THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 25

November

2019

DECISION

ZKE. 440.20.2019

Based on Article. 104 § 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), art. 160 sec. 1 and 2 of the Act of 10 May 2018 on the protection of personal data (Journal of Laws of 2019, item 1781) in connection with art. 12 point 2 and art. 22 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended) in connection with Art. 6 sec. 1 lit. c and lit. f of the Regulation of the European Parliament and of the Council (EU) 2016/679 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 (Journal UE L 119 of 04/05/2016, p. 1 and EU Official Journal L 127 of 23/05/2018, p. 2), in connection with Art. 105 paragraph. 4 and art. 105a paragraph. 4 and 5 of the Act of August 29, 1997. Banking law (Journal of Laws of 2018, item 2187, as amended), after conducting administrative proceedings regarding the complaint of Mr. W. M., represented by the attorney, Ms. J. D., against the processing of his personal data by Bank M. S.A. and transferring them for the purpose of creditworthiness assessment and credit risk analysis to B. S.A., President of the Personal Data Protection Office

refuses to accept the request.

JUSTIFICATION

The President of the Personal Data Protection Office (formerly: the Inspector General for Personal Data Protection) received a complaint from Mr. WM, hereinafter referred to as the Complainant, represented by the attorney, Mrs. for the purpose of assessing creditworthiness and analyzing credit risk to BSA, hereinafter referred to as B.

In the content of the complaint, the Complainant indicated that he demanded that the data protection authority take steps to stop processing his personal data by the Bank for the purposes of assessing creditworthiness and analyzing credit risk in B. paid off. The complainant justified the above request with the fact that the Bank failed to fulfill its obligation under Art. 105a paragraph. 3 of the Banking Law and did not inform about the intention to process his personal data after the expiry of the

obligation, due to his untimely payment of arrears under the credit card agreement, which makes the Bank's action unlawful. At the same time, the Complainant pointed out that the Bank - despite directly sending him a request to delete the Complainant's data from B. - reacted negatively to the request formulated in this way.

In order to establish the facts of the case, the President of the Personal Data Protection Office, hereinafter also referred to as the President of the Personal Data Protection Office, initiated administrative proceedings. On the basis of the evidence collected in the case, he established the following facts:

The complainant concluded with the Bank on [...] July 2005 a credit card agreement number […] and, in addition, an agreement for a revolving credit line in account number […]. The Complainant's personal data was obtained by the Bank in connection with the conclusion of the above-mentioned contracts and in the scope covered by them.

The Bank, during the period of validity of the above-mentioned contracts, processed the complainant's personal data pursuant to art. 105a paragraph. 1 of the Act of August 29, 1997 Banking Law, in order to assess creditworthiness and analyze credit risk. At the same time, pursuant to Art. 105a paragraph. 4 of the Banking Law, the Bank disclosed the complainant's personal data to B., which took place on [...] August 2005 - within the scope resulting from the revolving credit line agreement and on [...] October - within the scope resulting from the agreement credit card.

Due to the delayed repayment of liabilities, the Bank undertook debt collection measures against the Complainant. The complainant finally repaid the debt in full in November 2011 and March 2012.

Due to the delay in performance, amounting to a total of […] days, the Bank processed the complainant's personal data in B. for the purposes of creditworthiness and credit risk analysis without his consent, also after the expiry of the obligations in question. As the legal basis for such action, in its written explanations of [….] September 2014, the Bank indicated Art. 105a paragraph. 3 of the Banking Law. However, the Bank's practice did not fall within the disposition of the above-mentioned legal provision, as the Bank, contrary to the arguments presented in the proceedings before the President of the Personal Data Protection Office, did not properly notify the Complainant about the intention to process such data and did not provide any credible evidence for the above-mentioned circumstances.

By letter of [...] July 2014, the Complainant requested the Bank to stop processing his personal data at B. The Bank complied with the request and, as of [...] July 2014, no longer processes the Complainant's personal data at B. as regards the credit card agreement number […] and the revolving credit line agreement in account number […] for the purposes of creditworthiness

assessment and credit risk analysis.

Personal data of the Complainant in the scope of: name, surname, PESEL number, residence / correspondence address, residence address, series and number of the identity document, gender, financial data, date of birth, citizenship, residence status, mother's family name, contact telephone numbers, as well as data on banking products and the CIF number are currently processed by the Bank pursuant to Art. 6 sec. 1 lit. f 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. as part of the Bank's legitimate interest, i.e. to defend against possible claims, including in connection with the proceedings in this case by the President of the Personal Data Protection Office.

The account relating to the credit card agreement number [...] and the revolving credit line agreement in the account number [...] currently has the status of closed account in B., and the related personal data of the Complainant are processed solely for the purpose of applying internal statistical methods pursuant to Art. . 105a paragraph. 4 and 5 of the Banking Law.

