

Home »Practice» Opinions of the CPDP for 2021 »Opinion of the CPDP on the admissibility of personal data processing in the sale of excisable goods - cigarettes and alcohol, by an operator through remote access (using machines with video control and remote access from an operator) CPDP on the admissibility of personal data processing in the sale of excisable goods - cigarettes and alcohol, by an operator through remote access (using video surveillance machines and remote access from an operator) OPINION OF THE COMMISSION FOR PERSONAL DATA PROTECTION reg.№ / 2021 Sofia, 06.10.2021

SUBJECT: Admissibility of personal data processing in the sale of excisable goods - cigarettes and alcohol, by an operator through remote access (through machines with video control and remote access from an operator) Commission for Protection of Personal Data (CPDP) composed of - Chairman: Ventsislav Karadzhov and members: Tsanko Tsolov, Maria Mateva and Veselin Tselkov, at a meeting held on 29.09.2021, considered a letter mo with ent. № PNMD-01-77 / 12.08.2021 of the Secretary General of the Ministry of Economy (MI) on the occasion of a letter received from the manager of a company with a request regarding the admissibility of the sale of alcohol and cigarettes through vending machines with video control and remote access from operator according to the Bulgarian legislation. In connection with the normatively regulated functions of the Minister of Economy, attention is drawn to the following: 2, item 10), prohibition of cross - border distance selling, as well as offering and selling to consumers of these products through the services of the information society (Article 31a). For non-compliance with the legal norms specified in Art. 46 of the TTTA are provided for administrative penal provisions. In view of this, the sale of tobacco products from a vending machine would be a violation of the TTTSTI. The letter from the Ministry of Economy states that the Law on Wine and Spirits (LVN) regulates the terms and conditions for the production, production, processing, labeling, trade and control of ethyl alcohol and distillates of agricultural origin and spirits. Article 131 of the ZVSN prohibits the sale of bulk spirits and the bottling and sale of spirits in plastic bottles with a capacity of more than 0.5 liters. Spirits and cigarettes are excise goods that are subject to specific provisions related to excise legislation, which falls within the competence of the Ministry of Finance (MoF) and in particular of the Customs Agency. To the extent that alcoholic beverages (beer, wine and spirits) fall within the scope of the Food Act (ZHR), and the use of tobacco products and alcoholic beverages as health risk factors is regulated by the Health Act (ZZdR), the opinion is relevant of the Ministry of Agriculture, Food and Forestry (MAF) and the Ministry of Health (MH). The Ministry of Economy considers that on the issue of the applicability of the proposed identification of persons who will buy tobacco and alcohol products from vending machines - ID card scanning and facial recognition, an opinion should be sought from the CPDP, so they ask the commission to rule on the competence of the

forwarded letter of the company. Attached to MI's letter is a copy of the company's request that it be a leader in the FMCG sector and a representative of leading EU and third-country brands such as Johnnie Walker, J&B, Bushmills, Smirnoff, Hennessy, Gordons, Baileys and others. many other. As a distributor for Bulgaria of world famous and renowned brands of products, the company wants to get an opinion on the following issues related to the introduction in the Republic of Bulgaria of vending machines for excisable goods - cigarettes and alcohol from a remote operator via video surveillance . The purchase will go through several stages: 1. When the buyer clicks on the number of the desired item, an automatic message will appear on the screen stating that in order to purchase the product (cigarettes or alcohol), you need to identify the person who complies with the Personal Data Protection Act. 2. After the person has given his consent, the operator (seller) receives a signal and contacts the buyer in real time. The operator instructs the person to bring his ID card with its front part closer to the designated place on the machine. After the latter follows the instructions, the operator identifies the identity of the buyer, checking whether the person has reached the age of majority and whether it is the same as in the photo on the ID card. 3. If the operator finds that everything is in order and the person has reached the age of 18, he allows him to complete his purchase. Otherwise, the process will be terminated. In view of the above, the company asks for an opinion on the following issue: "Is the described type of sale of excise goods through a seller with remote access to a vending machine, applicable under current Bulgarian law?" Legal analysis: The lawful nature of the processing of personal data presupposes the existence of at least one of the grounds specified in Art. 6, para. 1 and / or Art. 9, para. 2 of Regulation (EU) 2016/679 (General Regulation on Data Protection, ORD), as well as compliance with the basic principles proclaimed by Art. 5 of the same regulation. As stated in the letter of the Ministry of Defense, ZTTSTI introduces bans on the sale of tobacco and related products from vending machines for tobacco or related products and self-service stalls, except for duty-free shops (Art. 30 , para 2, item 10), as well as for the cross-border sales at a distance, as well as the offering and sale to consumers of tobacco and related products through the services of the information society (art. 31a). In view of this, it can be reasonably concluded that the processing of personal data resulting from the activities prohibited by the TTTAI would be illegal due to lack of legal basis, respectively contrary to the principle set out in Art. 5, para. 1, p. "A" of the ORD. In case the legislation allows the sale of alcohol to be carried out through vending machines or vending machines, some basic clarifications should be made, arising from the introduced by Art. 54, item 1 of the CPA ban on the sale of alcoholic beverages to persons under 18 years of age. This prohibition does not require the identification of persons, but only verification of the year of birth (ie whether the person

