither notified them about the decision related to this, nor informed them about the possibilities of legal remedy available to them, namely that they can lodge a complaint with the Authority and they may also make use of their right to seek legal remedy in front of the court. Pursuant to the General Data Protection Regulation, a mandatory element of content of any decision rejecting requests aimed at the exercise of the rights of data subjects is the information on the possibilities of the enforcement of rights. The circumstance that the Complainants turned to the Obligee through their legal representatives and that the general privacy statement accessible in the Forbes website includes the modes of the enforcement of rights does not exempt the Obligee from providing the necessary information. Based on all this, the Authority establishes that the Obligee infringed Article 12(1) and (4) of the General Data Protection Regulation.

Pursuant to the General Data Protection Regulation, data subjects shall have the right to erasure (to be forgotten), but the Regulation also specifies the exemptions when this right cannot be enforced.

This includes the cases when processing is necessary for the freedom of expression and the exercise of the right to be informed [Article 17(3)(a)], or when public interest justifies the need for processing [Article 17(3)(b)-(d)], or if processing is necessary for the establishment, enforcement and defence of legal claims [Article 17(3)(e)].

The processing of the data related to the Complainants and the undertaking in which the Complainants have interests (including disclosure) are among the exemptions in which case the right to erasure cannot be enforced (and the request to erase personal data can be rejected lawfully) pursuant to Article 17(3)(a) of the General Data Protection Regulation in view of the fact that the processing of these data is necessary to ensure the freedom of expression and the right to be informed.

In this case, therefore, Article 17(3)(a) of the General Data Protection Regulation creates the balance between the right to erasure and the freedom of expression and the exercise of the right to be informed, ensuring, inter alia, the freedom of the press and in the case of the on-line versions of the lists, the freedom of the internet.

In view of the above, the Authority rejects the part of the petition of the Complainants in which the Complainants request the Authority to order the restriction of processing, the erasure of the personal data of the Complainants and to prohibit processing by the Obligee.

III.5. The request by the Obligee to suspend the procedure

In its statement made to the call of the Authority, the Obligee requested the Authority to suspend the procedure with reference to Section 48(1)(a) of the Administrative Procedures Act (preliminary issue within the competence of a court) in view of the fact that there was a court procedure in progress between the Complainants and the Obligee on the grounds of the processing of the personal data of the Complainants, in which procedure, the court will bring the decision on whether or not the processing carried out by the Obligee qualifies as lawful.

The Authority waived the suspension of the procedure because of the following:

- Section 38(2)-(2a) provide express tasks and powers for the Authority to investigate the lawfulness of processing and to make the decision thereon; the court procedure does not qualify as a preliminary issue, decision on which would be absolutely necessary for enabling the Authority to make its decision objectively and correctly, without which the decision of the Authority would be ungrounded.
- The Administrative Procedures Act makes it clear that generally, merely on the basis of its provisions, suspension is not called for on the grounds that the Authority is aware of another procedure in progress, which could have an impact on its procedure, unless a separate legal regulation enables suspension. The preliminary issue is not the same as the decision of another body may have an “impact” on the interpretation of the law by the Authority.
- Pursuant to Article 79(1) of the General Data Protection Regulation, without prejudice to any available administrative or non-judicial remedy, including the right to lodge a complaint *with a supervisory authority pursuant to Article 77,* each data subject shall have the right to an effective judicial remedy where he or she considers that his or her rights under this regulation have been infringed as a result of processing his or her personal data in non-compliance with this Regulation.
- The Authority makes the decision on the eventual suspension of the procedure ex officio and not upon the request of any client participating in the procedure.

III.6. The petition of the Complainants for an interim measure and levying a fine

Based on Section 46(b) of the Administrative Procedures Act, the Authority rejects the request of the Complainants for an interim measure in view of the fact that [...] already adjudged the petition of the Complainants for the enforcement of the same right in a civil procedure running in parallel with the procedure of the data protection authority.

