

Decision on appeal with registration № PPN-02-150 / 12.03.2019 DECISION» PPN-02-150 / 2019 Sofia, 03.09.2019 The Commission for Personal Data Protection (CPDP) composed of: Tsanko Tsolov, Tsvetelin Sofroniev, Maria Mateva and Veselin Tselkov at a meeting held on 24.07.2019, pursuant to Art. 10, para. 1 of the Personal Data Protection Act, respectively Art. 57, § 1 (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 (Regulation), considered on the merits complaint PPN-02-150 / 12.03.2019, filed by G.B.I. The administrative proceedings are by the order of art. 38 of the Personal Data Protection Act (PDPA). The Commission for Personal Data Protection has received a letter with ent. № PPN-02-150 / 12.03.2019, whereby G.B.I. notifies of a decree for imposition of precautionary measures in an enforcement case № **** drawn up by an employee of the Territorial Directorate of the NRA Sofia (TD of the NRA Sofia). Mrs. G.B.I. informs that after a telephone conversation with the public contractor, she received information that the precautionary measure imposed and the seizure of her accounts were the result of a notification under the Mutual Assistance Agreement and information about tax liabilities in Dortmund, Germany. Allegations of improper processing of her personal data and possible fraud have been made. In order to clarify the facts and circumstances, an inspection was performed, the results of which are reflected in the statement of findings PPN-02-333 / 11.06.2019 on the list of the CPDP. The inspection was opened on April 23, 2019 in the TD of the National Revenue Agency, 21 Aksakov Str., Sofia. The inspection order was served on the acting director A.G. On the same date, the inspection team visited the Collection Directorate at the TD of the National Revenue Agency, Sofia, located in Sofia, 2 Triaditsa Street. Assistance was provided by ES - Chief Public Contractor, D.S. - Head of Sector OSPV "8", I.K. - Head of Public Receivables Department. According to the submitted Order № ZCU-41 / 17.01.2012, the Central Liaison Office Directorate maintains contacts with other Member States in the field of mutual assistance in the collection of public receivables pursuant to Council Directive 2010/24 / EU of 16 March 2010 on mutual assistance for the recovery of claims relating to taxes, duties and other measures and Commission Implementing Regulation (EU) № 1189/2011 of 18 November 2011 laying down detailed rules concerning certain provisions of Directive 2010 / 24 / EU Council on mutual assistance for the recovery of claims relating to taxes, charges and other measures. In this regard, "Procedure for exchange of information on a request for mutual assistance of an EU Member State", "Procedure for exchange of information on a request for mutual assistance of a public contractor to an EU Member State", "Procedure for notification on request of mutual

assistance" have been developed and provided. another EU Member State or at the request of a revenue authority of the NRA

"and" Procedure for exchanging information at the request of mutual assistance of an EU Member State ". During the inspection it was established that the initially received requests for collection of receivables are processed by the Central Liaison Office Directorate at the Central Office of the National Revenue Agency, located in Sofia, Knyaz para. Dondukov "№ 52. The claim for receivables in respect of G.B.I. is assigned to B.M. - Senior Revenue Expert in the Central Liaison Office Directorate. B.M. has taken action to identify the obligor. After identifying the person from the Central Liaison Office Directorate, an act for awarding a public contractor provides information for taking action to secure and collect debts of the obligor, indicating his three names, PIN, permanent and current address. . In order to process the documents on a given file / receivable, the information system "MARC-CZV" is used, in which all documents prepared by the NRA employees on the respective receivable are uploaded. The documents are arranged in chronological order by the date of their creation. The request for collection of receivables and / or precautionary measures is opened through the software application "CZV-Electronic Forms". The public contractor should write a report on the respective receivables regarding the actions taken within 6 months. There is no such report for the file of GBI, at the time of the inspection. With a handover protocol from E.S. a complete file on enforcement case № **** of GBI was provided, as well as the printouts made during the inspection by the information system "MARC-CZV" of documents attached to the file. The documents provided by the NRA and the access to tax and social security information for G.B.I. are based on the declared consent of the same for disclosure of information from 23.04.2019. In order to clarify additional facts and circumstances regarding the collected documents and the procedure for identification of the obligor, on 25.04.2019 the inspection team visited the Central Office of the NRA in Sofia, Knyaz al. Dondukov "№ 52. The inspection order was served on G.D. - Executive Director, in the presence of A.S. - Director of the Central Liaison Office Directorate. Assistance was provided by Z.D. - Chief Revenue Inspector. The person in charge of BM's file was absent from work during the inspection. For the findings during the inspection a bilaterally signed statement of findings was prepared, a copy of which was provided to GDS. Acceptance-transfer protocol were provided relevant to the inspection documents. During the analysis of the documents collected during the inspection and the provided copies of the Request for collection of receivables and / or precautionary measures, it was established as follows: of receivables from Germany on a protected CCN network through CCN / Rec-b-vat for the person I. (first name) and G. (surname), with date of birth date 1. The address of the obligated person is Sofia address 1. The person is listed as the managing director of a company registered in

