Decision on appeal with registration № PPN-01-315 / 11.05.2018 DECISION» PPN-01-315 / 2018, Sofia, January 9, 2019. Commission for Personal Data Protection (CPDP) composed of: members: Tsvetelin Sofroniev, Maria Mateva and Veselin Tselkov at a regular meeting held on December 12, 2018. , objectified in Protocol № 46/2018, on the grounds of Art. 10, para. 1, item 7 of the Personal Data Protection Act (PDPA) and Art. 57, § 1, letter "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 on repeal of Directive 95/46 / EC (ORD), considering the merits of the complaint Reg. № PPN-01-315 of 11.05.2018, in order to rule took into account the following: 38 of the Personal Data Protection Act (PDPA). The Commission for Personal Data Protection was seised with a complaint with registration № PPN-01-315 dated 11.05.2018 filed by ST against a financial institution (FI). S.T. points out that on 04.05.2018 she visited the central office of F.I. in Lozenets district in her capacity as a proxy of her son, in order to make a reference (not an extract) for remaining installments on a drawn loan № **** and to repay two delayed installments. The reason for the visit to this office was a telephone conversation the day before between an employee of F.I. and her son, during whom the latter was threatened by the employee when he was reminded of the delayed installments, for which a complaint was lodged by him. On the spot in the office on the above date (04.05.2018) an employee in F.I. - E.L. listened to the situation and before her ST stated the desire to repay the delayed installments in the amount of BGN 1,655.58 and to repay the remaining ones ahead of schedule. In this connection, the ID card of ST was requested and re-photographed. and scanned the power of attorney presented by her son. After S.T. signed all the necessary documents, received a refusal from the employees of F.I. to provide a reference containing information on the remaining installments under the loan agreement, on the grounds that they do not like the power of attorney. Meanwhile, S.T. was registered as a client of F.I. From F.I. refused to return to ST photocopied documents containing personal data. Based on the above, S.T. asks for assistance from the CPDP in resolving the problem. Attached to the complaint is a copy of a power of attorney and an application dated 04.05.2018. PPN-01-315 # 1 and PPN-01-315 # 2, all dated 31.05.2018, F.I. and S.T. are regularly informed about the initiated proceedings in the Commission for Personal Data Protection. With a letter with registration № PPN-01-315 # 3 dated 14.06.2018 from FI, through V.G. and A.D. - legal representatives of the company have expressed an opinion on the complaint. According to F.I., S.T. complains that she does not wish to be disturbed on the telephone by F.I. regarding a loan agreement concluded on 03.07.2017 by her son - K.T. and that in connection with the

same complaint, the company had sent a reply to it. It is stated that the data of ST were not processed illegally and the provisions of the LPPD were not violated, and in this regard it is noted that due to unpaid payment on time on the loan of her son - K.T. under a loan agreement concluded on 03.07.2017, employees of F.I. contacted her by telephone, as she had been identified as his contact person. It is pointed out that the obligation of K.T. was to inform her mother that she had been designated as a contact person and that F.I. to contact her, which was done as this fact was not disputed by S.T. Attached to the letter is a reply with ref. № *** dated 25.05.2018 on the application with ent. № *** dated 08.05.2018. With letter PPN-01-315 # 4 dated 19.06.2018, S.T. states that the date of the application indicated in response to ref. № *** from 25.05.2018 is 04.05.2018, and not as stated in it - 08.05.2018 and that there were two reasons to visit FI, namely: the first - was worried many times , as she was named as a contact person and the second - her son was threatened on the phone by FI, for which he received an apology after a complaint was filed by him. She points out that before referring the commission she filed a complaint electronically to FI, describing the problem, as a response to this complaint she received on 14.06.2018 electronically and on 18.06.2018 by courier. Attached to the letter are: reply dated 14.06.2018, opinion, reply with ref. № *** from 14.06.2018, answer with ref. № *** dated 25.05.2018, receipts with № *** and ***. In order to clarify the facts and circumstances of the case, additional evidence and information were requested from FI, provided by the latter in letters with registration №: PPN-01-315 # 7 of 06.07.2018, PPN-01-315 # 9 of 06.08.2018 and PPN-01-315 # 11 of 11.09.2018. According to the additional information provided, S.T. has lodged a complaint with F.I. informed ST that in order to limit the risk of illegal disposal of funds by the authorized persons, protective measures have been introduced in the form of verification of the submitted powers of attorney. In the absence of representative authority, the authorized persons were not allowed to dispose of or communicate information about stocks and movements, which in essence constituted bank secrecy within the meaning of Art. 62 of the Credit Institutions Act. On the merits of the appeal, F.I. points out that the execution of the payment transactions was regulated in the internal documents, and when depositing an amount at the cash register each person had to register as a client of F.I. In Art. 3.1.3. of the General Terms and Conditions for Provision of Payment Services indicated the documents that F.I. required the fulfillment of the requirements of the Anti-Money Laundering Measures Act (AMLPA) related to the identification of the client and his representatives. These conditions, as well as the internal rules for control and prevention of money laundering and terrorist financing, were adopted in accordance with the requirements of the LMML. The company refers to the provisions of Art. 4, item 1, art. 10, vol. 1 and Art. 65, para. 1 of the LMML, which provisions obliged F.I. in its capacity as

