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»Practice» Opinions of the CPDP for 2019

»Opinion of the CPDP regarding the application of Art. 25k of LPPD in conjunction with Art. 52 of the Law on Protection against Discrimination Opinion of the CPDP regarding the application of Art. 25k of LPPD in conjunction with Art. 52 of the Law on Protection against Discrimination

OPINION

ON

THE COMMISSION FOR THE PROTECTION OF PERSONAL DATA

Reg. № NDMSPO-01-211 / 2019

Sofia, July 11, 2019

REGARDING: Application of Art. 25k of LPPD in conjunction with Art. 52 of PfDA.

The Commission for Personal Data Protection (CPDP) composed of - Chairman: Ventsislav Karadzhov and members: Tsanko Tsolov, Tsvetelin Sofroniev and Maria Mateva, at a meeting held on June 26, 2019, considered a request for an opinion (entry № NDMSPO-01 -211 / 28.05.2019) by BNP PARIBA S.A. - Sofia Branch ", UIC 175185891, concerning the application of Art. 25k of the Personal Data Protection Act, regulating the general rules for determining the term for storage of personal data of participants in procedures for recruitment and selection of personnel in connection with Art. 52 of the Law on Protection against Discrimination, which provides for a 3-year limitation period for protection of persons against discrimination.

The company asks for how long it should keep the personal data of the participants in the procedures for recruitment and selection of personnel, observing the conditions of art. 25k of the LPPD on the one hand, and taking into account its legitimate interest in storing these data for a period of 3 years in order to protect their rights in possible proceedings under the Protection against Discrimination Act (PfDA) on the other.

Legal analysis:

With the amendments to the Personal Data Protection Act (PDPA) of 26.02.2019, a new Chapter IVa was created, regulating the general rules for personal data processing, as well as some special cases of data processing.

The provision of Art. 25k, para. 1 of the LPPD stipulates that the employer or the appointing authority, in its capacity as controller of personal data, should set a deadline for storage of personal data of participants in the procedures for recruitment

and selection of personnel, which may not be longer than 6 months, unless the applicant has given his consent to storage for a longer period. After the expiration of this period, the employer or the appointing authority shall delete or destroy the stored documents with personal data, unless a special law provides otherwise.

The second paragraph of the same provision stipulates that where in the procedures in question the employer or the appointing authority has requested the production of originals or notarized copies of documents certifying the physical and mental fitness of the candidate, the required qualification and length of service, he should to return these documents to the candidate who has not been approved for appointment, within 6 months from the final completion of the procedure, unless a special law provides otherwise.

The systematic interpretation of the two norms leads to the conclusion that the first paragraph covers personal data of job applicants contained in documents such as CVs, cover letters, various certificates, certificates and more.

For its part, the Law on Protection against Discrimination (PfDA) prohibits the employer from placing job candidates at a disadvantage on the basis of the discriminatory characteristics listed in the law. Moreover, the violations objectified in Art. 12 of the PfDA, concern specifically the procedures for recruitment and selection of staff, carried out by each employer. In addition, according to Art. 23 of the PfDA, the employer provides upon request information to the person who claims that his rights have been violated, which must contain the grounds for the decision taken by the employer, as well as other relevant data.

In this regard, in case they consider that their rights under PfDA. are violated, job candidates have the opportunity to defend themselves within 3 years of committing the violation / arg. Art. 52 of the CPA.

Given the statutory burden of proof in PfDA. and in view of the taking of measures for protection against proceedings instituted against them, the employers should have data of the unselected candidate-applicant even after the 6-month term under Art. 25k of LPPD, so that they can be presented as evidence. It is indisputable that the information required as evidence would include personal data from the CV and / or other documents of the candidate, which may motivate the decision taken by the employer not to offer the position.

The hypothesis of Art. 25k of LPPD introduces general terms and conditions under which the term for storage of personal data contained in the above documents provided by the job applicant is determined. Moreover, conducting recruitment and selection procedures involves “reproducing” data on candidates (but not storing originals or copies of their documents outside the general order specified in Article 25k of the LPPD) in the internal documentation (orders, protocols of commissions for

ranking the candidates, decisions, etc.) of each employer or appointing body, which can justify the decision to select within the initiated proceedings under the PfDA.

In view of the above, there is no normative obstacle to the personal data contained in the internal documents of the employer / appointing authority regarding the selection (documents created by him and his employees in connection with the selection procedure) to be stored for the purposes of Art. 52 of PfDA. 3-year term. This storage should be realized in compliance with the requirements of Art. 5, para. 1 of Regulation (EU) 2016/679 and in particular while respecting the principles of minimizing data (point "c" of the same) and limiting their storage (point "e" of it), ie . the data must be reduced to the minimum volume necessary to ensure the protection of the interests of the employer / appointing authority under the PfDA, for a period not longer than the statutory 3-year period.

In view of 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. The primary documents of the candidates for work such as CVs, motivation letters, documents proving qualification and experience, and other documents submitted or collected for the purposes of the competition procedure, as well as copies of them should be kept as provided in Art. 25k of LPPD general order.
2. There is no normative obstacle, personal data of participants in a competitive procedure, contained in the internal documents created by the employer or the appointing authority regarding the conducted procedures for recruitment and selection of personnel to be stored for the purposes provided in Art. 52 of the Law on Protection against Discrimination 3-year term, subject to the requirements of Art. 5, para. 1, p. "C" and "e" of Regulation (EU) 2016/679. In this case, for the purposes of possible proceedings under the PfDA, the employer or the appointing authority will have evidence that will be based on information available in the primary documents under item 1, without violating the provisions of Art. 25k of the LPPD general order for limiting the term of storage of these documents with personal data.

THE CHAIRMAN:

MEMBERS:

Ventsislav Karadzhov

Tsanko Tsolov

Tsvetelin Sofroniev / p /

Maria Mateva / p /

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