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OPINION

ON

THE COMMISSION FOR THE PROTECTION OF PERSONAL DATA

Reg. № NDMSPO-17-723 / 2018.

Sofia, February 22, 2019

SUBJECT: Principled approach of the CPDP with regard to the draft codes of conduct submitted for approval

The Commission for Personal Data Protection (CPDP) composed of: Ventsislav Karadzhov, Tsanko Tsolov, Tsvetelin Sofroniev, Maria Mateva and Veselin Tselkov, on 15.02.2019, when considering a request with ent. № NDMSPO-17-723 # 5 / 31.10.2018 found that after the implementation of Regulation (EU) 2016/679 (General Regulation on Data Protection) on 25 May 2018, the CPDP has received approval 11 draft codes of conduct within the meaning of Art. 40 of the General Regulation. Of these, 10 were returned to the importers due to deficiencies and inconsistencies with the regulatory requirements of Art. 40 and Art. 41 of Regulation (EU) 2016/679, as well as the criteria and procedures adopted and published by the CPDP, and one of them is still under review. Subsequently, 4 draft codes of conduct were submitted to the committee for reconsideration, which, according to their petitioners, reflected the remarks and recommendations made by the supervisory authority.

The Law on Amendments to the Personal Data Protection Act (AMA), adopted at second reading on 24.01.2019, but still unpublished, provides in Art. 14a that the conditions, the order and the criteria for approval of the codes of conduct will be determined by the Regulations for the activity of CPDP, and the requirements for accreditation of a supervisory body in accordance with art. 41 of the General Regulation will be signed by an ordinance adopted by the commission.

In the situation thus described, there is an objective obstacle to the formal approval of codes of conduct under Art. 40, para. 5 of Regulation (EU) 2016/679. At the same time, given the significant public interest in this important tool for practical implementation of the General Regulation, illustrated by the large number of submitted projects, it is appropriate to identify opportunities for CPDP to give positive dynamics to the process in full compliance with current regulatory framework. In this

regard, the CPDP adopts a principled approach to the draft codes of conduct submitted for approval.

Legal analysis:

Code of Conduct within the meaning of Regulation (EU) 2016/679 is a voluntary instrument that aims to facilitate the effective implementation of the Regulation, as well as to help demonstrate compliance with regulatory requirements in accordance with the principle of accountability, by take into account the peculiarities of data processing in certain sectors or professions. It is prepared for a separate category of controllers / data processors (PDOs), especially if they belong to the same sector or industry.

The General Regulation imposes an obligation on supervisors to promote the development of codes of conduct, taking into account the specificities of data processing in certain sectors and the specific needs of micro and small and medium-sized enterprises. It is the duty of the CPDP to give an opinion on whether a draft code, its amendment or supplement complies with the Regulation and to approve this draft code, its amendment or supplement, if it finds that it provides sufficient appropriate guarantees. At the same time, the CPDP has the power to accredit a body of conduct to monitor the code of conduct.

In order to facilitate the preparation of codes of conduct, in July 2018 the CPDP adopted and published criteria and procedures for approving codes of conduct. The adopted criteria and procedures specify the regulatory requirements of the regulation in order to promote their uniform understanding and application in the drafting of codes of conduct. In addition, on 12 February 2019, the European Data Protection Board (EDPS) adopted Guidelines on Codes of Conduct and Supervisory Authorities, with a public consultation pending before its final adoption by the Committee.

The elements of the procedure for approving codes of conduct that require special attention are the following:

In the first place, the procedure for approving a code of conduct covering only the territory of an EU Member State is developed entirely before the national supervisory authority without the need to apply the coherence mechanism under the General Regulation (Art. 40, para. 6 of Regulation). In this regard, it should be noted that all projects submitted to the CPDP are of national scope and do not provide for cross-border processing of personal data.

Secondly, despite the fact that the General Regulation is not completely clear on the issue, the unequivocal understanding of both the EDPS and the CPDP is that the existence of an accredited monitoring body within the meaning of Art. 41 of Regulation (EU) 2016/679 is a mandatory condition for the final approval of a code of conduct for non-public controllers or processors (*conditio sine qua non*). At the same time, by virtue of Art. 41, para. 3 of the General Regulation, the draft criteria

for the accreditation of such a body should be approved by the EDPS in accordance with the coherence mechanism.

In this situation, the only possibility to continue the work on the draft codes of conduct is for the CPDP to take a stand only on the content of the respective code, based on the normative requirements in Art. 40 of Regulation (EU) 2016/679 and the criteria of the CPDP, taking into account the Guidelines of the EDPS, without assessing at this stage the proposed supervisory authority.

Given that the proceedings under Art. 40, para. 5 of the Regulation is two-stage and includes in the first stage an opinion on compliance with the regulations and only then approval of an accredited supervisory body, due to lack of necessary regulatory conditions for formal approval within the meaning of the same text, the act could only be an opinion. , not a solution. At the same time, the last stage of the factual composition of the approval - accreditation of a supervisory body, should be postponed until the promulgation of the ordinance under Art. 14a of the LPA LPP and coordination of the criteria from the EDPS under the coordination mechanism.

The benefits of such a principled approach are expressed in the first place in ensuring positive dynamics of the process, regardless of the objective regulatory constraints. The separation in time of the process of approving the content of the code from the process of accreditation of a supervisory body allows for a better distribution of the workload of the expert staff involved in the process. Last but not least, this approach provides greater clarity for importers on what is expected of them and when they will be able to take full advantage of the relevant code.

In view of the above and on the grounds of Art. 58, para. 3, p. "D" of Regulation (EU) 2016/679, the Commission for Personal Data Protection expressed the following

#### OPINION:

1. Irrespective of the fact that the Law on Personal Data Protection and the by-laws envisaged by it have not yet entered into force, the Commission for Personal Data Protection shall continue the consideration of draft codes of conduct within the meaning of Art. 40 of Regulation (EU) 2016/679, whose territorial scope is limited only to the Republic of Bulgaria and does not include cross-border processing of personal data.
2. Considering that the proceedings under Art. 40, para. 5 of Regulation (EU) 2016/679 is two-stage, the initial opinion will be relevant only to the compliance of the content of a code with the General Regulation.
3. In case of a positive opinion on the compliance of the rules contained in the Code with the requirements of Regulation (EU)

2016/679, its final approval by a decision of the CPDP under Art. 58, para. 3, p. "D", supra art. 40, para. 5 of the Regulation, and respectively its full legal effect as a tool for demonstrating and proving compliance with the requirements of applicable legislation in the field of personal data protection and inviolability, will be possible only after accreditation of a body for its monitoring under Art. 41 of the General Regulation.

Five members of the CPDP voted - Ventsislav Karadzhov, Tsanko Tsolov, Tsvetelin Sofroniev, Maria Mateva - for, Veselin Tselkov - against.

THE CHAIRMAN:

MEMBERS:

Ventsislav Karadzhov

Tsanko Tsolov

Tsvetelin Sofroniev / p /

Maria Mateva / p /

O.M. Veselin Tselkov / p /

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