Decision on appeal with registration № PPN-01-151 / 12.03.2018 DECISION» PPN-01-151 / 2018 Sofia, 24.07.2019 The Commission for Personal Data Protection (CPDP) composed of: Tsanko Tsolov, Tsvetelin Sofroniev, Maria Mateva and Veselin Tselkov at a meeting held on 10.04.2019, pursuant to Art. 10, para. 1 of the Personal Data Protection Act, respectively Art. 57, § 1 (f) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (Regulation), considered on the merits a complaint № PPN-01-151 / 12.03.2018 filed by E.M. The administrative proceedings are by the order of art. 38 of the Personal Data Protection Act (PDPA). The Commission for Personal Data Protection was seised with a complaint filed by E.M. with allegations in the same for illegal processing of his personal data, namely its provision without his knowledge and consent by Financial Institution AD (FI AD) to Financial Institution EOOD (FI EOOD) in connection with concluded between the parties loan agreement. The complainant informs that on 15.09.2017 he applied for a loan from F.I. AD by order made through the site ***. He added that on the same day an employee of the company contacted him to carry out an inspection and approve the loan application. Mr. E.M. indicates that, at the request of the credit counselor, he dictated to him a confirmation code received on his mobile phone, in response to which he was informed that the loan had been approved. He added that he had received in his e-mail **** an educational letter and a contract № ****, sent by e-mail *****. He also informed that he had received an e-mail from ****** You have not yet confirmed the Contract for guaranteed receipt of the money within minutes, open this link and enter the received SMS code. The applicant alleged that he had not entered the confirmation code he had received and added that it was not clear from the SMS he received containing the code that a guarantee contract had been entered into. He claims that he provided the code only to the credit consultant of F.I. AD with whom he spoke and was not informed that during its confirmation he would conclude a contract of suretyship with F.I. Ltd. He claims that his personal data was provided by F.I. AD of F.I. EOOD and used the conclusion of a contract for the provision of suretyship, without his knowledge and consent, as a result of which he suffered property damage, which he found upon termination of the contract ahead of schedule on 16.01.2018. Relevant evidence is attached to the complaint. In the conditions of the official principle laid down in the administrative process and the obligation of the administrative body for official collection of evidence and clarification of the actual facts relevant to the case, by F.I. AD of F.I. EOOD written statements and relevant evidence have been requested. In response from F.I. AD disputed the complaint and asked the Commission to disregard it as unfounded.

They inform that the complainant is a client of the company, in connection with concluded 3 (three) credit agreements with F.I. AD, the last of which the subject of the complaint was repaid ahead of schedule on 16.01.2018. A standard European form was requested on 15.09.2017 by the complainant, through an application for a loan for the loan product "****". They added that the contract had been declared by telephone in accordance with the terms and conditions agreed in item III.3 of the General Terms and Conditions, including that the complainant had applied for a guaranteed loan within the meaning of § 20 of the General Terms and Conditions and Art. 4, para. 1 of the Agreement. It is alleged that the applicant himself chose to secure the fulfillment of his obligations under the agreement concluded between him and F.I. AD contract by providing a guarantee from a third party, having had the opportunity to choose an unsecured loan or to provide a bank guarantee. Relevant evidence is attached to the opinion. In the course of the proceedings F.I. EOOD commit an opinion on the unfoundedness of the complaint, with relevant evidence attached to it. They inform that on 15.09.2017 the complainant signed a loan agreement with F.I. AD for the amount of BGN 600.00, under which the company should provide the applicant with the loan amount under the agreed conditions, after providing security for the obligations of the applicant under the loan agreement in the form of a guarantee, provided that submitted by the applicant application approved. After submitting an application for the loan, the applicant signed a contract for the provision of a guarantee on 15.09.2017 with F.I. EOOD "Contract for granting a guarantee". The contract for guarantee was signed at a distance in compliance with the requirements of the Electronic Document and Electronic Signature Act, and the complainant used the individually generated five-digit access code, received by short message to the telephone number indicated by him, namely - *** ***. In addition, they stated that at the e-mail address indicated by the applicant **** he had received an automatic e-mail with the contract for the provision of a guarantee attached. Informart that by virtue of the application submitted in this way and a loan agreement was concluded, F.I. Ltd. received from F.I. AD the personal data of the complainant in order to assess its creditworthiness in connection with the conclusion of the contract for the provision of suretyship. They consider that there has been no violation of the complainant's rights and legality in the processing of his personal data for the purposes of the guarantee contract and therefore ask the Commission to dismiss the complaint as unfounded. The Commission for Personal Data Protection is an independent state body that protects individuals in the processing of personal data and in accessing such data, as well as monitoring compliance with the LPPD and Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data The complaint contains the required details specified in