The Authority rejects the Complainants' request for levying a data protection fine because the application of this legal consequence does not directly affect the rights or legitimate interests of the Complainants, for them such a decision by the Authority does not generate rights or obligations; it follows that with regard to the application of this legal consequence within the enforcement of public interest, i.e. levying a fine, the Complainants do not qualify as clients pursuant to Section 10(1) of the Administrative Procedures Act. Moreover, as it fails to comply with Section 35(1) of the Administrative Procedures Act, in this respect no request can be submitted, thus this part of the petition cannot be interpreted as a request.

III.7. Processing prior to 25 May 2018

The Complainants complained about the lawfulness of processing with regard to the period prior to Processing 1. It was established in the course of the procedure that in the period prior to Processing 1, the Obligee included the "[…] family" in its compilation "Largest Hungarian family undertakings" only on one occasion in the August 2015 issue of Forbes.

This part of the petition concerns processing, which took place prior to 25 May 2018 which is the starting day of the applicability of the General Data Protection Regulation, hence the rules of the Regulation cannot be applied. In view of this, based on Section 47(1)(a) of the Administrative Procedures Act, the Authority terminates the procedure because this part of the petition does not comply with the conditions in Section 60(2) of the Privacy Act because the General Data Protection Regulation was not yet applicable in the processing period objected to. Because of this, a petition requesting the procedure of the Data Protection Authority cannot be submitted and the Authority does not even initiate the launching of the investigative or administrative procedure.

The fact that the Obligee collected the data related to the business undertaking, in which the Complainants have interests from databases accessible to the public and from the public disclosures and communications of [...] also in the period from August 2015 to September 2019 cannot be regarded as unlawful processing.

III.8. Legal consequences

The Authority partially sustains the petition of the Complainants and pursuant to Article 58(2)(b) of the General Data Protection Regulation condemns the Obligee because its activities related to Processing 1 and Processing 2 infringed Article 5(1)(a), Article 5(2), Article 6(1)(f), Article 12(1) and (4), Article 14, Article 15 and Article 21(4) of the General Data Protection Regulation.

Pursuant to Article 58(2)(c) of the General Data Protection Regulation, the Authority orders the Obligee to fully meet its obligation to inform the Complainants, including the supply of information on the criteria taken into account in the course of interest assessment and on the results of the interest assessment (retrospectively), within 15 days from the decision becoming final.

The Authority orders the Obligee pursuant to Article 58(2)(d) of the General Data Protection Regulation to transform its practice related to providing information in advance in accordance with the provisions of the legal regulation in force and this decision, and to perform interest assessment in accordance with the legal regulations and the provisions of this decision, including a second individual interest assessment following an objection in the event that in the course of future data processing activities it intends to use legitimate interest as the legal basis.

The Authority rejected the request by the Complainants to levy a data protection fine as described under Section III.6, at the same time it examined ex officio whether it is warranted to levy a data protection fine on the Obligee on the grounds of the infringements established. Based on Article 83(2) of the General Data Protection Regulation and Section 75/A of the Privacy Act, as stated below, the Authority considered all the relevant circumstances of the case ex officio and established that in the case of the infringements exposed in the course of this procedure, a warning in itself is not a proportionate and dissuasive sanction, hence the levying of a fine is warranted.

By levying the fine, the special preventive goal of the Authority is to encourage the Obligee to conduct its processing activities consciously, to handle data subjects not as objects and/or impeding circumstance, but as true holders of rights and provide the information and other conditions needed for the exercise of their rights stemming from this and the control over the processing of their personal data. In general, it is necessary to make it clear to all controllers in similar situations that the processing of personal data requires increased awareness, they must not negligently trust that the data subjects will suffer no detriment as a result of the effectively uncontrolled processing of their personal data. Such a behaviour disregards the rights of the data subjects and as such cannot remain unsanctioned.

The Authority considers the practice present in the Hungarian market exemplary, according to which the various rich lists, publications listing the richest Hungarians do not always contain the name of the data subject and/or an entry on the data subject, and as a result for instance of the properly grounded objection of the data subject publish only a letter instead of the full name, and only minimal information instead of the entry presenting the activities of the data subject (e.g. the name of the given industry, and the magnitude of the wealth associated with the data subject).

