

Home »Practice» Opinions of the CPDP for 2018 »Opinion of the CPDP at the request of UniCredit Bulbank AD in connection with the application of Regulation (EU) 2016/679 Opinion of the CPDP at the request of UniCredit Bulbank AD in connection with the application of Regulation (EU) 2016/679

OPINION OF THE COMMISSION FOR THE PROTECTION OF PERSONAL DATA reg. № NDMSPO-01-873 / 10.08.2018 Sofia, 21.09.2018 SUBJECT: ) 2016/679 by UniCredit Bulbank AD Commission for Personal Data Protection (CPDP) composed of members: Tsvetelin Sofroniev, Maria Mateva and Veselin Tselkov, at a meeting held on 19.09.2018, considered a request for opinion / ent. . № NDMSPO-01-873 / 10.08.2018 / from UniCredit Bulbank AD, which raises the following questions regarding the application of Regulation (EU) 2016/679: 1. Is it permissible for joint administrators to rely on a single statement of intent for providing consent by the data subject in order to offer direct marketing. 2. What is the quality of the bank in relation to the contradictory interpretation of the legal figures "administrator" and "personal data processor" in the context of its relationships with customers. In connection with bringing its activities in line with Regulation (EU) 2016/679, UniCredit Bulbank AD is faced with a contradictory interpretation by its customers of the quality of the parties in relations related to the provision of banking services - administrator and processor. . Clients of the bank require the signing of an agreement according to which the client has the quality of administrator in relation to the data provided to UniCredit Bulbank AD, referring to the fact that the bank has the quality of data processor. Their main argument in this direction is that the concluded between the parties contracts for banking services, under which the client has the status of "assignor" and "UniCredit Bulbank" AD of "contractor", determine their placement in the position of "administrator" (client) and "Processor" (the bank). For its part, UniCredit Bulbank AD does not share this interpretation of the General Regulation, considering that in carrying out the activity of providing banking services to individuals and legal entities, it has the quality and obligations of an "administrator" on its own grounds with respect to In addition, the provision of these specific services can only be carried out with the relevant license, ie. data processing is carried out on its own basis and not on behalf of the client. In the assessment of the quality "administrator", UniCredit Bulbank AD has used the explanations contained in Opinion 1/2010 of the Working Group under Art. 29 of Directive 95/46 / EC on the terms "controller" and "processor", in which banks are clearly defined as controllers of personal data in financial transactions. In connection with the above, as well as in order to avoid illegal behavior and uncertainty regarding the obligations related to the parties to the banking services, UniCredit Bulbank AD asks for an opinion on the above issues. 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.

1. The figure of "joint administrators" is new and was introduced by Art. 26 of the General Regulation, according to which when two or more administrators jointly determine the purposes and means of processing, they have the capacity of joint administrators. By means of a contract between them, they must determine in a transparent manner their responsibilities for fulfilling the obligations under the Regulation and in particular regarding the exercise of the rights of data subjects and their respective obligations for providing the information under Art. 13 and 14 of the Regulation. The contract should reflect the respective roles and relationships of the joint controllers vis-à-vis data subjects, and the essential characteristics of this contract should be accessible to the data subject. It is advisable to indicate a contact point for data subjects in the contract. In addition, regardless of the terms of the contract, data subjects may exercise their rights in respect of and against each of the controllers, including the right to withdraw consent at any time. In connection with the above, it can be concluded that there is no legal obstacle for joint administrators to use "one consent" by the entity whose data are processed for the purpose of offering direct marketing, as long as the following conditions are met: - consent should meet the specific requirements of art. 4, item 11 and Art. 7 of the Regulation, namely to be a freely expressed, specific, informed and unambiguous indication of the will of the data subject, given by means of a statement or clearly confirmatory action, which may be withdrawn at any time; - the requirements for transparency under Art. 5, paragraph 1, b. "A", art. 13 and Art. 26 (1) of the Regulation, and the data subject should be informed both of the purposes of the processing and of the scope of his consent.

2. The concept of controller and processor has been introduced by Directive 95/46 / EC and has been further developed with 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, administrator 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; 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." 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 with 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 how they will be destroyed. In addition, the 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, para. 1 of Regulation (EU) 2016/679, 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 Regulation (EU) 2016/679). 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, 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, para. 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. 28, para. 10 of the General Regulation explicitly provides that if the processor begins to determine the purposes and means of processing, he automatically begins to 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 banking activity and the provision of banking services on the territory of the Republic of Bulgaria are exhaustively regulated in the Credit Institutions Act (CIA), the Bulgarian National Bank Act (BNBA), the Payment Services and Payment Systems Act (ZPSPS) and the relevant by-laws. In general, banking services include accepting deposits and lending, but banks also offer a number of payment services. In addition, banks are subject to licensing and supervision by the Bulgarian National Bank (BNB). In connection with the above, it should

be noted that the banking activity is strictly regulated by law, and the special legislation regulates the purposes of personal data processing; the categories of personal data; the recipients or categories of recipients to whom the personal data are or will be disclosed; the terms for storage, etc. Due to the fact that the intended characteristics for personal data processing are normatively defined in the banking legislation, they cannot be subject to negotiation within the meaning of Art. 28, para. 3 of Regulation (EU) 2016/679. The principle of accountability referred to in Art. 5, para. 2 of Regulation (EU) 2016/679 requires participants in trade and civil turnover, taking into account their activities, to determine their legal relationship in relation to personal data processed by them - independent administrators, administrator 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 of the Regulation.

Another important aspect that needs special attention is the high degree of regulatory regulation of banks. In practice, this means that both they and their customers have a limited opportunity to determine the goals and means of processing personal data in the provision of banking services. This fact must be fully taken into account when concluding contracts with other data controllers in order to avoid breaches of the applicable legal framework.

In connection with the above arguments, without stating as an absolute rule, it can be assumed that companies that provide services under strict and comprehensive regulations, on the basis of a license or similar individual permit from the state and under the control of explicitly designated public authorities, in principle could not be considered as processors of personal data, but as independent administrators. Examples of such administrators are banks, postal operators, insurance companies and others. In these cases, the contracting authority could not indicate to the service provider exactly how 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, para. 3, letter "b" of Regulation (EU) 2016/679, the Commission for Personal Data Protection states the following

OPINION:

1. There is no normative obstacle for joint administrators to use "one consent" on the part of the subject, whose data are processed for the purpose of offering direct marketing, provided that the specific requirements regarding the consent under Art. 4, item 11 and Art. 7 of Regulation (EU) 2016/679, as well as the obligation for transparency of processing under Art. 5, paragraph 1, b. "A", art. 13 and Art. 26 (1) of the General Regulation.

2. 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 be considered as processors of personal data but as independent administrators. Examples of such administrators are banks, postal operators and insurance companies.

Given the diversity of public relations and in accordance with the principle of accountability regulated in Art. 5, paragraph 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 the personal data processed by them - independent administrators, administrator and processor or joint administrators . 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:

Tsvetelin Sofroniev / p /

Maria Mateva / p /

Veselin Tselkov / p /

Downloads

Opinion of the CPDP at the request of UniCredit Bulbank AD in connection with the application of Regulation (EU) 2016/679

[print](#)