

Home »Practice» Opinions of the CPDP for 2020 »Opinion of the CPDP on the nature of the administration of personal data carried out by Sofia Municipality and regional administrations Opinion of the CPDP on the nature of the administration of personal data carried out by Sofia Municipality and regional administrations COMMISSION FOR PROTECTION OF PERSONAL DATA reg. № PNMD-01-115 / 2020 Sofia, 30.11.2020 SUBJECT: 4, item 7 of Regulation (EU) 2016/679 Commission for Personal Data Protection (CPDP) composed of - Chairman Ventsislav Karadzhov and members - Tsanko Tsolov and Maria Mateva, at a meeting held on 25.11.2020, considered a letter with ent. № PNMD-01-115 / 2020 by Ms. Yordanka Fandakova - Mayor of Sofia Municipality, which raises questions about the nature of the administration of personal data carried out by Sofia Municipality and regional administrations in the context of Art. 4, item 7) of Regulation (EU) 2016/679. The letter states that the concept of "data controller" plays a crucial role in the implementation of Regulation (EU) 2016/679, as it defines who is responsible for compliance with data protection rules and how the persons for whom data are collected data can exercise their rights in practice. In this regard, accurate and correct determination of which of the participants in the data protection system has this quality is of utmost importance. The letter further shares the position that the definition of "administrator" in the Regulation contains three main components that are closely linked: personal aspect ("natural or legal person, public authority, agency or other entity"), possibility for multiple administration ("alone or in combination with others") and essential elements distinguishing the controller from other actors ("defines the purposes and means of the processing of personal data"). The analysis of these components leads to the conclusion that Sofia Municipality as a legal entity, determining only or jointly with other purposes and means to process personal data, is an "administrator" within the meaning of Art. 4, item 7) of Regulation (EU) 2016/679. The mayor's letter states that the relations between Sofia Municipality and the district administrations, however, lack an unambiguous opinion on whether the district administrations have the capacity of personal data controller on their own grounds and participate in the processing of personal data independently, as secondary administrators. budget credits to Sofia Municipality and are not legal entities. In order to determine the quality in which they process personal data, it is necessary to assess the normative regulation in the Law on the Territorial Division of the Sofia Municipality and Large Cities and the Law on Local Self-Government and Local Administration (LLSGA). With the Law on the Territorial Division of the Sofia Municipality and the Big Cities (Promulgated SG No. 66,1995), the Sofia Municipality is divided into districts and mayoralties in the regions that are constituent administrative-territorial units in the municipality. According to Art. 38, para. 1 of LLSGA, the body of the executive power in the municipality is the mayor of the municipality, and the bodies

of the executive power in the region and the mayor's office are respectively the mayor of the region and the mayor of the mayor's office, who are also elected directly by . The functions of the mayor of Sofia municipality are provided by the administration of Sofia municipality, and the regional administrations support the activities of the mayors of regions. It is specified that the powers of the mayor of the municipality are regulated in Art. 44, para 1 of the LGMSA, according to which the mayor appoints and dismisses the deputy mayors of the municipality, deputy mayors, heads of maintenance units of the municipal budget, chiefs and employees of the municipal administration, performs the functions of civil status and other functions determined by law or assigned to it by the central state bodies, in which activities personal data are processed. On the other hand, the mayor of the region according to art. 46, para. 1 of the LGMSA appoints and dismisses employees of the municipal administration in the region, keeps registers of population and civil status and sends update messages to ESGRAON, ensures the provision of administrative services to individuals and exercises other powers related to personal data processing. The different powers of the mayor of the municipality and the mayors of the regions provided for in the LGMSA presuppose independent determination of the goals and means for processing the personal data during their implementation. Based on the stated considerations, it can be concluded that Sofia Municipality and the regional administrations are different independent administrators and this stems from the normatively defined different powers of the mayor of the municipality and the mayors of regions. The Sofia Municipality states that in case of assessment by the CPDP that the regional administrations are controllers of personal data and participate in data processing independently, an opinion is required on whether the mayor should control the legality of processing of personal data by the mayors of regions and town halls, in view of the obligation under Art. 44, para. 1, item 9, assoc. second from the LGMSA. The cited provision gives the mayor of the municipality the power to control the legality of the acts and actions of the mayors of regions and town halls, in connection with which the mayor of Sofia Municipality receives complaints and signals about their illegal processing of personal data. To the extent that the proceedings relate to the application of data protection requirements, the ORD is responsible for supervising the data. In this regard, the Commission for Personal Data Protection, as a permanent independent supervisory body in the country, monitors and ensures the implementation of the Regulation (Art. 57, para. 1, letter "a") and has the powers under Art. 58, including those referred to in para. 2 adjustments such. In connection with the above, the question arises whether it is permissible for the mayor of Sofia Municipality to exercise control over the above-mentioned grounds of the LGMSA over the acts of other data controllers, such as (with a positive opinion of the CPDP) are district administrations or acts and actions