In this factual state, the President of the Personal Data Protection Office considered the following.

On May 25, 2018, the provisions of the Act of May 10, 2018 on the protection of personal data (Journal of Laws of 2019, item 1781), hereinafter referred to as "u.o.d.o.", entered into force.

Pursuant to Art. 160 sec. 1-3 of the Act, proceedings conducted by the Inspector General for Personal Data Protection, initiated and not completed before the date of entry into force of this Act, are conducted by the President of the Personal Data Protection Office on the basis of the Act of August 29, 1997 on the Protection of Personal Data (Journal U. of 2016, item 922, as amended), hereinafter referred to as the "1997 Act", in accordance with the principles set out in the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096 with d.). At the same time, the activities performed in the proceedings initiated and not completed before the effective date of the provisions of the Act on

From May 25, 2018, also Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 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 / WE (Journal of Laws UE L 119 of 04.05.2016, p. 1 as amended), hereinafter referred to as "Regulation 2016/679".

Taking into account the above, it should be stated that the present proceedings, initiated and not completed before May 25,

2018, are conducted on the basis of the Act of August 29, 1997 on the protection of personal data (with regard to the provisions governing the administrative procedure) and on the basis of the Regulation 2016/679 (in the scope determining the legality of the processing of personal data). The method of conducting proceedings in cases initiated and not completed before the date of entry into force of new regulations on the protection of personal data, resulting from the provisions of law, correlates with the well-established position of the doctrine, according to which “a public administration body assesses the facts of the case according to the moment of issuing the administrative decision. This rule also applies to the assessment of the legal status of the case, which means that the public administration authority issues an administrative decision on the basis of the provisions of law in force at the time of its issuance ”(Commentary to the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws No. 00.98.1071) M. Jaśkowska, A. Wróbel, Lex., El / 2012).

In the light of the provisions of Regulation 2016/679, the processing of personal data is authorized when any of the conditions listed in art. 6 sec. 1 of the Regulation 2016/679 (equivalent to Article 23 (1) of the 1997 Act in force until 28 May 2018), i.e. when: a) the data subject has consented to the processing of his personal data in one or more specified purposes (similarly in Article 23 (1) (1) of the Act 1997); b) processing is necessary for the performance of a contract to which the data subject is party, or to take steps at the request of the data subject prior to entering into a contract (similarly in Article 23 (1) (3) of the Act 1997); c) processing is necessary to fulfill the legal obligation incumbent on the controller (similarly in Art. 23 (1) (2) of the Act 1997); d) processing is necessary 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 as part of the exercise of public authority vested in the controller or (by analogy in Art. 23 (1) (4) of the Act 1997); f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where these interests are overridden by the interests or fundamental rights and freedoms of the data subject, which require protection of personal data, in particular, when the data subject is a child (by analogy in Article 23 (1) (5) of the Act 1997).

These conditions apply to all forms of data processing, including their disclosure. These conditions are also equal to each other, which means that for the legality of the data processing process, it is sufficient to meet one of them.

While referring to the subject matter of this case, it should be clarified that the legal act containing detailed regulations regarding the processing of personal data of bank customers is primarily the Act of August 29, 1997 - Banking Law (Journal of Laws of 2018, item 2187). ), hereinafter referred to as the Banking Law.

When examining the legality of the disclosure of the Complainant's personal data by the Bank to B., in connection with the debt resulting from the credit card agreement number [...] and additionally from the revolving credit line agreement in the account number [...], the President of the Office for Personal Data Protection indicates that that B. is an institution established pursuant to Art. 105 paragraph. 4 of the Banking Law, which stipulates that banks may, together with banking chambers of commerce, establish institutions for the collection, processing and disclosure of, among others, banks - information constituting banking secrecy to the extent that this information is needed in connection with the performance of activities bank, and also other institutions legally authorized to grant loans - information on receivables and on the turnover and balances of bank accounts to the extent that this information is necessary in connection with granting loans, cash loans, bank guarantees and sureties. Pursuant to Art. 105a paragraph. 1 of the Banking Law, processing by banks, other institutions legally authorized to grant loans and institutions established pursuant to art. 105 paragraph. 4 (eg B.), information constituting banking secrecy with regard to natural persons may be performed, subject to Art. 104, 105 and art. 106-106c, for the purpose of creditworthiness assessment and credit risk analysis. The information contained in B. BIK is to serve the fulfillment by banks, as institutions of public trust, of their statutory obligations related to the need to exercise special care in ensuring the security of stored funds, as well as the need to properly examine creditworthiness, from which existence - in accordance with Art. 70 paragraph. 1 of the Banking Law - the bank makes granting a loan conditional. Creditworthiness testing, which includes the ability to repay obligations and creditworthiness, is an extremely important element of the bank's operations. B. was established precisely in order to reduce the risk of granting difficult loans, accelerate and simplify loan procedures, and support banks' decisions regarding granting loans.

