

Decision on appeal with registration № PPN-01-267 / 25.04.2018 DECISION» PPN-01-267 / 2018 Sofia, 25.02.2019 Personal Data Protection Commission (Commission / CPDP) composed of: members - Tsanko Tsolov, Tsvetelin Sofroniev and Veselin Tselkov, at an open meeting held on 23.01.2019 on the grounds of Art. 10, para. 1, item 7 of the Personal Data Protection Act (PDPA) considered on the merits a complaint reg. № PPN-01-267 / 25.04.2018, filed by AA The administrative proceedings are by the order of art. 38, para. 1 of the Personal Data Protection Act. The Commission was approached by Ms. AA, who claims that Financial Institution EOOD (FI EOOD) and Financial Institution AD (FI AD) illegally, without her consent, process her personal data. Mrs. AA describes the following factual situation: on 21.08.2007 she concluded a contract for issuing and servicing an international credit card under the Cash Back promotional program. At the conclusion of the contract she did not sign any declaration that she agrees to her personal data being used in any way by F.I. AD. The contract also did not contain a clause by which Ms. A.A. to consent to someone using her personal data for any reason. F.I. However, AD provided its personal data to traders and intermediaries when making payments for purchased goods or services offered at retail outlets. The international rules on tripartite and quadripartite card payment schemes existing at the time of the contract (Directive 95/46 / EC) were not applied - as a result of which her personal data were used by third parties as well as by financial institutions. The other violation of which Ms A.A. complains that on 30.06.2016 between F.I. AD and F.I. EOOD a contract for cession was concluded, which created an opportunity for F.I. EOOD to use her data without her consent; moreover, in this case the activity of F.I. Ltd. was outside the law. She complains that the level of protection of her personal data is not just low, and the level of protection of personal data is simply not there. She claims that she has paid in full her debt to F.I. AD in the amount of BGN 529, as well as that it was not notified of the assignment. She made a claim for compensation in the amount of BGN 20,000. A letter was sent to the complainant in order to clarify the subject of the complaint, to which she replied in time. With a letter ex. № PPN-01-267 / 2018 # 4 F.I. AD was notified of the initiation of administrative proceedings before the Commission, a certified copy of the complaint was sent, a written statement and relevant evidence were required. With a letter ex. № PPN-01-267 / 2018 # 5 F.I. EOOD was notified of the initiation of administrative proceedings before the Commission, a certified copy of the complaint was sent, a written statement and relevant evidence were required. In time FI AD expresses an opinion that on 21 August 2007 a contract was concluded between her and the applicant № ***** for the issuance and servicing of an international credit card under the Cash Back promotional program. In Art. 29 of the contract states that the cardholder certifies

that he is familiar with the General Terms and Conditions of F.I. AD for issuance and use of international credit cards, and Art. 33 provides that the general conditions in question are an integral part of it. In item 4, chapter VIII - Additional provisions, it is stated that by accepting these general terms and conditions the client "gives consent to F.I. AD to process the personal data received from it... and to provide the same... to the contractually bound parties (merchants and companies) and to other third parties in charge of the processing of card transactions ". In an additional declaration to the contract, Ms. A.A. had stated that she was aware of the rights of F.I. AD to transfer its rights to a third party in case of default. Due to non-fulfillment of the cardholder, cession of all matured and due liabilities was performed according to the contract for transfer of receivables between F.I. AD and F.I. Ltd. In this regard, F.I. AD claims that the processing of Ms. A.A.'s personal data is lawful - on a contractual basis - Art. 6, vol. 1, p. "B" of the ORD. Refers to Art. 9, item 4 of the concluded contract for issuance and servicing of an international credit card, where the right of F.I. AD to provide an external company with the collection of amounts due in case of default. Considers it sufficient that Ms A.A. has signed the contract, and finds that no further declarations to that effect are necessary. He finds that the complaint is an abuse of rights, asks to terminate the proceedings before the CPDP and to leave the complaint without respect. In time FI EOOD expresses an opinion that on the basis of a contract for cession is a private successor of F.I. AD. The assignor (FI AD) has authorized the assignee to notify the debtor on his behalf. He points out that the town of № **** was formed according to the inventory of the Sofia District Court, III Civil Code, 151st Panel, with parties - A.A. - the plaintiff; F.I. AD - defendant and F.I. Ltd. - third party helper. In response to the statement of claim, Ms A.A. was notified of the assignment. The decision is in favor of the defendant and the helper, and an appeal is currently underway. The company finds that it lawfully processes the personal data of Ms. A.A. pursuant to Art. 4, para. 1, items 3 and 7 of the LPPD. The relevant claims for compensation were outside the scope of Art. 10 of the LPPD and therefore appeared inadmissible. He considers the complaint unfounded and asks that it be dismissed. Attaches evidence. In so far as the applicant denied being notified of the assignment, F.I. Ltd. Evidence is required in this regard. F.I. Ltd. is of the opinion that it has tried to inform Mrs. A.A. for the performed cession and for the information under art. 20 of the LPPD, sending her letters to four addresses, all of which were returned with the mark "unsolicited shipment" or "undiscovered address". In the cited court decision Ms. A.A. stated that she had learned of the assignment only with the answer to the statement of claim. In her complaint, she claims that she was not informed about it at all. By a decision of the Commission, objectified in Protocol № 48 / 19.12.2018, the complaint was declared regular and admissible. As parties in the proceedings are constituted: applicant - AA,

