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OPINION OF THE COMMISSION FOR PERSONAL DATA PROTECTION № PNMD-01-36 / 2020 Sofia, 16.04.2020 SUBJECT: Change in the methods of data collection from households and individuals and the use of up-to-date communication data

The Commission for Personal Data Protection (CPDP) composed of - Chairman Ventsislav Karadjov and members - Tsanko Tzolov and Veselin Tselkov, at a meeting held under Art. 12 of the Rules of Procedure of the CPDP and its administration, considered a letter with ent. № PNMD-01-36 # 1 / 07.04.2020 and subsequently with ent. № PNMD-01-36 # 2 / 10.04.2020 by the Chairman of the National Statistical Institute (NSI), asking the Commission to express an opinion on the possibility of the NSI to use data from telecommunications service providers via wireless technology and terrestrial connections for the purpose of conducting statistical surveys. The request is related to the extraordinary measures taken (apparently the measures applied by the Law on Measures and Actions during the State of Emergency, announced by a Decision of the National Assembly of March 13, 2020), which greatly hinder the NSI's work on data collection and processing for a number of statistical surveys. It is noted that these measures largely make it impossible to provide accurate and timely information on the state and trends in the economy, social sphere, demography and the environment. It is emphasized that according to the European statistical legal framework, the NSI conducts a number of surveys in households, the specifics of which require visits and direct contact of interviewers with household members, the results of which are the basis of many other statistical surveys. suspended. The Chairman of the NSI concludes that the only way to continue collecting data from households and persons without physical contact with them are alternative methods of data collection (telephone interviews, electronic questionnaires, etc.) and for this purpose it is crucial for the NSI to have up-to-date data on telephone numbers and other contact information to be provided by mobile operators operating in the country. In the second request for an opinion with the same subject, arguments are presented in the direction of a positive opinion of the CPDP for the transmission of mobile numbers to respondents selected by the NSI, as follows: - In Art. 89 of Regulation 2016/679 provides for guarantees and derogations related to the processing of data for statistical purposes. - According to Art. 25n of the Personal Data Protection Act, personal data initially collected for another purpose may be processed for the purposes of the National Archives, for the purposes of scientific or historical research or for statistical purposes. - Each statistical survey must go through several phases, the main ones being: preparation, collection of information, processing and dissemination of data. An essential part of his preparation is not only determining the sample, but

also gathering contact information about the subjects of the study. Telephone numbers are information without which it is impossible to collect data and use this data "for statistical purposes", ie. until their processing. Therefore, the NSI believes that access to contact information (in this case, the bases of mobile operators) can not be mechanically excluded from the scope of information used for "statistical purposes". - By analogy, the NSI refers to the Census and Housing Act of the Republic of Bulgaria in 2021, which in Art. 20 (4) provides for legal entities that provide public services on the basis of a normative act and maintain registers and databases to provide free of charge to the NSI the individual data and metadata necessary for the purposes of the census. In conclusion, the Chairman of the NSI emphasizes that in case the problem with access to data of mobile operators is not resolved, the NSI will be in a situation where it can not fulfill the obligations of the Republic of Bulgaria to the European Commission, defined in Parliament and Council Regulations , to other international institutions (UN, UNICEF, UNESCO, etc.), as well as to national legislation. There is also information that this will not only hinder the work of DG Eurostat and the European Commission, but will be grounds for the Commission to request the imposition of financial sanctions on our country. The present analysis is based entirely on the long-standing practice of the CPDP related to the processing of telephone numbers of personal data subjects, as well as on the case law on complaints in this matter and the instructions of the European Data Protection Board in this regard. The opinion of the CPDP is of an advisory nature to the personal data controller (in this case the NSI) 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 the law and the Regulation. 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. Legal analysis: The Statistics Act (STA) is the normative act regulating the activity of the NSI, as by virtue of Art. 6, para. 1 of the same, the NSI carries out independent statistical activity of the state and other activities assigned to it by law and has legal personality as a legal entity supported by the budget (Article 6, paragraph 2 of the LTA). The same normative act sets the general legal definitions of the terms "statistical information" and "statistical purposes" (respectively §§ 3 and 4 of the Additional Provisions of the LTA), as follows: - "statistical information" is summarized, quantitative and representative information / or the dynamics of mass phenomena in existing aggregates of statistical units in the economy,