Germany - "Dogus Food" GmbH, with an address in Germany. 2. On 05.01.2018 the requested body - Directorate "Central Liaison Office", in the person of the responsible employee BM, requests the exchange of names (first and last name) in the application form. 3. After inquiries made by the responsible employee of the Central Liaison Office - BM, for identification of the person (reference from the Unified System for Civil Registration and Administrative Services - ESGRAON) and confirmation of the request to Germany, the same proceeds to send the request to the Collection Directorate of the TD of the National Revenue Agency Sofia for compulsory collection of monetary receivables by a public contractor. 4. The request was sent to the Collection Directorate on 16.01.2018, together with an electronic document entitled "Single instrument for implementing enforcement measures for the recovery of claims falling within the scope of Council Directive 2010/24 / EU". Those present at the inspection claimed that the Single Instrument should have been provided to the debtor by a public contractor in order to inform him of the obligation and the procedure for appealing to the competent authority - in this case the authority referred to in the section Identification of receivables 2, item 9 and item 10 of it. 5. With Assignment Act № ***** E.C. in the position of Chief Public Contractor she has been appointed as a responsible employee in the Collection Directorate (as in Annex 6). As a result, a decree was issued to impose precautionary measures. 6. After receiving a telephone call on February 12, 2019 from G.B.I., the public performer E.S. fills in the relevant field of the Request for collection of receivables and / or precautionary measures (item 20) the objection of GBI that she did not reside in Germany and does not owe taxes there. Requests from the requesting party (Germany) further clarifications on the case for the identification of the obligor. 7. On 27 February 2019, Germany replied that according to the documents in their possession, the debtor had his own name I. and the surname G. had a maiden name M. They stated that the person G.I. is not registered in Germany and owes the relevant tax liabilities as a result of the acquisition of all shares in Dogus Food GmbH. They do not understand why the NRA instructed them to exchange the places of their first and last name in the form. 8. At the time of the inspection in the system there are three consecutive inquiries from the NRA to Germany - from 12.03.2019, 04.04.2019 and 12.04.2019, to provide additional identifying information about the obligor, without an answer from the requested party. The inspection team was provided with correspondence between the TD of the NRA Sofia and the Central Office of the NRA in Sofia (letter is ex. № 20-00-1156 / 20.03.2019 of the TD of the NRA and entry № 24-28-491 / 20.03.2019 of the Central Office - to Annex № 8), which shows that „... Upon review and analysis of the evidence provided to the Service Department by the public contractor, it was established that there is no indisputable establishment of the identification of GBI as an obligated person... ". In the course of the inspection, with a letter ent. №