As established by the President of the Personal Data Protection Office, the transfer of the complainant's personal data by the Bank to B. took place during the period of the previous legal regulation on the protection of personal data and was based on the premise mentioned in Art. 23 sec. 1 point 2 of the 1997 Act (in connection with Art. 105 sec. 4 of the Banking Law), and for the legality of this disclosure, pursuant to Art. 105 paragraph. 4 of the Banking Law, the consent of the Complainant was not required. At present - due to the adjustment made by the Bank on [...] July 2014, consisting in the fact that the credit card agreement number [...] and the revolving credit line agreement in the account number [...] is no longer presented in the reports used to assess the credit risk - the fact of the Bank's failure to fulfill the information obligation under Art. 105a paragraph. 3 of the Banking Law. Although the actions of the Bank actually violated the provisions on the protection of personal data in this

respect, however, on the basis of the evidence gathered in the case, it should be concluded that this event was a one-off event, and the state of non-compliance with the law of personal data processing is currently not continued.

As is clear from the factual findings, B. is currently processing the complainant's personal data resulting from the above-mentioned loan agreements solely for the purpose of using internal statistical methods, to which he is entitled pursuant to Art. 105a paragraph. 4 of the Banking Law, pursuant to which the Banks and institutions referred to in Art. 105 paragraph. 4, may process information constituting banking secrecy regarding natural persons after the expiry of the obligation resulting from the agreement concluded with the bank or other institution authorized by law to grant loans, without the consent of the person to whom the information relates, for the purposes of using the statistical methods referred to in Art. 128 sec. 3. At the same time, as it results from the wording of Art. 105a paragraph. 5 of the Banking Law, such processing may be performed for a period not longer than 12 years from the expiry of the obligation - in the case of B. and not longer than 5 years from the expiry of the obligation - in the case of the Bank.

As for the Bank, it processes the Complainant's personal data only for evidence purposes, resulting from the limitation period for claims. Thus, the basis for the processing of the Complainant's personal data by the Bank is currently Art. 6 sec. 1 letter f) of Regulation 2016/679.

In connection with the findings, it should be noted that the continuation of administrative proceedings by the President of Personal Data Protection, initiated by a complaint about irregularities in the processing of the complainant's personal data by the Bank, aimed at issuing an administrative decision pursuant to Art. 18 sec. 1 of the 1997 Act is unfounded.

According to the wording of the above-mentioned of the provision, in the event of a breach of the provisions on the protection of personal data, the President of the Personal Data Protection Office ex officio or at the request of the person concerned, by way of an administrative decision, orders the restoration of the lawful state, in particular: removing the deficiencies (1), supplementing, updating, rectifying, disclosing or failure to provide personal data (2), application of additional security measures for the collected personal data (3), suspension of the transfer of personal data to a third country (4), data protection or transfer to other entities (5) or deletion of personal data (6). From the wording of Art. 18 sec. 1 of the Act of 1997, and at the same time from the definition of an administrative decision - as an act decisive in a ruling manner about the rights and obligations of the parties to the proceedings in the factual and legal status established and valid at the time of its issuance - it follows that the personal data protection authority does not assess past events, no continued at the time of the judgment. The

decision of the President of the Personal Data Protection Office (UODO) is an instrument to restore lawfulness in the data processing process carried out at the time of issuing the decision.

Considering the above, it should be stated that there are currently no grounds for formulating an order referred to in Art. 18 sec. 1 of the Act, because the complainant's personal data are no longer processed in B. for the purposes of creditworthiness assessment and credit risk analysis, but only for the purposes of using statistical methods, which is in line with applicable law and does not require the complainant's consent. Due to the above, the administrative proceedings in the present case should have been concluded with a decision refusing to grant the applicant's request.

In this factual and legal state, the President of the Personal Data Protection Office resolved as at the beginning.

Based on Article. 127 § 3 of the Code of Administrative Procedure, the party has the right to file an application for reconsideration of the case within 14 days from the date of its delivery to the party. If a party does not want to exercise the right to submit an application for reconsideration of the case, he has the right to lodge a complaint against the decision with the Provincial Administrative Court in Warsaw within 30 days from the date of its delivery to the party. The complaint is lodged through the President of the Personal Data Protection Office (address: ul. Stawki 2, 00-193 Warsaw). The entry fee for the complaint is PLN 200. The party has the right to apply for the right to assistance, including exemption from court costs.

2021-03-23