demography, social field and environment. - "statistical purposes" means the use of the individual data collected for the development and production of statistical information, statistical analyzes and forecasts. For the purposes of § 5 of the RTA, each "statistical survey" includes the observation of statistical units, the collection, processing and analysis of individual data provided by them in order to obtain statistical information. The Law on Statistics in a separate chapter prescribes the obligations for providing data for statistical surveys. The method for data collection and the obligation of public bodies to provide the information required by the NSI are provided: Art. 20, para. 6 of the LTA stipulates that state bodies and local self-government bodies, other state institutions, the Bulgarian National Bank and the bodies maintaining registers and information systems provided by law are obliged to provide free of charge to the National Statistical Institute and statistical bodies upon their written request the individual data and / or statistical information collected by them, necessary for conducting the statistical surveys included in the National Statistical Program. As can be seen from the above, this obligation to provide data does not cover private law entities, including legal entities (such as mobile operators), much less natural persons - data subjects. For individuals there is a legal obligation to provide personal data only for the purposes of comprehensive censuses of the population and housing (obligation set out in Article 21 of the LTA), and these censuses are carried out under a separate special law 18 of the LTA). Outside of these cases, data subjects provide their personal information on a voluntary basis. The special law in this case is the Law on Census of Population and Housing of the Republic of Bulgaria in 2021 (Census Law), which regulates the preparation, organization and conduct of the census of population and housing in the Republic of Bulgaria in 2021. The Census Act provides for a number of measures to protect data when processing them for census purposes, one of which is that personal data be collected for statistical purposes only, and the sources of these data include legal entities that provide public services on the basis of of a normative act and maintain registers and databases, provide free of charge to the NSI the individual data and metadata necessary for the purposes of the census (Article 20, paragraph 4 of the Census Act). An important clarification is that the data collected in this way are used only for a specific legal purpose, namely "to verify and ensure the scope and quality of the collected information" - Art. 20, para. 5 of the Census Act. The activity of mobile operators as enterprises providing public electronic communications networks and / or services is regulated by virtue of a special law - the Electronic Communications Act (ECA). The functions for regulation and control in the implementation of electronic communications are performed by the Commission for Regulation of Communications (Article 21, paragraph 1 of the LEC). According to the legal definition of the WEU, a "number" is a sequence of decimal digits that uniquely identifies an endpoint in

an electronic communications network. . Enterprises providing public electronic communications networks and / or services are subject to a number of obligations for consumer data protection, which include the number of the called and the called end user (Art. 248, para. 1, item 1, b. (Of the LEC) and the processing by disclosing and transmitting these data is subject to explicit formal rules, as within the meaning of Art. 251b, para. 1, item 1 of the same, the enterprises providing public electronic communications networks and / or services shall store for a period of 6 months data created or processed in the course of their activity, which are necessary for tracking and identifying the source of the connection. The data described in this way are defined in Art. 251i, para. 1, item 1 of the LEC and represent (in case of public telephone service) the telephone number of the caller and data for identification of the subscriber or user. The special law regarding the activity of mobile operators has prescribed a special procedure for disclosure of the described data, which requires their provision to a certain group of persons (law enforcement and investigative bodies) during security proceedings before a competent district court (Article 251b et seq. . Regulation (EU) 2016/679 (General Regulation on Data Protection), which has been directly applicable since 25 May 2018, is the normative act laying down rules relating to the protection of individuals with regard to the processing of personal data and on free movement of this data. According to Art. 4 (1) of the General Regulation, "personal data" means any information relating to an identified or identifiable natural person ("data subject") directly or indirectly, in particular by means of an identifier such as a name, identification number, location data, online identifier or one or more characteristics specific to the physical, physiological, genetic, mental, intellectual, economic, cultural or social identity of that individual. Data processing of the subject is any operation or set of operations performed with personal data or a set of personal data by automatic or other means such as collecting, recording, organizing, structuring, storing, adapting or modifying, retrieving, consulting, using, disclosing through transmission, dissemination or other means of making the data available, arranging or combining, restricting, deleting or destroying (Article 4 (2) of the General Data Protection Regulation). In all cases of the provision of personal data to the subject or third parties from the registers maintained by mobile operators, they constitute personal data processing operations within the meaning of the General Data Protection Regulation. The provision of information containing personal data by an administrator, in this case an enterprise providing electronic communications service, to another administrator in the person of the NSI, could be done only in the presence of one of the hypotheses referred to in Art. 6, para. 1 of the Regulation (conditions for lawful data processing) and in strict compliance with the principles set out in Art. 5, para. 1 of the same (principles related to data processing). The grounds for lawful processing specified in Art. 6 of the Regulation are exhaustive and alternative (it is