PPN-02-150 # 3 / 21.03.2019, G.B.I. informs the CPDP that it has filed a complaint to the Administrative Court of the city of Plovdiv for revocation of the tacit confirmation of the director of the TD of the National Revenue Agency Sofia of the issued decree for imposition of precautionary measures. Additionally with letters ent. № PPN-02-150 # 8 / 29.05.2019 and ent. № PPN-02-150 # 10 / 03.06.2019 sends the opinion on the case and the minutes of 27.05.2019 from the public hearing of the court, respectively, submitted by the NRA. With a letter of ref. № PPN-02-150 # 5 / 20.05.2019, the inspection team requested information from the General Directorate "Civil Registration and Administrative Services", as follows: 1. How many individuals with names G. (own), and (surname), with date of birth date 1 are available in the population register maintained by the directorate. Indicate all identifying data (three names, surname before marriage, PIN, permanent and current address). 2. For the persons under item 1, to indicate whether they have an address registration in the city of Sofia address 1 and as of which date. 3. At the address Sofia address 1 is there a registration of a person with names G. (own), I. (surname), M. (surname before marriage) and date of birth date 1 (if any, to which date has been). 4. To indicate the permanent and current address of the person G.B.I. (with surname before the marriage K.), PIN 1, as well as whether there is an address registration in Sofia address 1 (if any, as of what date it was). With a letter ent. № PPN-02-150 # 6 / 22.05.2019 received a response from the General Directorate "Civil Registration and Administrative Services" as follows: 1. According to the population register - National Database (NBD) "Population" named D . (own), I. (surname) and date of birth date 1 has only one person. The same is with the names G.B.I. and PIN 1. The surname of the person from K. to I. was changed after the civil marriage in 1993. The same was confirmed by Mrs. G.B.I. with a letter with ent. № PPN-02-150 # 4 / 09.05.2019, which declares to the CPDP that her names before the conclusion of civil marriage (on 16.06.1993) are G.B.K. 2. According to the NBD "Population" from 10.04.2000 the permanent address of G.B.I. with PIN 1 is the town of P. ****. Since then, G.B.I. has not changed her permanent address. 3. The person has not stated the current address by the order of art. 90, para. 1 of the Civil Registration Act. The current address of the person in the NBD "Population" is the address registration made in the sense of Decree № 2772 for passports and address registration (revoked) - P. *****. 4. The person G.B.I. with PIN 1 there is no address registration in Sofia. 5. In the National Classifier of Permanent and Current Addresses there is no address: address 1 in Sofia. There is an address Sofia address 2. 6. In NBD "Population" there is no person with first and last name GI, born on date 1, with previous surname M. Additionally with a letter with ent. № PPN-02-150 # 7 / 29.05.2019 Ms. G.B.I. sends documents from the German Commercial Register for the registration of "Dogus Food" GmbH (in German), with attached protocol for

registration of the person as a shareholder from 29.03.2016, list of shareholders from 11.04.2016 and registration of the person as shareholder. It is evident from them that as a shareholder in the company "Dogus Food" GmbH there is the person GI, with maiden name M. (maiden name of the whistleblower is K.), born on date 2. The date of birth of the whistleblower is date 1), with address Sofia, address 1. The statement of findings was reported at a meeting of the Commission held on 19.06.2019 and in accordance with the evidence gathered in the proceedings and after submitted by G.B.I. request the signal is reclassified as a complaint. The Commission for Personal Data Protection is an independent state body that protects individuals in the processing of personal data and in accessing such data, as well as monitoring compliance with the LPPD and Regulation (EU) 2016/679 of the European Parliament and 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. In order to exercise its powers, the Commission must be properly seised. The appeal shall contain the obligatory requisites, specified in the provision of art. 30, para. 1 of the Rules of Procedure of the Commission for Personal Data Protection and its administration (PDKZLDNA), namely: there are data about the complainant, the nature of the request, date and signature, in view of which it is regular. The appeal is procedurally admissible, filed within the term under Art. 38, para. 1 of LPPD by a natural person with a legal interest against a competent party - controller of personal data within the meaning of Art. 4, para. 7 of the EU General Regulation 2016/679. A competent body has been notified - the CPDP, which according to its powers under Art. 10, para. 1 of LPPD in connection with Art. 57, § 1, letter "e" of Regulation (EU) 2016/679, deals with complaints against acts and actions of data controllers that violate the rights of data subjects related to the processing of personal data, as there are no the exceptions under Art. 2, § 2, letter "c" and Art. 55, § 3 of Regulation (EU) 2016/679 given the fact that the case does not concern processing activities performed by a natural person in the course of purely personal or domestic activities and / or activities performed by courts in the performance of their judicial functions. For the stated reasons and in view of the lack of prerequisites from the category of negative under Art. 27, para. 2 of the APC, the appeal was accepted as admissible and as parties to the proceedings: the appellant - G.B.I. and the respondent - the National Revenue Agency, in its capacity as controller of personal data. An open hearing has been scheduled to consider the complaint on the merits on 24.07.2019, of which the parties have been regularly notified and instructed to distribute the burden of proof in the process. The NRA requested a written opinion on the case, in response to which and with a letter PPN-02-150 # 13 / 15.07.2019 from the Agency expressed an opinion that the complaint is unfounded. They claim that there is no violation of the provisions of EU Regulation 2016/679 and LPPD, and the actions of