concerning the processing of personal data fall within the competence of the supervisory authority outlined by Regulation (EU) 2016/679. The mayor's letter expresses the opinion that the Commission's opinions on the two issues are important not only for Sofia Municipality, but also for other cities with regional division, where the processing of personal data also affects a large number of individuals, as well as to achieve of unified practice with the different administrators in the application of personal data protection. Legal analysis: According to Art. 4 (7) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95 / 46 / EC (General Data Protection Regulation) "controller" means a natural or legal person, public authority, agency or any 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 law or the law of a Member State, the controller or the specific criteria for determining it may be laid down in Union law or in the law of a Member State. According to Art. 2, para. 1 of the Law on Local Self-Government and Local Administration (LLSGA) the municipality is the main administrative-territorial unit in which local self-government is carried out. According to the provision of Art. 17, para. 1 of the LGMSA, the local self-government is expressed in the right and the real possibility of the citizens and the bodies elected by them to decide independently all issues of local importance, which the law has provided in their competence in different spheres. The body of the executive power in the municipality is the mayor of the municipality, and the bodies of the executive power in the region and the mayor's office are respectively the mayor of the region and the mayor of the mayor's office, who are also elected directly by the population. (Article 38, paragraph 1 of the LGMSA and Article 33, paragraph 1 of the Administration Act). The activity of the mayor of the municipality, as well as of the other bodies of the local self-government, is supported by the municipal administration. In view of the stated legal provisions, when the municipality is considered as a personal data controller, it falls within the scope of the definition set out in § 1, item 17 of the Additional Provisions of the Personal Data Protection Act (PDPA), according to which "public authority 'is a state or local authority, as well as a structure whose main activity is related to the spending of public funds. This interpretation of the legal norms should apply both to the Sofia Municipality and the regional administrations, which have the status of separate public bodies, regardless of the fact that the regional administrations are not legal entities. The leading characteristic of the administrator in this case is that he is a public body whose powers are regulated by law. This specific nature of the controller is an important condition for the application of the provisions of Regulation (EU) 2016/679, such as those relating to the applicability of consent and other