Another goal of the Authority by levying the fine is to encourage the Obligee to review its data processing practices related to its publications listing the richest Hungarians and the largest Hungarian family undertakings. When determining the amount of the fine levied, the Authority - in addition to the special preventive goal - also paid attention to the general preventive goal to be achieved with the fine, with which it wishes to achieve driving the processing practice by the Obligee in the direction of full compliance, while restraining the Obligee from another infringement.

When determining the necessity for levying the fine, the Authority considered the aggravating and mitigating circumstances of the infringements as follows:

The Authority regarded the fact that

- the infringements committed by the Obligee in relation to the principles and the exercise of the data subject's rights qualify as infringements punishable by the higher maximum amount fine (up to EUR 20,000,000 or in the case of an undertaking up to 4% of the total worldwide annual turnover of the preceding financial year) according to Article 83(5)(a) and (b) of the General Data Protection Regulation;
- the Complainants attempted to move the Obligee towards appropriate processing, but ultimately the intervention of the Authority was necessary [General Data Protection Regulation Article 83(2)(a)];
- taking all the circumstances of the case into account, the infringements established substantiate a deliberate and resolute attitude of the Obligee towards processing and the exercise of data subject's rights, i.e. they qualify as deliberate in nature [General Data Protection Regulation Article 83(2)(b)];
- in spite of the deficiencies of the processing activities related to the publications notified by the Complainants, a business transaction was carried out (the publication listing the richest Hungarians was published in December 2019) and the mitigation of damage sustained by the Complainants took place only as a result of [...], in their view [General Data Protection Regulation Article 83(2)(c)];

- Obligee has outstanding responsibility for the lawfulness of processing and providing transparent information on processing because of the global name recognition and acknowledgement of Forbes and its role played in the media market [General Data Protection Regulation Article 83(2)(d)] as aggravating circumstances.

The Authority considered that the Obligee did not process personal data in the special category as a mitigating circumstance. The personal data of the Complainants in the Trade Registry are data accessible on public interest grounds and are also company data, while the data presented in relation to the asset or value estimates are to be regarded as conclusions drawn from the evaluation of the data based on a specific methodology as part of the exercise of the right to the freedom of expression [General Data Protection Regulation Article 83(2)(g)].

The Authority also took into account that the Obligee cooperated with the Authority in the course of the procedure, but as it did not go beyond compliance with legal obligations, this behaviour was not evaluated as an express mitigating circumstance [General Data Protection Regulation Article 83(2)(f)].

The Authority also took into account that although infringements related to the processing of personal data were not established against the Obligee earlier, it also condemned the Obligee in its decision NAIH/2020/838/2 brought in the procedure of the Authority launched under case number NAIH/2019/7972 against the Obligee simultaneously with this decision, partially because of the infringements established in this decision and it ordered the Obligee to carry out similar measures and also levied a fine against it [General Data Protection Regulation Article 83(2)(e) and (i)].

In levying the fine, the Authority also reviewed the additional criteria included Article 83(2) of the General Data Protection Regulation, but did not take them into account because according to its consideration, they were not relevant to this case.

The Obligee's annual report on the business year 1 January 2019 - 31 December 2019 was not yet available at the time of this decision, thus the Authority took the business years 2018 and 2017 into account when determining the fine:

- Based on the report of the Obligee closing its general business year 1 January 2018 – 31 December 2018 accessible to the public, the Obligee had net sales totalling HUF 727,702,000 (seven hundred twenty-seven million seven hundred and two thousand forints) and closed the year with a pre-tax profit of HUF 115,194,000 (one hundred and fifteen million one hundred and ninety-four thousand forints) after taking revenues and expenditures into account.
- Based on the report of the Obligee closing its general business year 1 January 2017 – 31 December 2017 accessible to the public, the Obligee had net sales totalling HUF 681,029,000 (six hundred eighty-one million twenty-nine thousand forints) and closed the year with a pre-tax profit of HUF 156,095,000 (one hundred and fifty-six million ninety-five thousand forints) after taking revenues and expenditures into account.