their employees are found to be correct in accordance with the principles of the Regulation and approved by the NRA internal rules, including Instruction № 2 / 08.05.2019 for the measures and means for protection of personal data, processed by the National Revenue Agency and the procedure for movement of files and application of registers and Information Security Policy, adopted in implementation of the Ordinance on the general requirements for network and information security. They believe that this case is a crime committed, which should be referred to the prosecutor's office. At a meeting held on July 24, 2019, the complaint was considered on the merits. The parties - regularly notified, do not appear, do not represent themselves. In his capacity of administrative body and in connection with the need to establish the truth of the case, as a basic principle in administrative proceedings, according to Art. 7 of the APC, requiring the existence of established factual facts, given the evidence gathered and the allegations, the Commission considers that considered on the merits of the complaint № PPN-02-150 / 12.03.2019 is justified. The decision took into account the change in the legal framework in the field of personal data protection and the fact that from 25.05.2018. applies 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 the fact that from 02.03.2019 in force Act amending and supplementing the Personal Data Protection Act. Account is also taken of the fact that Regulation (EU) 2016/679 has direct effect, and legal facts and the consequences arising from them before the application of the Regulation should be assessed according to the substantive law in force at the time of their occurrence. In the specific case such are the material provisions written in the LPPD in the wording before 02.03.2019, in view of the fact that some of the legal facts and legal consequences related to the processing - collection and use of personal data were made on 05.01.2018. (collection), on 08.02.2018 use for imposing an arrest warrant. With regard to the actions performed after 25.05.2018 on the use of personal data, namely their use to impose precautionary measures by decree of 08.02.2019. and their provision in this regard to Bank 1, Bank 2, Bank 3 and Bank 4, the provisions of EU Regulation 2016/679 are applicable. In this regard, it should be noted that the provision of Art. 4, para. 1 of LPPD (repealed, but effective as of the date of data collection and their use) correspond to the provisions of Art. 6, § 1, of the Regulation and do not contradict them, as both provisions impose on the controller of personal data the obligation to process personal data lawfully in the presence of a condition for admissibility of processing. The complaint concerns the processing, in the case of collection, use and provision of personal data of the complainant by the NRA in connection with a request received on 02.01.2018 in the Directorate "Central Liaison Unit" for collection of receivables from Germany on a secure CCN network

through CCN / Rec-b-vat for the person I. (first name) and G. (surname), with date of birth date 1 address of the obligated person Sofia, address 1. The person is designated as managing director of a company, registered in Germany - "Dogus Food" GmbH, with address in Germany. The request is in accordance with Council Directive 2010/24 / EU of 16.03.2010 on mutual assistance for the recovery of claims relating to taxes, duties and other measures and Commission Implementing Regulation (EU) № 1189/2011 of 18 March 2010 November 2011 laying down detailed rules concerning certain provisions of Council Directive 2010/24 / EU on mutual assistance for the recovery of claims relating to taxes, duties and other measures. In this regard, the NRA has developed and submitted the file "Procedure for exchange of information on a request for mutual assistance of an EU Member State", "Procedure for exchange of information on a request for mutual assistance of a public contractor to an EU Member State", "Notification Procedure at the request of another EU Member State or at the request of a revenue authority of the NRA "and" Procedure for exchange of information at the request of mutual assistance of an EU Member State ". From the evidence gathered in the file it was established, and it is not disputed between the parties, that on January 2, 2018 the Central Liaison Office Directorate received a request for collection of receivables from Germany on a secure CCN network for the person I. (own name) and D. (surname), with date of birth date 1, specified as managing director of a company registered in Germany - "Dogus Food" GmbH, with address in Germany. On 05.01.2018 the requested authority - Directorate "Central Contact Point", in the person of the responsible employee BM, wants the exchange of names (first and last name) in the application form. It is evident from the content of the form that the required information is incomplete, namely there is no data on the surname and maiden name of the debtor, a circumstance which is confirmed and from the letter available in the file is ref. № 20-00-1156 / 20.03.2019 of the TD of the National Revenue Agency and ent. № 24-28-491 / 20.03.2019 of the Central Office, which states that... Upon review and analysis of the evidence provided in the "Service" department by the public contractor, it was found that there is no indisputable establishing the identification of GBI as an obligated person... ", and additional information on the correct identification of the person should be requested from the competent authority in Germany. Such additional information was requested only in 2019 on 12.02.2019, in response to which on 12.03.2019 the maiden name of the obligated person "M." was established, and on 25.06.2019 in a copy of the personal card of the debtor, data proving that the applicant is not the debtor. In fact, the instructions given in the cited letter are written in procedures approved by the NRA and in particular procedure № CZV 8 Version E on Exchange of information on a request for mutual assistance, evident from the content of which, when there is an incomplete request for mutual assistance should be