grounds for the processing of personal data, the appointment of a data protection officer and etc. In principle, the processing of personal data by public authorities is directly dependent on their legal powers. The powers of the mayor of the municipality are exhaustively described in Art. 44, para. 1 of the LGMSA. Apart from that, the powers of the mayors of a region or mayoralty are regulated by Art. 46, para. 1 of the LGMSA. As far as the law clearly distinguishes the scope of powers, this can be considered as an additional argument in favor of the statement that in this case it is individual administrators who process personal data for the purposes of their tasks and powers. is that the powers of individual mayors of regions have a clearly defined territorial scope within the Sofia Municipality. Although there is such a principled division of powers between the mayor of the municipality and the mayors of regions, which determines the status of the municipal administrations as separate administrators, it is possible, in connection with some processes of personal data processing, joint administration or relations of administrator - processor. Each controller is obliged to perform an in-depth analysis and describe their activities related to the processing of personal data, clarifying whether, in addition to being an administrator on its own grounds, it does not process data in another capacity. The grounds for such considerations are given, for example, by the provisions of Art. 44, para. 1, items 9, 13 and 14 of the LGMSA. In view of the territorial division, the mayor of the municipality may assign the performance of certain functions to the mayors of regions. In this sense, the relationship that arises between them in connection with the specific processing of personal data can be considered as a relationship between controller and processor. The relations in question are regulated by the provisions of Art. 28 of Regulation (EU) 2016/679, and for the purposes of transparency and accountability of processing a contract or other legal act is required with a provision of Art. 28, para. 3 of Regulation (EU) 2016/679 content. It is possible that in practice it will be necessary to jointly administer data between Sofia Municipality and the individual district administrations or between some of the district administrations, which is related, for example, to the joint implementation of a project involving personal data processing. In such a case, the specific processing should be carried out under the conditions of Art. 26 of Regulation (EU) 2016/679. Given the arguments set out in this way and in accordance with Art. 30 of Regulation (EU) 2016/679 outlines the following principles: Each administrator shall maintain a register of the processing activities for which he is responsible. Joint administrators shall keep a common register of their joint activities related to the processing of personal data. Each processor maintains a register of all categories of processing activities carried out on behalf of the controller. According to Art. 24 of Regulation (EU) 2016/679, the administrator is obliged to introduce appropriate technical and organizational measures to ensure and be able to demonstrate that the processing is

carried out in accordance with Regulation (EU) 2016/679, taking into account the nature, the scope, context and purposes of the processing, as well as the risks with different probability and severity for the rights and freedoms of individuals. This responsibility of the controller and the application of the principle of accountability are maintained in relation to the activities performed by the processor of personal data in the relevant lawful assignment. It should be borne in mind that if a processor violates Regulation (EU) 2016/679 by defining the purposes and means of processing (ie exceeding or setting other objectives for the assigned processing), the processor is considered to be the controller in relation to this processing. In the presence of the formulated in art. 24 of Regulation (EU) 2016/679 liability, the controller shall ensure that the data subject's rights under Articles 15 to 22 can be exercised only in respect of the processing which he has carried out or assigned under contractually specified conditions. personal data processor. In this sense, the Sofia Municipality and the respective regional administrations should respond to the requests for exercising rights, according to their attitude to the specific processing of personal data, namely - when they are in the role of administrator. In case the requests of the data subjects for exercising rights under Art. 15-22 have been received by an administrator who has no relation to the specific processing or even the processing is beyond his powers, if possible it should be directed to the competence, respectively or to Sofia Municipality or to one of the regional administrations that performed the processing. In cases where the request for exercise of rights is addressed to a processor of personal data, he is obliged to hand it over to the controller who assigned him the specific processing, and provide the necessary assistance to clarify the case. On the other hand, in case complaints and signals are received in Sofia Municipality for illegal processing of personal data by other independent administrators, including those performed by regional administrations, as independent administrators, they should be forwarded to the CPDP, as this is the competent supervisory body within the meaning of Art. 55 of Regulation (EU) 2016/679, charged with the powers under Art. 58 of Regulation (EU) 2016/679. However, it is permissible for the mayor of Sofia Municipality to exercise control over the processing of personal data, for which he is responsible as controller and which is assigned to the mayor of the region and the relations that arise between them have the essence of relations between controller and processor. data. Such control cannot be exercised in cases when the Sofia Municipality and the respective regional administrations carry out the processing as separate independent administrators, as this strengthens the essence of the concept of local self-government, regulated by Art. 17, para. 1 of the LGMSA. Therefore, in their practice, the administrators should differentiate the activities related to the consideration of requests for exercise of rights within the meaning of Art. 15-22 of Regulation (EU) 2016/679 by data

