OFFICE FOR PERSONAL DATA PROTECTION

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Ref. UOOU-00313 / 19-23

DECISION

Chairwoman of the Office for Personal Data Protection as the appellate body competent pursuant to § 10

and § 152 paragraph 2 of Act No. 500/2004 Coll., the Administrative Procedure Code, decided on 27 May 2019 pursuant to § 152

paragraph 6 (a) b) of the Administrative Procedure Code as follows:

Appeal filed by the party, the company

, based

,

against the decision no. UOOU-00313 / 19-16 of

14 February 2019, is rejected and the contested decision is upheld.

Justification

During the inspection of file no. stamp UOOU-06436/16 took place at the company

, based

('the party'),

serious errors of the party in the processing of personal data were found when it was not

documented technical and organizational measures ensuring the safety of processed personal data

data subjects, the data subjects were not properly informed as well as it was found that the party to the proceedings

at least at the time of the inspection, processed the personal data of applicants for loan intermediation after

longer than that

is necessary to fulfill the purpose of processing, because of objectively

the declared purpose of the processing resulted in a one-off mediation. To fulfill the purpose
the processing of personal data thus took place by transferring them to real financial providers
services.
On the basis of the facts thus established, the administrative body of the first instance issued an order ref. UOOU-
09378 / 18-3 (copy in the new file kept under ref. UOOU-00313 / 19-2) of 10 October 2018
('the remedy'), by which it ordered the party to remedy the defective situation
consisting in the obligation I) to ensure that the personal data of loan applicants are deleted
immediately after they have been handed over to the financial service providers, II) comply with the information
obligation, III) to take appropriate technical and organizational security measures, IV) to introduce
procedures for fulfilling the right to be forgotten under Article 17 of the Regulation of the European Parliament and of the
Council
(EU) 2016/679 (General Data Protection Regulation) and further delete the personal data of all
loan intermediaries whose personal data have already been transferred for this purpose
financial providers, and finally V) inform the inspector of compliance with all of the above
remedial action. He was not opposed to the remedy and therefore acquired it
legal force on 22 October 2018, thereby in accordance with the provisions of § 150 paragraph 3 of the Administrative
Procedure Code
acquired the character of a final and enforceable decision.
Administrative proceedings for the imposition of a fine for failure to take corrective measures imposed by an order
to remedy was initiated by delivery of order no. UOOU-00313 / 19-9 of 18 January 2019 of the same
on. The administrative authority at first instance considered that it had been established that the party had not ensured that:
personal data of loan applicants were deleted immediately after
their handover
providers
financial services, while not deleting the applicants' personal data
on loan intermediation, the personal data of which have already been transferred financially for this purpose

providers, not even in the alternative period specified in the call no. UOOU-09378 / 18-7 ze

on December 18, 2018, thus failing I. and IV. statement of the remedy. For the above described delict

At the hearing, a fine of EUR 83 (6) of Regulation (EU) 2016/679 was imposed on the party

CZK 100,000.

Against the order ref. UOOU-00313 / 19-9, the party objected to the timely opposition, thereby

it was annulled and the administrative authority of the first instance continued the proceedings. Respondent participant

The proceedings objected primarily to the unjustifiedness of the first statement of the remedy order, ie the liquidation obligation

personal data of the applicants after their transfer, as in his opinion this obligation has become

with regard to the newly chosen purpose of personal data processing unenforceable. He also stated

that it is working on preparing a technical solution that will ensure data minimization and accuracy

personal data processed.

The first-instance administrative body subsequently issued it on the basis of the collected file documentation

on 14 February 2019 decision no. UOOU-00313 / 19-16, by which the party repeatedly

found him guilty and fined him CZK 100,000, repeating the argument

contained in the order ref. UOOU-00313 / 19-9. He added: “On January 9, 2019, he was

the administrative body received a note from the party's legal representative stating that he had done so

deletion of personal data of data subjects who appeared in the control procedure (file UOOU-

06436/16) and that further measures will be taken in January 2019. The party thus failed

obligations imposed on him because he did not delete and accept all personal data

appropriate solutions by 9 January 2019. "

However, the party defended the decision with a proper appeal, filed on 28 February