required additional information from the requesting Member State (4. 4.2), and in case the Member State is unable to provide the requested additional information, which prevents the identification of the obligor, the file should be closed. However, on January 5, 2018, the responsible employee of the Central Liaison Office Directorate took measures to identify the person through a reference to the Unified System for Civil Registration and Administrative Services - ESGRAON on the information available in the request two names and date of birth, having confirmed the request to Germany. The request was forwarded to the Collection Directorate of the TD of the National Revenue Agency in Sofia for forced collection of monetary receivables by a public contractor. During the reference made in ESGRAO personal data of the complainant were collected: volume three names, single civil number, permanent and current address, marital status, ID card number. Personal data illegally collected in view of the fact that the obligated person has the name GBI, the same except with a different father's name and with a different PIN and date of birth from those of the complainant, namely the complainant has a date of birth 2, and the obligated person with date of birth date 1, as well as with different permanent address. As can be seen from the official reference made in ESGRAON, the complainant's permanent address is P. ***** and has never been changed, while the address indicated in the request is Sofia, address 1. The data were collected in violation of Art. 4, para. 1 of the LPPD insofar as there is no condition for admissibility for their collection, and subsequently their use for instituting enforcement proceedings № ***** against the applicant for collection of receivables in the amount of BGN 169,315.37, decree for imposition of security measures with ref. № ***** - namely seizure of available and incoming amounts on account in Bank 5 and seizure of motor vehicles. As can be seen from the reference submitted in the file in the register of the Bulgarian National Bank, on 08.02.2019 by the NRA, in connection with the enforcement case, additional data were collected about the complainant related to her bank accounts. As a result of which a decree was issued for the imposition of precautionary measures ref. № ***** of the NRA for attachment of available and incoming amounts on the applicant's bank accounts, deposits, deposited items in vaults, including the contents of cassettes, as well as amounts provided for entrusted management of the applicant's accounts in the Bank 1 , Bank 2, Bank 3 and Bank 4. The collection of this information about the person is illegal and in violation of Art. 6, § 1 of the Regulation, insofar as it concerns processing carried out after 25.05.2018, and for the same there is none of the conditions for admissibility of processing written in the cited provision. The subsequent processing of the applicant's personal data, namely their provision to the respective banks with letters of arrest sent to them, ref. № ***, *****, ***** and **** of the NRA is also illegal. Insofar as there is no ground for processing the personal data of the applicant as a debtor in the enforcement case, illegal and in violation