a credit institution, to implement the measures and to comply with the rules laid down therein. In this regard, the verification of the representative authority is carried out by taking a copy of the presented power of attorney, and the identification of the proxy in accordance with the provisions of Art. 53 of the LMML - by presenting an official identity document, taking a copy of it and checking its validity - Art. 55 of s.z. These actions were performed by F.I. before the establishment of business contacts and the performance of a random operation according to the requirements of Art. 15 of the LMML. Pursuant to Art. 16 of ZMIP F.I. was obliged to create client databases and client files in which it stored and maintained up-to-date information about its clients and about the operations and transactions performed by them, with a storage period of 5 years - Art. 67, para. 1 of the LMML. For these reasons, S.T. should have been registered in the client file of F.I. as a customer and copies of her identity document and power of attorney should be taken, notwithstanding her subsequent refusal to perform the payment transaction. Informs the CPDP that during the visit to the office on 04.05.2018, ST has not submitted a written application for information on the amount of obligations under the loan agreement concluded by her son, nor has she filled in a document (import note) for the execution of a payment transaction for the payment of loan repayment amounts. It is stated that in case of a refusal requested by a client to perform a payment transaction and in the absence of a submitted written order for its execution, it is not required to fill in a special document on paper. Regarding the refusal of F.I. to provide the requested service to ST, it is stated that F.I. has refused to accept the presented power of attorney on the grounds that the latter did not entitle ST to represent her son before credit institutions, referring to item 3.5 of the General Terms and Conditions for the provision of payment services, and these considerations were promptly communicated to S.T. F.I. specify that they do not have a client file of ST on paper, as on June 26, 2018 in the central office of F.I. the made copies of documents were returned, for which an acceptance-transfer protocol was drawn up. In the electronic file of ST a scanned copy of the ID card and general customer data were stored. According to the company, the data processing of ST has been performed in the presence of the condition under Art. 4, para. 1, item 1 of LPPD (normatively established obligation), as their subsequent processing - their storage in the system, was carried out in the presence of the condition under Art. 4, para. 1, item 1 and item 7 of LPPD (statutory obligation and legitimate interest). Regarding the principal K.T. - son of ST, it is indicated that he has not concluded a framework contract for payment services and does not have an open bank account for utilization of the bank loan withdrawn by him. The latter was repaid by installments on the official account of F.I. It is pointed out that the presented general conditions are not applicable to the consumer loan agreement of K.T., but are applicable to the one stated by ST. operation - one-time such in the sense of art.

53, para. 1 of the Law on Payment Services and Payment Systems. According to the contract K.T. had the right to receive upon written request and free of charge at any time from the performance of the contract a statement in the form of a repayment plan for the payments made and forthcoming, incl. the periods and conditions for the payment of the recurring or one-off costs and the interest when they are to be repaid without repaying the principal. The terms and conditions of payment were described in detail in the repayment plan to the contract. By virtue of the last K.T. he had no obligation to open an account, he was free to choose at his own discretion how to repay his obligations under the contract - by depositing the amount due in cash, in F.I. or at the cash desk, at one of the persons who accept payments on behalf and for the account of FI, by payment order from the consumer's bank account in another bank or by payment via e - Pay, Easy Pay or B - pay. the cases when a client or his proxy makes a payment in cash with an office in the office of FI, he declared the execution of a one-time payment transaction within the meaning of Art. 53, para. 1 of the Law on Payment Services and Payment Instruments, to which the rules cited in the previous letter additionally applied, including the obligations to identify customers and the persons authorized by them under the Anti-Money Laundering Measures Act. With regard to the introduced technical and organizational measures, it is stated that they are described in Section III of the General Terms and Conditions for the provision of payment services and item 17 of the Rules for opening, maintaining and closing bank accounts. It is noted that the general conditions were adopted by a Decision of the Management Board on 23.10.2015, as they entered into force on 27.10.2015, as Section XI was adopted on 07.05.2015 and in force on 11.05. 2015. The procedure for performing operations by a proxy was regulated in items 3.3 - 3.6. It is pointed out that according to the specifics of the various processes involving the processing of personal data, technical and organizational measures are applied for physical, personal and documentary protection, as well as for protection of automated systems and / or networks, such as unauthorized access cryptographic protection is also used. Attached to the letters are: acceptance and transfer protocol dated June 26, 2018, rules for opening, maintaining and closing bank accounts, organizational structure, general conditions for providing payment services, internal rules for control and prevention of money laundering and financing of terrorism, printout of electronic file, complaint with ent. № **** dated 11.05.2018. With a Decision of the CPDP from a meeting held on 07.11.2018, objectified in Minutes № 42, submitted by ST against F.I. complaint reg. № PPN-01-315 of 11.05.2018 was declared regular and admissible, as its content is in accordance with the requirements of Art. 30, para. 1 of PDKZLNA, respectively art. 29, para. 2 of the APC; the complaint was filed by a natural person with allegations of illegal processing of personal data relating to him - use of personal data, incl.

