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»Practice» Opinions of the CPDP for 2020

»CPDP opinion on the right of persons obliged under the Anti-Terrorist Financing Measures Act to process personal data of newly appointed persons for the purposes of the same law CPDP opinion on the right of obligors under the Terrorist Financing Measures Act to process personal data of newly appointed persons for the purposes of the same law

OPINION

ON

COMMISSION FOR THE PROTECTION OF PERSONAL DATA

Reg. № PNMD-01-18 / 2020

Sofia, April 8, 2020

SUBJECT: Processing of personal data on the basis of the Law on Measures against Terrorist Financing

The Commission for Personal Data Protection (CPDP) composed of - Chairman: Ventsislav Karadzhov and members: Tsanko Tsolov, Maria Mateva and Veselin Tselkov, at a meeting held on 25.03.2020, considered a request for an opinion with registration № PNMD-01 -18 / 26.02.2020 by a bank, whereby the bank raises the following issues concerning the processing of personal data in compliance with the provisions of the Anti-Terrorist Financing Measures Act (AIFT):

1. "Can the persons obliged under the Anti-Terrorist Financing Measures Act process personal data of their employees, resp. candidates for work on the grounds of compliance with their legal obligations within the meaning of Art. 6, § 1, b. "C" of the General Data Protection Regulation? "
2. "If the answer is negative, is there any other legal basis within the meaning of Art. 6 of the General Data Protection Regulation, on the basis of which the persons obliged under the Anti-Terrorist Financing Measures Act to process personal data of their employees, resp. job candidates - for example legitimate interest?

Legal analysis:

The Anti-Terrorist Financing Measures Act (LTFA) defines both the measures and the procedure and control for their implementation. The purpose of the law is to prevent and detect actions of individuals, legal entities, groups and organizations aimed at financing terrorism.

The provision of Art. 3 of the law provides for the following measures:

1. blocking of financial resources and other financial assets or economic resources;
2. prohibition to provide financial services, financial resources and other financial assets or economic resources.

Persons who have implemented any of the measures should immediately notify the Minister of the Interior, the Minister of Finance, the Chairman of the State Agency for National Security and the Commission for Combating Corruption and Confiscation of Illegally Acquired Property.

In Art. 4b of the law stipulates that the above measures are applied to:

1. natural persons, legal entities, groups and organizations against which sanctions have been imposed for terrorism or its financing by a regulation of the European Parliament and of the Council;
2. natural persons, legal persons, groups and entities designated by the United Nations Security Council as being related to terrorism or its financing or against whom sanctions for terrorism or its financing have been imposed by a resolution of the United Nations Security Council nations - after the publication of the information under Art. 5a, para. 1, item 2;
3. natural persons, legal entities, groups and organizations included in a list adopted by a decision of the Council of Ministers.

As in Art. 4c specifies that the measures against the entities under items 1 shall be applied in accordance with the procedure provided for in the regulations of the European Parliament and the Council and under this Act, where this is provided, while the measures against the entities under items 2 and 3 shall be applied. apply in accordance with this law.

In addition, the provision of Art. 7 of the LFTA, introduces a general prohibition of natural and legal persons or other legal entities to provide financial resources and other financial assets or economic resources, as well as financial services to persons referred to in Art. 4b, items 2 and 3 of the FTA.

It should be noted here that the State Agency for National Security, in coordination with the Ministry of Interior, gives instructions for the implementation of the measures provided by law and they are published on the websites of both agencies (Article 5b of the LFTA). Moreover, the control over the fulfillment of the obligations under the LFTA by the obligors under the Anti-Money Laundering Measures Act (AMLPA), including banks and financial institutions, is carried out by the Chairman of the State Agency for National Security (argument art. 14a ZMFT).

From what has been stated so far, it can be concluded that the measures under the ATMF are aimed at preventing and detecting actions of individuals, legal entities, groups and organizations aimed at financing terrorism by blocking funds and other financial assets or economic resources or by banning provision of financial services, financial resources and other

financial assets or economic resources to the persons specified in Art. 4b of the LTFT.

As can be seen from the provisions of the LFTA, banks and financial institutions are obliged to enforce the law and they should apply the measures to persons with whom they have a legal relationship (eg contractual or pre-contractual) regarding their financial services.

In this particular case, insofar as the legal relationship between the employer, having the status of a person liable under the LMPT and its employees, falls within the scope of the law, the employer would have a legal obligation, which in turn is the basis for lawfulness of personal data. . 6, § 1, b. "C" of Regulation (EU) 2016/679. However, this processing should meet the requirements of the FTA, ie. the natural persons - employees of the bank to fall into one of the ones described in art. 4b of the same law groups and the bank to take against them the measures specified in art. 3 of it (to handle financial resources and / or to provide financial services to its employees).

It should be noted here that the CPDP is not a competent body for the application of the LFTA and its possible ruling on the existence, respectively. the absence of a legal obligation provided for in a special law such as the LFTA would be incompatible with its statutory powers.

In view of the above and given the high degree of importance of public relations regulated by law through a special LFTA, there is a reasonable conclusion that the processing of personal data for law enforcement purposes based on the legitimate interest of the administrator would be illegal.

In connection with the above and on the grounds of Art. 58, § 3, b. "B" of Regulation (EU) 2016/679, the Commission for Personal Data Protection states the following

OPINION:

1. When the legal relations between the employer, having the capacity of a person liable under the LMPT and his employees, fall within the scope of the law, a legal obligation would arise for the employer, which in turn is grounds for legality of personal data processing within the meaning of Art. 6, § 1, b. "C" of Regulation (EU) 2016/679, under the conditions of Art. 3 and Art. 4b of the LTFT.
2. The legal relationship with the job applicants does not fall within the material scope of the LFTA, therefore the processing of their personal for the purposes referred to in the law would be illegal.
3. Given the high degree of importance of public relations regulated at the legal level in the special LFTA, there is a reasonable

conclusion that the processing of personal data for the purposes of law enforcement based on the legitimate interest of the administrator would be illegal.

THE CHAIRMAN:

MEMBERS:

Ventsislav Karadzhov

Tsanko Tsolov

Maria Mateva / p /

Veselin Tselkov / p /

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