2019. In that appeal, he stated the following.

In the opinion of the party to the proceedings, it took place between the issuance of the rectification order and the date of filing

a change in the facts, as a result of which the sanction should be reconsidered,

as well

the question of the real enforceability of the party's obligations by the order was also assessed

stored. Furthermore, the party to the proceedings dealt with the accuracy of the processed data. In that
stated in particular that it does not currently process any out-of-date personal data,
the accuracy and timeliness of the data have always been regularly verified by him
individual re-offers to enter into a loan agreement where the data subjects were
asked about the validity and timeliness of the personal data they previously provided. It is at the same time
believes that the aim of the legislation is to ensure the accuracy and timeliness of personal data over time

data, but it is not his duty to process absolutely correct data, but he must
update - modify or delete - only at your own discretion.
In the light of all the foregoing, the party considers that the decision is inconsistent
law, and therefore suggested that the Chair of the Office for Personal Data Protection as
decomposition, resp. Appellate body contested decision ref. UOOU-00313 / 19-16 of
On February 14, 2019, it canceled.
The appellate body examined the contested decision in its entirety, including the process which
preceded its publication, and reached the following conclusions.
First, the appellate body finds that the party has not lodged any remedies within the statutory time - limit
remedies against the injunction and is therefore not entitled to review the proceedings themselves
on the imposition of remedial measures, as well as the obligations imposed by the order. The party to the proceedings
it does not challenge the remedies itself in any way.
From Article 5 (1) (a) (d) of Regulation (EU) 2016/679 clearly shows that the accuracy of personal data
it must be evaluated depending on the selected purpose of processing. The General Regulation thus requires
that personal data is accurate and up-to-date to the extent of the processing process
the intended purpose could be properly fulfilled. It is thus an objective criterion that is
the administrator is obliged to examine before the start and during the processing, and cannot be identified
with the view of the party that the required level of accuracy of the data would be based solely on
subjective judgment of the personal data controller.

At the same time, the Appellate Body draws attention to and emphasizes the need to make a strict distinction between accuracy

personal data and the legal title for their processing. The party instead of direct compliance

measures pursuant to the first statement of the rectification order, which was imposed following the process

processing found during the inspection, he tried to replace such defective processing with a new one

the processing process through which, in his view, the situation should have been rectified

contrary to the law. However, the Appellate Body considers it necessary in this context

emphasize that any newly created processing acts solely for the future and cannot be reversed

legalize the current absence of a legal title. At the same time it is not possible in an already existing legal relationship

the controller-data subject unilaterally changes the purpose of the processing, as this will

the fundamental importance of consent to the processing of personal data, which must

in particular, be free and informed. The WP29 group then in its guidelines No. 259 for

consent under Regulation 2016/679 states: The "free" element presupposes a real choice

and control of data subjects. "and" Provision of information to data subjects before obtaining them

Consent is essential to enable them to make informed decisions, to understand what

agrees, and for example exercise its right to withdraw consent. If the administrator has access to the information

does not provide, user control is only illusory and consent will be an invalid basis for

Whereas purpose is, in principle, the most basic characteristic of everyone

processing, correct and accurate information on the purpose of processing before consent is given

must be considered essentials of its validity. It can thus have a newly defined purpose

effects exclusively on customers who have agreed to use their data in accordance with the new ones

conditions.

During the inspection, it was proved that the transfer of personal data of applicants for mediation

the purpose of the processing has been fulfilled, as a result of which any further processing takes place

without an adequate legal reason, as the processing is carried out longer than necessary

the time and legal reason testifying to the administrator by the fulfillment of the purpose has expired. Obligation to dispose of personal
data according to statement IV. the remedy is thus in no way related to the accuracy of the data,
as a party apparently considers when arguing that the personal data of all persons for whom
has not been properly verified for accuracy and timeliness, deleted, however now no outdated personal
does not process the data and therefore considers the obligation imposed to be fulfilled.
From the diction of statement IV. The recovery order states that the obligation to destroy personal data is necessary
evaluate in relation to the first statement of the same order. Liquidation obligation according to IV. the statement therefore lasts until that
until adequate measures are taken to fulfill the meaning and significance of the imposed
measures according to the first statement of the remedy.
The appellate body therefore further dealt with the fulfillment of the first statement of the rectification order, which was the participant
the procedure imposes an obligation to ensure that the personal data of loan intermediaries are
liquidated after being handed over to direct providers.
As stated above, the party instead of directly complying with the measure imposed
to remedy this, it replaced the existing processing of personal data with a new processing process
with an altered purpose of processing. This should be “re-processing of requests for provision
financial and other services of companies
", Thus fulfilling the obligation imposed,
resp. for the extinct. However, he considered the first-instance administrative body to be particularly problematic
the question of the accuracy of the data processed pursuant to Article 5 (1) (a) (d) Regulation (EU) 2016/679, namely:
with regard to the possible length of processing time, when due to the nature of the processed personal data
It is clear that without an adequate solution to ensure the accuracy of the data, these cannot
over time they properly serve their purpose and processing will thus be illegal. Administrative authority
It therefore concluded that until measures were taken to ensure legality