by taking a copy of an identity document and a power of attorney for her registration as a client of F.I. without a request to that effect; the complaint was filed against FI, which company has the capacity of controller of personal data - Art. 2, para. 1 of the Credit Institutions Act; to a competent authority and within the statutory period - the violation was committed on 04.05.2018 by a person with a legal interest, there are no negative prerequisites specified in Art. 27, para. 2 of the APC. The said decision constituted as parties: applicant ST and respondent - F.I. and a date has been set for examining the merits of the complaint. An open meeting was held on 12.12.2018, in accordance with the provisions of Art. 39, para. 1 of the PDKZLDNA, for which the parties regularly notified do not appear and do not send a representative. The Commission for Personal Data Protection, after considering the views of the parties in the context of the evidence gathered in the file, finds that the complaint is well-founded and as such should be upheld for the following reasons: verification evidence established that F.I. as a credit institution within the meaning of Art. 2, para. 1 of the Credit Institutions Act has the capacity of controller of personal data in connection with its activities, incl. that he processed the applicant's personal data, namely in the context of this activity - as a contact person by her son K.T. on the occasion of a loan agreement concluded by him on 03.07.2017 with F.I. and in connection with a request made by her in her capacity as an authorized person of her son, to provide a reference containing information on the remaining installments under the loan agreement concluded by him and repayment of delayed installments in the amount of BGN 1655.58. The subject of the dispute between the parties is the processing of personal data provided on 04.05.2018 to ST, for purposes other than those requested (providing a certificate of remaining contributions and repayment of such in its capacity as an authorized person): its registration as client of F.I. It is not disputed between the parties that as of 04.05.2018 ST has visited F.I. and has requested a service in his capacity as an authorized person. Regarding the actions taken by F.I. on the occasion of the request made by S.T. it should be noted that they are contradictory, incl. as such are the statements made in the course of the proceedings by the administrator. In this sense, the administrator points out that for the payment of cash / at the cash desk there is a requirement for registration of the client as random (external), and for the purposes of identification - taking a copy of the identity document, ie no it is necessary to present a power of attorney, and to obtain information about the remaining installments on the loan - and identify the proxy by taking a copy of the power of attorney and identity document. On the other hand, regarding the request for depositing cash / cash and receiving information (in the reply to ST) it is stated as a requirement to take action to identify the proxy on the basis of introduced rules - GTC and those for opening , maintaining and closing bank accounts, which regulated the requirements for registration of the person as a