of Art. 6, § 1 of the Regulation are also the actions for providing the personal data of the complainant in a volume of names, PIN, permanent and current address, to the Central Register of Special Pledges with a request to enter the attachment in the register. The evidence gathered in the file testifies to a violation committed by the NRA at the stage of personal data collection, which subsequently led to their illegal use and provision in connection with the initiated enforcement case № *** for collection of receivables in the amount of 169,315.37 BGN established in Germany against the applicant, in the capacity of an obligated person, which quality was indisputably established that she did not have in respect of the specific obligation, given the evidence presented in the file, in particular a copy of ID card of the person G.B.I. . The circumstances surrounding the existence of a crime given the fact that the identity document is not genuine are irrelevant to the present proceedings, and insofar as the information in it indicates that the person named in it is different from the applicant, it is evidence that the applicant's personal data were processed by NRA illegal. In view of the distribution of the burden of proof in the process and the evidence gathered from the file, it is necessary to conclude that the submitted by Ms. G.B.I. The complaint is well-founded and her personal data have been processed by the NRA, in violation of Art. 4, para. 1 of LPPD (repealed) and Art. 6, para. § 1 of the Regulation. The same did not comply with the requirements for legality and admissibility of the processing of personal data, was carried out without the consent of the complainant and without any of the other conditions for admissibility of processing specified in the cited provisions, namely the same was not done in compliance with a statutory obligation of the controller of personal data is not necessary to protect the life and health of the individual, nor to perform a task in the public interest or to exercise powers conferred on the controller by law, or to realize the legitimate interests of the controller , before which the interests of the individual do not take precedence. Given the nature and type of the violation found, the Commission considers that the corrective measures under Art. 58, § 2, letter "a", "b", "c", "d", "e", "e", "g", "h" and "j" of the Regulation are inapplicable and inappropriate in this case, as the infringement is complete and irreversible. The Commission finds it appropriate to impose a corrective measure under Art. 58, § 2, letter "i" of the Regulation, namely - property sanction of the personal data controller, considering that the same will have a warning and deterrent effect and will contribute to compliance with the established legal order. As well as a purely sanctioning measure, a reaction of the state to the violation of the normatively established rules, the property sanction also has a disciplinary effect. The administrator is obliged to know the law and to comply with its requirements, moreover, that he owes the necessary care provided for in the LPPD and the Regulation and arising from his subject of activity, human and economic resources. In determining the amount of the sanction and in

accordance with the conditions under Art. 83, para. 2 of the Regulation, the Commission, as a mitigating circumstance, took into account that the infringement was first for the administrator and concerned a violation of the rights of a natural person, as the administrator took further action, the violation, namely on 03.07.2019 an Order for termination of the enforcement and a Decree for cancellation of the imposed precautionary measures was issued. As an aggravating circumstance, the violation concerning various forms of processing of available data, namely collection, provision and use, was completed with the act of its commission and is irremovable, and the same became known to the CPDP as a result of its referral by the victim . The Commission also considered as an aggravating circumstance the fact that the personal data processed were large, including the person's unique civil identification number, marital and financial status, and that the infringement had caused damage to the applicant. The circumstances under Art. 83, para. 2, letters "b" and "i" of the Regulation are irrelevant insofar as it concerns an administrator - a legal entity that does not form a fault, and at the time of the violations approved codes of conduct, respectively approved certification mechanisms have not been introduced. In determining the amount of the sanction, the Commission also took into account the duration of the infringement, which covered a period of one and a half years and, last but not least, the damage suffered by the applicant. in view of the fact that these are seized bank accounts of the person and caused to the same anxiety and worries. Taking into account the purpose of the penalty, which should have a deterrent and warning function, the nature and gravity of the violation, the public relations it affects, the categories of personal data concerned, the Commission considers that the imposed property sanction should amount to BGN 55,000. below the average minimum provided for in the Regulation for this violation, for which the sanction is up to EUR 20,000,000. at the same time, it does not infringe the principle of proportionality and the requirement of proportionality with regard to the infringement found and the measure imposed. Guided by the above and on the grounds of Art. 38, para. 3 of LPPD, the Commission for Personal Data Protection,

HAS DECIDED AS FOLLOWS:

1. Declares the complaint № PPN-02-150 / 12.03.2019 as well-founded.
2. On the grounds of art. 58, § 2, letter "i" in connection with Art. 83, § 5, letter "a" of EU Regulation 2016/6779 imposes on the National Revenue Agency with address of management Sofia, Knyaz Alexander Dondukov Blvd. amount of BGN 55,000 (fifty-five thousand leva) for violation of Art. 4, para. 1 of LPPD (repealed) and Art. 6, § 1 of EU Regulation 2016/679.

The decision is subject to appeal within 14 days of its service through the Commission for Personal Data Protection before the

Administrative Court Sofia - city.

MEMBERS:

Tsanko Tsolov

Tsvetelin Sofroniev / p /

Maria Mateva / p /

Veselin Tselkov / p /

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