and respondent parties - F.I. AD and F.I. Ltd. in their capacity of administrators of personal data. An open meeting of the CPDP is scheduled for January 23, 2019 to consider the complaint on the merits, of which the parties have been regularly notified. At the open meeting of the Commission F.I. AD and F.I. Ltd. send representatives who maintain their views on the unfoundedness of the complaint. Mrs. AA appears in person and with an attorney. ****, with a power of attorney for the file. Considered on the merits, the complaint is unfounded. Regulation (EU) 2016/679 (General Regulation on Data Protection), which has been directly applicable since 25 May 2018, is the normative act laying down rules relating to the protection of individuals with regard to the processing of personal data and on free movement of this data. The General Regulation builds on and further develops the previous data protection regime introduced by Directive 95/46 / EC, transposed into the Bulgarian Personal Data Protection Act of 2002. According to Art. 4, item 1 of the General Data Protection Regulation (DPO), "personal data" means any information relating to an identified natural person or a person who can be identified by various identifiers, including name, identification number, location data etc. item 2 of the same article defines as "processing" any operation or set of operations performed with personal data or a set of personal data by automatic or other means such as collection, recording, organization, storage, disclosure by presentation, etc. These definitions in practice overlap with those contained in Art. 2, para. 1 and § 1, item 1 of the Additional Provisions to the LPPD. With regard to the first request in the complaint reg. No PPN-01-267 / 25.04.2018, concerning the illegal provision by F.I. AD personal data of the applicant to merchants and intermediaries in fulfilling its obligations under an international credit card service agreement, CPDP accepts that there is no violation: the processing of personal data of the cardholder is related to and is strictly limited to processing card transactions. Moreover, it is an integral part of the very nature of this type of contract, as is apparent from the applicant's own analysis. The personal data of Ms. A.A. are processed on the basis of art. 6, § 1, b. "B" - for the performance of a contract to which the data subject is a party (respectively Article 4, paragraph 1, item 3 of the LPPD). With regard to the second request for assignment, the appeal is also unfounded. It is undisputed that the applicant was a client of F.I. AD, which on a contractual basis has processed her personal data - three names, PIN, address. It is indisputable that between F.I. AD and F.I. EOOD a contract for cession was concluded on 30.06.2016, pursuant to which the claim of Ms. AA was transferred by the assignor F.I. AD to the assignee F.I. Ltd. The transfer of receivables is carried out according to the rules of art. 99 of the Law on Obligations and Contracts (LOAC), which stipulates that the previous creditor is obliged to hand over to the new one the documents in his possession, which establish the claim. The documents necessarily contain personal data of the debtor, and his consent is

irrelevant to the validity of this type of legal transaction. From the above it can be concluded that in connection with the implementation of the civil contract of assignment is transferred a certain amount of personal data to the debtor, which is a type of processing. At the same time, the provisions of the CPA appear to be special with regard to the LPPD and the consent of the debtor within the meaning of Art. 6, § 1, b. "A" ORZD (respectively Art. 4, para. 1, item 2 LPPD) is not relevant. The grounds for processing personal data in this case are different - Art. 6, § 1, b. "C" and "e" of the CRDP (respectively Art. 4, para. 1, items 1 and 7 of the LPPD): the processing is necessary for the observance of a legal obligation that applies to the administrator and a legitimate interest. In this sense, the "CPDP Practical Guidelines in Which Cases Consent is Not Necessary for Personal Data Processing", posted on the Commission's website: This circumstance determines the transfer of personal data, insofar as they are contained in the relevant documents. Upon receipt of the claim, the new creditor may process the data on the basis of his legitimate interest in recovering the amount due, including by way of enforcement. However, for the sake of completeness, it should be noted that in Art. 9, item 4 of the concluded contract for issuance and servicing of an international credit card, the right of F.I. AD to provide to a third party (external company) the collection of amounts due in case of default, as the relevant page of the contract is countersigned by Ms. A.A.T.e. alternatively, it can be assumed that there is an informed consent of the data subject to the provision of his personal data to third parties for the purpose of collecting contractual obligations. The information transferred from the assignor to the assignee, as shown in Appendix № 1 to the assignment agreement of 30.06.2016, in this case is: unique credit number, names, address and PIN of the debtor, contact telephone number, date of loan agreement, initial loan amount (principal) balance due, default interest. The personal data are appropriate, related to and limited to what is necessary in connection with the purposes for which they are processed - Art. 5, § 1, b. "C" ORZD.

Although there is no evidence that Ms. A.A. has received the notification of cession under Art. 99 of the Law on Obligations and Contracts and the information under Art. 20 of the LPPD (respectively Art. 14 of the PDPA), the legal fact that makes the processing of personal data admissible is the transfer of the receivable, not the notification. In addition, the applicant learned of the assignment with the answer to the claim under the Civil Procedure Code № **** on the list of the Sofia District Court, III Civil Code, 151st Chamber, which is reflected in the reasons for the court decision № **** ** of the Sofia District Court. The applicant denied the existence of an obligation to F.I. AD, but does not provide evidence in this regard, such as an effective court decision. It is beyond the Commission's power to rule on the existence or non-existence of a bond relationship.

Whether the assignment agreement gave rise to an action in respect of the debtor, whether there was a claim, what its amount is - these are matters in which the civil court has jurisdiction. In this sense, there is lawful processing of Ms. A.A.'s personal data. on the basis of Art. 6, para. 1, p. "C" of the ORD - for compliance with the legal obligation of the administrator and b. "E" - a legitimate interest of the administrator to collect his claim.

Guided by the above, based on Art. 57, § 1, b. "E" of the Regulation, respectively Art. 10, para. 1, item 7, in connection with Art. 38, para. 2 of the Personal Data Protection Act, the Commission for Personal Data Protection,

HAS DECIDED AS FOLLOWS:

Disregards the complaint reg. № PPN-01-267 / 25.04.2018, filed by A.A. against financial institution AD and financial institution EOOD.

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

MEMBERS:

Tsanko Tsolov

Tsvetelin Sofroniev / p /

Veselin Tselkov / p /

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