has reached the age of majority or not) and whether he corresponds to the person in the photo of the identity document. The provision of Art. 11, para. 1 of Regulation (EU) 2016/679, according to which if the purposes for which the controller processes personal data do not require identification of the data subject by the controller, the controller is not obliged to maintain, obtain or process additional information in order to identify the data subject for the sole purpose of complying with the DPA. This corresponds to the principle of processing a minimum amount of data, according to Art. 5, para. 1, p. "C" of the ORD. For the purposes of this legal analysis, it is essential to make a clear distinction between the traditional way of selling alcohol and that carried out by vending machines and vending machines. Verification of the age of the buyer in the traditional way of selling alcohol can be done in case of doubt by requiring the presentation of an identity document. It is a matter of principle that this does not constitute the processing of personal data, as long as no records are kept representing registers of personal data. However, it is different to carry out a check on the age of the buyer, when this is done in whole or in part by automatic means, as stated in the request. In this case, the verification is the processing of personal data, falling within the material scope of the ORD (Article 2, paragraph 1). In view of this, the administrator is obliged to comply with all requirements arising from the ORD. In order to be able to comply with the prohibition on the sale of alcohol to persons under 18 years of age, the seller (personal data controller) has a legal obligation to carry out the relevant inspection, which in turn is grounds for processing specific personal data the meaning of Art. 6, para. 1, p. "C" of the ORD. The existence of this ground excludes the applicability of the consent under Art. 6, para. 1, p. "A" of the ORD, as a basis for the processing of personal data. In view of the lawful nature of the processing of personal data in this case, the provision of Art. 25d of the Personal Data Protection Act (PDPA), according to which an administrator or processor of personal data may copy an identity document only if this is provided by law. As there is no such requirement in the present case, the copying of the identity document and, in a broader sense, its recording and preservation are inadmissible. Therefore, the planned mechanism for remote inspection by means of video surveillance should meet the same conditions. As the use of the mechanism for verification of data from the identity document, performed by remote access through video surveillance, could pose a high risk to the rights and freedoms of data subjects, including persons under 18 years of age who are subject to special protection, the controller should perform a risk assessment and an appropriate impact assessment on data protection. When performing risk and impact assessments, the controller should take into account potential threats that may be relevant to the specific processing, such as unauthorized access to the video surveillance system, availability of skimming devices and others. In case such processing is undertaken by the controller, the

controller must take measures to ensure the transparency and information of the data subjects within the meaning of Art. 13 and / or Art. 14 of the ORD. An essential element of this obligation of the controller is in the information to clearly indicate who the controller is, what are the rights of data subjects and how they can be exercised, taking into account that it is possible to process personal data of children (up to 18 years). In this sense, the information must be clear, understandable and easily accessible.

For these reasons and on the grounds of Art. 58, para. 3, p. "B" of Regulation (EU) 2016/679 in conjunction with Art. 10a, para. 1 of the Personal Data Protection Act, the Personal Data Protection Commission expresses the following

#### OPINION:

1. The processing of personal data, which could result from the activities prohibited by Art. 30, para. 2, item 10 of the Law on Tobacco, Tobacco and Related Products (TTTSTI) is illegal due to lack of legal grounds, respectively contradiction with the principle specified in Art. 5, para. 1, p. "A" of Regulation (EU) 2016/679.
2. If the legislation allows the sale of alcohol to be carried out through vending machines or vending machines, the verification of data from the identity document, performed by remote access through video surveillance, should be considered as processing of personal data within the meaning of Art. 4, item 2 of Regulation (EU) 2016/679, respectively to meet all its requirements for legality. In this case, the controller should not perform actions on copying, scanning or storing an image of the identity document and / or personal data contained in it, as this would be a violation of personal data protection legislation.

#### THE CHAIRMAN:

#### MEMBERS:

Ventsislav Karadzhov

Tsanko Tsolov

Maria Mateva / p /

Veselin Tselkov / p /

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