not necessary to cumulate two or more grounds for processing), but in the absence of such grounds, the processing would be contrary to the rules on personal data protection. According to the stated normative base, applicable both to the activity of the NSI and to that of the mobile operators, from which the aim is to acquire personal data sets in the form of “numbers” of clients, it can be concluded in the first place that in the sense of the LTA, these data do not represent statistical information, but part of the method of obtaining it. As can be seen from the statement of the NSI and the desired goal (change in data collection methods) so far the data have been collected according to methodologies prescribed by European legislation, and no arguments or relevant acts to state a change in these methods. Therefore, the current legislation and the methods provided for in it are still being applied. For the sake of completeness, it should be noted that with strictly defined legal definitions of statistical information and statistical purposes, it is impossible for the CPDP to respond positively to the NSI's request for a broad interpretation of both in order to apply the derogations provided in Art. 89, para. 2 of the General Regulation when personal data are processed for statistical purposes. In this case, the derogations provided for in Art. 25n of the Personal Data Protection Act, which provides for restrictions on the rights under Articles 15, 16, 18 and 21 of the Regulation, would be applicable if the NSI intended to process already acquired numbers of data subjects for statistical purposes, but not for their acquisition and subsequent processing for conducting studies from which to extract statistical data. In view of the above and given the will of the legislator, expressed in the two laws governing the activities of the transmitter and receiver of the data, there should be either a legal norm or other applicable grounds for lawful processing. In the sense of the applicable law - ZSt, the provision of personal data is imposed as an obligation only to public authorities of central and local government, but not to private entities (mobile operators). At the same time, there is no legal obligation for data subjects to provide their data to the NSI for the purposes of their normal activities, on the contrary - such an obligation is prescribed only in cases of conducting a national census under a special law (in this case the Law for the 2021 census). Given the request of the NSI related to traditional and regular surveys, and not to conduct a national census, there is definitely no legal obligation neither for enterprises providing electronic communications services nor for data subjects, their personal data to be processed by transmission of NSI. Therefore, there are no grounds for lawful processing under Art. 6, para. 1, p. "C" of the General Regulation - processing required to comply with a legal obligation. Given the arguments of the NSI on the restrictions imposed by the state of emergency, the CPDP's view is that on the one hand this situation is common to all EU countries and the argument that adverse consequences may follow only for the Republic of Bulgaria is untenable, insofar as all related statistical

