

Home »Practice» Opinions of the CPDP for 2018 »Opinion of the CPDP on a request received from Speedy AD on issues related to the application of Regulation (EU) 2106/679 Opinion of the CPDP on a request received from Speedy AD, on Issues related to the application of Regulation (EU) 2106/679 OPINION OF THE COMMISSION FOR THE PROTECTION OF PERSONAL DATA Reg. № NDMSPO-17-604 / 20.06.2018 Sofia, 17.09.2018 of Regulation (EU) 2016/679 of Speedy AD Commission for Personal Data Protection (CPDP) composed of: Members: Tsanko Tsolov, Tsvetelin Sofroniev and Maria Mateva at a meeting held on 12.09.2018, considered a request for opinion with ent. № NDMSPO-17-604 / 20.06.2018 by Mr. Valeri Mektupchiyan, Executive Director of Speedy AD. The company is a postal operator within the meaning of the Postal Services Act, which provides non-universal postal services, as well as those falling within the scope of the universal postal service. In connection with the alignment of its activities with Regulation (EU) 2016/679 (General Data Protection Regulation), the company has faced conflicting interpretations by its customers regarding the quality of the parties in the relations related to the provision of the postal service - administrator and processor. Clients (mainly financial institutions and online merchants) require the signing of an agreement according to which the client has the quality of administrator in relation to the data provided to Speedy AD, while the company has the quality of data processor. Their main argument in this direction is that the framework agreement concluded between the parties for the provision of postal services, under which the client has the status of "contracting authority" and "Speedy" AD of "contractor", determines their placement in the position of "administrator") and "processor" (the company). For its part, the company does not share this interpretation of the General Regulation, considering that in carrying out the activity of providing postal services to individuals and legal entities, it has the quality and obligations of "administrator" on its own basis in relation to collected and processed data. The conclusion of a framework contract only negotiates better prices, terms of invoicing and payment, amounts of benefits, but does not change the nature of the service offered. The case is similar when an individual contacts Speedy AD directly or visits its office and wants to send a shipment. The relations that develop in the services "Cash on delivery" and "Postal money order" are similar, where only the company collects and processes additional personal data in connection with the receipt / payment of cash and the preparation of relevant accounting documents. In addition, under special laws, a number of obligations are imposed on postal operators, which are related to the security of postal traffic, which involves the collection and processing of personal data. In the assessment of the quality "administrator", "Speedy" AD has used the explanations contained in Opinion 1/2010 of the Working Group under Art. 29 on the concepts of "controller" and "processor", as well as the guidelines of the Office of the United

Kingdom Information Commissioner (ICO) on controller and data processors (data controllers and data processors: what is the difference and what are the governing implications are) . In connection with the above, as well as in order to avoid illegal behavior and uncertainty regarding the obligations of the parties to the postal service, "Speedy" AD asks for an opinion from the CPDP on whether the postal operator has the status of "administrator" on its own with regard to the data collected and processed by him, necessary for the performance of the postal service. Legal analysis Regulation (EU) 2016/679 (General Regulation on Data Protection), which has been in force since 25 May 2018, is the normative act defining the rules related to the protection of personal data of individuals during their processing. The General Regulation builds on the previous data protection regime introduced by Directive 95/46 / EC, transposed into the Bulgarian Personal Data Protection Act of 2002, while taking into account the dynamics of the development of new technologies and data processing activities. personal data. The concept of controller and processor has been introduced by Directive 95/46 / EC and has been further developed in the new European legal framework for the protection of personal data. According to the legal definition of Art. 4, item 7 of the General Regulation, a controller is "a natural or legal person, public body, agency or state structure, which alone or jointly with others determines the purposes and means for the processing of personal data". The quality of administrator is a direct consequence of the fact that a particular legal or natural person has chosen to process personal data for their own purposes or purposes that are regulated by law. In this situation, except where legally required, the controller decides on the need to collect personal data, the categories of personal data, whether to change or modify it during processing, where and how to use this data and for what purpose, whether the data should be disclosed to third parties and what they should be, as well as for how long they will be stored and when and in what way they will be destroyed. In addition, the General Regulation imposes a certain range of obligations on the administrator. It must take appropriate technical and organizational measures relating to data security, taking into account the nature, scope, context and objectives of the data processing, as well as the existing risks to the rights and freedoms of data subjects. In addition, according to the provision of Art. 30 (1) of the General Regulation, the administrator shall maintain a register of the processing activities for which he is responsible. This commitment stems from the principle of accountability and the need for the administrator to be able to demonstrate at all times that he complies with the requirements set out in the Regulation. Processor of personal data is "a natural or legal person, public authority, agency or body which processes personal data on behalf of the controller" (Article 4, item 8 of the General Regulation). The main difference between an controller and a processor is that the latter does not act independently, but on behalf of the controller of