casual customer, incl. the requirement for the identification of the client and the proxy, as these rules were not applicable to the concluded credit agreement, but were applied in connection with the stated by ST service. Next, it is stated that when a client or his proxy makes a payment on a loan in cash at the office of FI, he declares a one-time payment transaction within the meaning of Art. 53 of the LPSA, for which the rules of the LMML were additionally applied. From the collected evidence and provided information it is established that there is a loan agreement between F.I. and the applicant's son, ie the latter was a client of F.I. Repayment of installments on the loan to which her son is a party and obtaining information on the remaining installments, in essence, constitute an obligation and right of the borrower arising from the concluded with F.I. contract. The fulfillment of the obligations and the exercise of the rights under this contract, regardless of how they will be qualified by F.I. - as an operation, service, etc., are exercised in this case by a person who has the capacity of proxy. In this sense, a client of F.I. is the borrower - the son of ST, with whom F.I. there is a loan agreement. This follows from item 5, item 6, item 13, item 17 of the presented rules for opening, maintaining and closing bank accounts (according to FI there is no account for utilization and repayment of the loan, but the specified rules are applicable to the service requested by ST, citing item 17); Section III of the GTC. There is no different conclusion from the measures introduced by the LMML, with the implementation of which the administrator motivates mainly the actions for registration of the complainant as a client of F.I. and taking copies of her identity document and power of attorney (internal rules according to the administrator introduce the requirements of the law). As an obligated person under Art. 4, item 1 of the law, the administrator should apply the rules to the clients, including their proxies, legal representatives, etc. According to § 1, item 9 of the Additional Provisions of the Law, “client” is any individual or legal entity or other entity that enters into a business relationship or performs an accidental operation or transaction with a person under Art. 4. According to the given definitions, “business relationship” is defined as an economic, trade or professional relationship that is related to the activity of the obligated institutions or the LMML and at the time of establishing contact it is assumed that it will have as an element duration (§1, 3 of the RD of ZMIT), and “accidental operation or transaction” - as any such related to the activity of a person under Art. 4 of the LMML, which is carried out outside the framework of established business relationships (§ 1, item 19 of the Additional Provisions of the LMML). It follows from the above that the law requires identification of authorized persons indisputably, but does not treat the same as customers within the meaning of the law - in this sense, Art. 59, para. 1 regarding the identification of clients - legal entities and their proxies, art. 65, art. 67 of the LMML, incl. the submitted rules of the administrator, adopted in implementation of the repealed. LMML - item 4.2, which require

identification of the client's proxies. In view of the above and the evidence gathered in the proceedings, it must be concluded that F.I. has violated the provisions of Art. 2, para. 2, item 2 of the LPPD (Art. 5, § 1, item “b” of the ORD) principle of limitation of the purposes, having additionally processed the personal data of ST in a manner incompatible with the purposes for which the data were collected, having registered the same as a client of FI, as there is no request from ST for its registration as a client, there is no statutory obligation for the administrator to perform such an action and it is not established the existence of any of the other provided conditions for the admissibility of this processing, incl. for the purposes of legitimate / legitimate interest of the administrator, as the inspection under the LMML (if required) will be carried out in respect of ST, but the latter as a representative of the client - her son. In connection with the above by ST in the appeal on the occasion of a request filed by her under Art. 28a, item 1 of the LPPD for deletion of data on 04.05.2018 on the spot in the office of FI, CPDP should indicate that the procedure and manner of exercising this right are regulated in Chapter Five of the Protection Act of personal data. According to Art. 29 of the LPPD, the request / application should contain certain details: name, address and other data for identification of the natural person, signature, date of submission of the application and address for correspondence. According to Art. 29 of the LPPD, this right is exercised by a written application to the personal data controller, personally by the individual or by a person authorized by him, and in cases of submitting the application electronically there is a requirement for signing it with advanced electronic signature, advanced electronic a signature based on a qualified electronic signature certificate or a qualified electronic signature as required by Regulation (EU) № 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and certification services for electronic transactions in the internal market and repealing Directive 1999/93 / EC (OB, L 257/73 of 28 August 2014) and the Electronic Document and Electronic Certification Services Act. In this sense and given the available data in the file, it can not be assumed that the administrator has in principle arisen an obligation to rule on the same, and henceforth to examine the issue of compliance with the established 14-day period under Art. 32, para. 4 of the LPPD for ruling, as as of 04.05.2018 the requirements for the form and content of the request / application have not been met by the complainant. - transfer protocol from June 26, 2018).Motivated by the above and on the grounds of Art. 38, para. 2 of LPPD in connection with Art. 39, para. 2 of PDKZLDNA and under arg. at 142, para. 1 of the APC

HAS DECIDED AS FOLLOWS:

1. Announces the application filed by S.T. complaint reg. № PPN-01-315 of 11.05.2018 against a financial institution as

well-founded.

2. In connection with item 1 and on the grounds of art. 58, § 2, b. ”B.” from ORZD sends an official warning to the administrator of a financial institution, UIC ***** for the violation of Art. 5, § 1, b. ”B” of the ORZD in an operation for the processing of personal data of ST, namely performed additional processing of her data in a manner incompatible with the purposes for which they were collected.

The decision of the Commission for Personal Data Protection may be appealed before the Administrative Court of Sofia within 14 days of its receipt.

MEMBERS:

Tsvetelin Sofroniev / p /

Maria Mateva / p /

Veselin Tselkov / p /

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Decision on the appeal with registration № PPN-01-315 dated 11.05.2018

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