The amount of the fine does not reach 4% of the total worldwide annual turnover whether based on net sales revenue or pre-tax profits. Based on the above, the amount of the fine levied is proportionate to the severity of the infringement.

IV. Procedural rules

Section 38(2) and (2a) of the Privacy Act determines the powers of the Authority; its competence covers the entire territory of the country.

Pursuant to Section 37(2) of the Administrative Procedures Act, the procedure is launched on the day following the receipt of the petition by the Authority taking action. Pursuant to Section 50(1) of the Administrative Procedures Act, unless otherwise provided by law, the period open for administering the case begins on the day of launching the procedure.

Pursuant to Section 112(1), Section 114(1) and Section 116(1) of the Administrative Procedures Act, legal remedy can be sought against the decision through administrative litigation.

The right to independent legal remedy against the warrant under Section II of the operative part is based on Sections 112, 114(1), 116(1) and 116(4)(d) of the Administrative Procedures Act.

* * *

Pursuant to Section 6:48(1) of the Civil Code, in the event of a cash debt the Obligee shall pay a penalty for delay from the first day of the delay at a rate corresponding to the base rate quoted by the central bank on the first day of the calendar half year affected by the delay.

The rules of administrative litigation are set forth in Act I of 2017 on Procedures in Administrative Litigation (hereinafter: Administrative Litigation Procedures Act). Pursuant to Section 12(1) of the Administrative Litigation Procedures Act, an administrative litigation against the decision of the Authority is within the jurisdiction of a tribunal and pursuant to Section 13(3)(a)(aa) the Fővárosi Törvényszék (Budapest Tribunal) has exclusive competence for the litigation. Pursuant to Section 27(1)(b) of the Administrative Litigation Procedures Act, legal representation is mandatory in lawsuits subject to the jurisdiction of a tribunal. Pursuant to Section 39(6) of the Administrative Litigation Procedures Act, the submission of the petition does not have a delaying effect on the entry into force of the decision.

Pursuant to 29(1) of the Administrative Litigation Procedures Act and - in view of this - Section 9(1)(b) of Act CCXII of 2015 on the General Rules for Electronic Administration and Fiduciary Services (hereinafter: e-administration Act), applicable according to Section 604 of the Civil Procedures Act, the legal representative of the client must communicate electronically.

Section 39(1) of the Administrative Litigation Procedures Act specifies the time and place of submitting a petition against the decision of the Authority. Information on the possibility of a request for holding a hearing is based on Section 77(1)-(2) of the Administrative Litigation Procedures Act. Section 45/A(1) of Act XCIII of 1990 on Levies (hereinafter: Levies Act) determines the magnitude of the levy on administrative litigations. Section 59(1) and Section 62(1)(h) exempts the party initiating the procedure from paying the levy in advance.

Pursuant to Section 135(1)(a) of the Administrative Procedures Act, Obligee shall pay a penalty for delay at a rate corresponding to the legal rate if he fails to meet its payment obligations when due.

If the Obligee fails to verify meeting of a prescribed obligation, the Authority shall deem that the obligation was not complied with when due. Pursuant to Section 132 of the Administrative Procedures Act, if the Obligee fails to meet its obligations incorporated in the final decision of the Authority, it can be enforced. Pursuant to Section 82(1) of the Administrative Procedures Act, the decision of the Authority becomes final upon its communication. Pursuant to Section 133 of the Administrative Procedures Act, enforcement is ordered by the Authority adopting the decision, unless otherwise provided by law or government decree. Pursuant to Section 134 of the Administrative Procedures Act, enforcement is carried out by the state tax authority, unless otherwise provided by law, government decree or in the case of a municipal authority, the decree of the municipality. Pursuant to Section 61(7) of the Privacy Act, the Authority carries out the enforcement of the decision with respect to the performance of a specific act, specific behaviour, tolerance or ceasing as incorporated in the decision of the Authority.

Budapest, 23 July 2020

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President
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