processing, it must proceed in accordance with the measure pursuant to the statement of the first remedy. Like possible solution the administrative body of the first instance proposed the creation of profiles of clients - data subjects - provided that these profiles are fully managed and can provide their personal data on a regular basis update so that they are still relevant.

The appellate body shall, with the opinion and possible solution set out by the administrative authority of the first instance identifies. The party to the proceedings is doing business in the field of mediation services, where it interconnects companies offering financial services with those interested in short-term loans and these financial it transmits to applicants the personal data of the applicants which are relevant for the assessment of the application for a loan and the preparation of the contract. According to the party, "repetition" in the definition of purpose should primarily ensure that data subjects do not have to re-apply for the next loan application fill in their data and at the same time so that the party to the proceedings can data to send further credit intermediation offers (see the party 's memorandum of 11 December 2018, ref. UOOU-00313 / 19-5). In addition, for this purpose, the party to the proceedings stores a wide range of personal data that changes naturally over time (eg data on monthly income, months worked, number of children, length of stay at the address,…), it should also be noted that due to the recurrence of the loan (ie the situation where at least one loan has probably already been granted), there has also been a change in the area of processed data concerning the debts and expenses of the client, which are for assessment

requests from financial providers are undoubtedly one of the key factors. When the absence of a mechanism for updating the data and the credit intermediation offer itself it may be out of date and insignificant at the time of delivery. In this context, it is necessary reject also the statement expressed in the dissolution that the party to the proceedings at each re-offer of the client contacts in order to update personal data, and should have done so in the past, as it appears to the appellate body to be purposeful. No such claim has been made so far proclaimed, during the inspection of file no. UOOU-06436/16 has not been proven and cannot be

deduce from the statements of the complainants to whom the unsolicited commercial use was wrongfully sent
a communication containing a loan intermediation offer, which was addressed in the inspection in question.
A similar situation follows from the repeated statements of the party to the proceedings, eg in the memorandum of
On 11 December 2018, where he stated: "As regards the legal requirement of accuracy, the
that it is working to take measures to ensure the accuracy and completeness of the data processed
regularly verified. The inspection body shall be informed thereof. "
On the basis of all the above, the Appellate Body concludes that although the party to the proceedings in the Annex
he demonstrated that he had adopted a technical solution to ensure the accuracy of the processing, which was
considered to be an essential aspect in assessing the fulfillment of the meaning of the remedial measure imposed
according to the first statement of the remedy, he did not accept them within the time limit by the administrative body of the first instance
designated and re-extended. At the same time, he did not fully comply with statement IV. order
to rectify, as he destroyed only part of the personal data identified by the administrative authority
first degree. Although all conditions for admission were created for the party to the proceedings
corrective measures, including additional communication with the party's lawyer,
the party to the proceedings has not fulfilled its obligations in full within the time allowed for that purpose, and
the appeal body finds the deadline to be more than reasonable. The fine imposed varies
within the legal range and is duly justified, with some redress being taken into account
within the amount of the sanction as a mitigating circumstance.
In view of the above, the Appellate Body rejected the defendant's arguments. At the same time not
did not find any reason for the illegality or incorrectness of the decision and did not find either
no errors in the procedure of the administrative body of the first instance.
Lessons learned:
Pursuant to the provisions of Section 91 (1) of the Act, this decision shall be challenged
No. 500/2004 Coll., Administrative Procedure Code, cannot be revoked.
Prague, May 27, 2019

For correctness of execution:

official stamp imprint

JUDr. Ivana Janů, v. R.

chairwoman