controllers, the possibilities for exercising control by a controller over the actions of a personal data processor in accordance with Art. 28 of Regulation (EU) 2016/679 and the supervisory function of the CPDP, expressed in the implementation of the assigned by Art. 58 of Regulation (EU) 2016/679 powers. Regulation (EU) 2016/679 introduces the figure of a Data Protection Officer (DPO), and public authorities or bodies are among those obliged to appoint DPOs / processors of personal data (Article 37, § 1, letter "a" of the Regulation EU) 2016/679). The definition of "public authority" for data protection purposes is set out in § 1, item 1 of the Personal Data Protection Act, namely a state or local authority, as well as a structure whose main activity is related to the spending of public data. funds ". In this sense, municipalities, as bodies of local self-government, should have DLDP. The norm of § 3 of Art. 37 of Regulation (EU) 2016/679 allows public authorities or bodies to use the services of a DPO, taking into account their organizational structure and size and agreeing to this commitment by the official himself. The tasks that the DPO should perform are: to inform and advise the controller or processor of personal data and the employees who perform the processing of their duties; monitor compliance with Regulation (EU) 2016/679 and other provisions on data protection at Union or Member State level and on the controller's or data controller's data protection policies, including the assignment of responsibilities, awareness raising and the training of personnel involved in processing operations and relevant audits; to provide, upon request, advice on the data protection impact assessment and to monitor the implementation of the assessment in accordance with Article 35; to act as a contact point with the CPDP, as well as with data subjects in relation to issues related to personal data protection. This also applies to the employees of the administrator, whose personal data are processed by him or who process personal data on his behalf. There is no obstacle for the Data Protection Officer to be assigned additional tasks. In practice, the approach is required, the data protection officials to create inventories and keep a register of processing operations according to Art. 30, para. 1 and par. 2 of Regulation (EU) 2016/679 on the basis of information provided to them by the various departments in their organization responsible for the processing of personal data. The present analysis is based entirely on the long-standing practice of the CPDP related to the processing of personal data of data subjects, as well as on the case law on complaints in such a subject and the instructions of the European Data Protection Board in this regard. The opinion of the CPDP has an advisory nature for the controller of personal data in applying the relevant legal norms. This opinion has only an explanatory character on the application of the norms commented in it, without creating rights and / or obligations for the interested parties. Pursuant to Regulation (EU) 2016/679 - General Regulation on Data Protection, the controller of personal data alone or jointly with another controller determines the rules and procedures for

data processing, which must comply with applicable law. The rules of accountability, transparency, good faith and the norms related to administrative and criminal liability regarding the legality of the processing carried out by him / her shall apply to the data processing actions taken by the controller or joint administrators. In connection with the above and on the grounds of Art. 58, § 3, letter “b” of Regulation (EU) 2016/679, the Commission for Personal Data Protection expresses the following

OPINION: 1. Pursuant to Art. 4, item 7) of Regulation (EU) 2016/679 in connection with § 1, item 17 of the Additional Provisions of the Personal Data Protection Act, as independent public bodies, Sofia Municipality and regional administrations generally carry out their activities, as separate controllers of personal data. 2. Between the Sofia Municipality and the regional administrations, on the occasion of specific processing of personal data, may also arise relations administrator - processor within the meaning of Art. 28 or those related to joint administration (in the capacity of two independent administrators, processing data jointly), according to Art. 26 of Regulation (EU) 2016/679.

3. Each controller is obliged to exercise control over the data that he processes or has assigned for the processing of personal data processors in compliance with the requirements of Regulation (EU) 2016/679.

4. The control for legality and expediency of the performed processing of personal data is connected with the supervisory function of the CPDP, regulated by art. 58 of Regulation (EU) 2016/679.

THE CHAIRMAN:

MEMBERS:

Ventsislav Karadzhov

Tsanko Tsolov

Maria Mateva / p /

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