organizations within the Union operate under conditions of social distance. Our understanding is that the methods to be applied should be commonly European in order to achieve uniformity of results. As can be seen from the development of the situation, these restrictive measures are universally imposed, but only for a limited period of time, and the NSI's request does not focus on the specific timeliness and / or urgency of studies that require the use of such invasive individuals approach such as acquiring a phone number without the person even being informed about it. On the other hand, the NSI does not present arguments in the direction of conducting research in fulfillment of obligations to implement emergency measures (such as studies for social needs, for humanitarian purposes, to protect the financial or tax system, to provide the necessary aid and / or support to persons affected by these measures), on the contrary, refers to the fulfillment of regular and systematic obligations. According to the systematic interpretation of the provisions of the General Regulation, this also excludes, in this case, the application of "performance of a public interest task" as a basis for lawful processing of personal data of mobile subscribers (Article 6, paragraph 1, b. " e "of the General Regulation). For the same reasons, there is no hypothesis of "protection of vital interests of data subjects" (ground under Article 6, paragraph 1, point "d" of the Regulation), as the studies are clearly not targeted at combating COVID 19 and do not carry the necessary degree of public importance. Given the specifics of the request and the long-standing practice of the CPDP, the inapplicability of the grounds related to the performance of a contract or legitimate interests of the personal data controller (grounds under Art. 6, para. 1, items "b" and "e" Of the Regulation), insofar as for mobile operators this processing falls outside the scope of the contract with their subscribers, and their legitimate interest does not include such processing activities, but for the NSI, as a public body, its activities and powers are strict and comprehensive legally regulated), these grounds are inapplicable by default. It should be clarified that, unlike surveys conducted by mobile operators on the principle of direct marketing, in this case the NSI aims to acquire and process numbers that further identify already established data subjects (no random aggregate sample of a set of numbers), by a method of processing which is not inherent in the commercial activity of a mobile operator. Last but not least, it should be emphasized that the NSI aims to collect data on specific persons appointed on their lists, without taking into account the fact that practice shows that 1) one person can be registered multiple telephone numbers (up to 10 according to the LEC) and 2) of a person on the list may not have any number registered. The understanding of the CPDP is that in this way, through the possible transmission of these numbers, will lead to the processing of more than one relevant number and contact with persons - users of numbers who are not included in the sample for research and for whom there is no reason for interference in their personal

sphere, but even in the absence of a telephone number, such a person from the list will be replaced with another, falling into the representative group, ie. more data processing without a reliable result for access of the target member of the household with the corresponding number. These procedures will have to be multiplied by three - for each of the mobile operators, which contradicts the principles of limiting data processing and minimizing data in Art. 5, para. 1, p. "B" and "c" of the General Regulation. Thus, after reviewing the possible grounds for the lawfulness of the processing in combination with the principles of such processing and in the context of relevant legal doctrine and case law, it is concluded that the only possible and applicable basis for the requested by the NSI would be the consent of data. It is important to keep in mind the requirements that such consent must meet, and they are, at a minimum, its priority (obtaining consent prior to data processing), accuracy of the form of giving it, the possibility of quick and easy withdrawal of the same, cemented by the cessation of the subsequent processing of this data, as well as guarantees that it is given informed and free (requirements under Article 7 of the General Regulation). Therefore, given that mobile operators, outside the hypotheses under Art. 251b et seq. Of the LEC, have no other lawful possibility for processing by transmitting personal data to the NSI, it will be in their burden to prove compliance with the requirements of Art. 6 and 7 of the General Regulation, in compliance with the principle of reporting from it, insofar as the processing of numbers outside the purposes of the Special Law (WEU) would be both excessive and disproportionate. In view of the above and given that the studies that the NSI refers to in their request are based on the principle of voluntariness, it can be reasonably concluded that the collection of data of subjects before obtaining their explicit consent does not correspond to the norms of the General Regulation, which provides for an obligation to process personal data for a specific purpose and to notify the natural person who should be given the opportunity to refuse. In this sense, provided that the mobile operators in their capacity as administrators of the personal data in question are committed to this, a system for collecting the consent of the data subjects - subscribers of the respective operator must be established before the transfer of their numbers, and this system, together with the provided guarantees for the rights of individuals, should be signed in a special agreement between each operator and the NSI.

In connection with the above and on the grounds of Art. 58, § 3 (b) of Regulation (EU) 2016/679, the Commission for Personal Data Protection expresses the following

OPINION:

Under the current legal framework, there is no legal basis for mobile operators to provide telephone numbers to entities

identified by the National Statistical Institute that fall within the scope of their research.

Unless there is another legal basis for lawful processing of personal data of subscribers of enterprises providing public electronic communications services by transmitting mobile numbers to the National Statistical Institute, prior informed consent must be obtained from each subscriber falling within the scope of the study. The conditions for the transfer of the information thus collected from one personal data controller to another should be set out in an agreement between them, which provides explicit guarantees for the protection of data subjects' rights, based on a risk analysis and impact assessment. . The two parties to the contract are joint administrators for the information processed on the basis of the contract.

THE CHAIRMAN:

MEMBERS:

Ventsislav Karadzhov

Tsanko Tsolov

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