personal data. Their relations are regulated by a contract, which regulates the subject, the term of the processing actions, the nature and purpose of the processing, the type of personal data and the obligations and rights of the controller, incl. to carry out inspections (audits). The General Regulation also introduces specific obligations for the data processor, which are not limited to data security. For example, he is obliged to process personal data only on a documentary order from the administrator. In cases where it is necessary to appoint another data processor, this is done only with the express written permission of the controller. Like the administrator, according to Art. 30 (2) of the General Regulation, the processor also maintains a register of the processing activities for which he is responsible. In addition, for the sake of even greater clarity, the provision of Art. Article 28 (10) of the General Regulation expressly provides that in cases where the processor begins to determine the purposes and means of processing himself, he should automatically be considered an administrator. The division of roles and responsibilities between the controller and the processor has one main purpose, namely to ensure that the processing of personal data takes place in accordance with the requirements of Regulation (EU) 2016/679 and accordingly ensures the protection of data subjects' rights. . The public relations related to the performance of postal activity on the territory of the Republic of Bulgaria are exhaustively regulated in the Postal Services Act (PSA) and the respective by-laws. Postal services include receiving, transporting and delivering postal items; receiving messages transmitted in physical or electronic form by the sender, processing and transmitting them by electronic means and delivering these messages to the recipient as postal items; postal money orders and courier services. Postal operators (such as Speedy AD) are subject to licensing and control by the Communications Regulation Commission. In addition, according to Art. 21 of the PSA, the postal operators are obliged to prepare general conditions of the contract with the users of the services. They regulate the terms and conditions for the provision of this type of services and determine the rights, obligations and responsibilities of the parties to the contract. The above-mentioned norm also regulates the obligatory elements that the postal service operators must include in them, as it is not necessary to sign individual contracts with the consumers. The principle of accountability under Art. 5 (2) of Regulation (EU) 2016/679 requires participants in trade and civil turnover, taking into account their activities, to determine for themselves what is their legal relationship in relation to their personal data - independent controllers, controller and processor within the meaning of Art. 28 or joint administrators under Art. 26 of the General Regulation. Their choice should ensure not only formal but also substantive compliance with the requirements of Regulation (EU) 2016/679 and, accordingly, effective protection of the rights of data subjects. Also, it should be borne in mind that the provision of services, which usually exchange personal

data between the contracting authority and the contractor, does not automatically lead to a relationship between administrator and processor within the meaning of Art. 28. Another important aspect to which special attention should be paid is the high degree of regulation of the activity of postal operators. In practice, this means that both they and their customers have a limited opportunity to determine the goals and means of personal data processing in the provision of postal services. This circumstance must be fully taken into account when concluding contracts with other administrators. of personal data, incl. financial institutions and online merchants in order to avoid violating the applicable legal framework. In connection with the above arguments, without making it an absolute rule, it can be assumed that companies that provide services under strict and comprehensive legislation, on the basis of a license or similar individual permit from the state and under the control of explicitly designated public bodies, in principle could not be considered as processors of personal data, but as independent administrators. Examples of such administrators are postal operators, banks, insurance companies and others. In these cases, the contracting authority could not indicate to the service provider how exactly to process the personal data provided by him, as both parties are obliged to comply with the relevant special legislation, incl. the provisions on the processing of personal data contained therein.

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

OPINION:

1. In principle, companies providing services under strict and comprehensive legislation, on the basis of a license or similar individual authorization from the state and under the control of explicitly designated public authorities, could not in principle be considered as processors of personal data, but as independent administrators. Examples of such administrators are postal operators, banks and insurance companies.
2. Given the diversity of public relations and in accordance with the principle of accountability, regulated in Art. 5 (2) of Regulation (EU) 2016/679, participants in trade and civil turnover should determine in each case what is their legal relationship in relation to their personal data - independent controllers, controller and processor or joint controllers. Their choice should not be formal and should ensure maximum compliance with the requirements of Regulation (EU) 2016/679 and effective protection of data subjects' rights.

MEMBERS:

Tsanko Tsolov

Tsvetelin Sofroniev / p /

Maria Mateva / p /

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2106/679

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