the provision of Art. 30, para. 1 of the PDKZLDNA - there are data about the complainant, the nature of the request, date and signature, in view of which it is regular. The appeal is procedurally admissible, filed within the term under § 44, para. 2 of the Transitional and Final Provisions of the LPPD by a natural person with a legal interest against a competent party - personal data controllers, whatever the quality of F.I. AD of F.I. EOOD undoubtedly have in respect of the applicant within the meaning of Art. 4, para. 7 of the General Regulation EU 2016/679 and Art. 3 of LPPD and in view of the evidence gathered in the file. The subject of the complaint is illegal processing of the personal data of the complainant in the case of their provision by F.I. AD of F.I. EOOD and their processing by the latter for the purposes of a contract concluded on 15.09.2017 for the provision of a guarantee. The complaint was referred to a competent body to rule - the CPDP, which according to its powers under Art. 10, para. 1, item 7 of LPPD (repealed) respectively Art. 57, § 1 (f) of Regulation (EU) 2016/679, deals with complaints against acts and actions of data controllers that violate the rights of individuals related to the processing of personal data, with no exceptions under Art. 2, § 2, letter “c” and Art. 55, § 3 of Regulation (EU) 2016/679 given the fact that the case does not concern processing activities performed by a natural person in the course of purely personal or domestic activities and / or activities performed by courts in the performance of their judicial functions. For the stated reasons and in view of the lack of prerequisites from the category of negative under Art. 27, para. 2 of the APC, at a meeting of the Commission held on 20.02.2019 the complaint was accepted as procedurally admissible and as parties in the proceedings were constituted: complainant - E.M. and respondent parties F.I. AD and F.I. Ltd., in their capacity of administrators of personal data. An open hearing has been scheduled to consider the complaint on the merits, of which the parties have been regularly notified. In order to clarify the case on the legal and factual side of F.I. AD is required to record the telephone conversation held with the applicant on 15.09.2017 for concluding a procedural loan agreement. In response and with an accompanying letter PPN-01-151 # 12 / 18.03.2019, the company submitted records of telephone conversations held with the complainant with additional clarification regarding the procedure for refinancing liabilities. In the course of the proceedings, Mr E.M. filed a written statement PPN-01-151 # 11 / 14.03.2019 on the merits of the complaint and made evidentiary requests. By letter PPN-01-151 # 13 / 25.03.2019 of the respondent F.I. EOOD was provided with a certified copy of the cited written statement with instructions within 7 days of its receipt to present information and evidence on the evidentiary requests made in items 3, 4, 5 and 6 of the same. In response, an opinion was expressed № PPN-0-151 # 14 / 08.04.2019 on the unfoundedness of the complaint with arguments that it concerns the processing of personal data of the complainant "as of 15.09.2017" under a

previous guarantee contract and "there is no new transfer of personal data", and "even if there is a provision of personal data, it is lawful in view of the information provided by Mr. E.M. consent to the adoption of the OU of F.I. AD, effective as of 15.09.2017, incl. XIV item 6. ”and the subsequent confirmatory actions of the complainant. At a meeting of the CPDP held on April 10, 2019, the complaints were submitted for consideration on the merits. The applicant - regularly informed, did not appear, did not represent himself. The respondent parties - regularly notified, are represented by P.S. - Data Protection Officer with a power of attorney presented at the meeting. disputes the complaint and asks the Commission to disregard it, upholding the written comments expressed by the companies on its unfoundedness In his capacity of administrative body and in connection with the need to establish the truth of the case, as a basic principle in administrative proceedings, according to Art. 7 of the Code of Administrative Procedure, requiring the existence of established facts, given the written evidence gathered and the allegations made by the parties, the Commission considers that considered on the merits complaint PPN-01-151 / 12.03.2018 is justified. The decision took into account the change in the legal framework in the field of personal data protection in the period from the filing of the complaint to its examination on the merits and the fact that from 25.05.2018 Regulation (EU) 2016/679 applies of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and the fact that the Act amending and supplementing Personal Data Protection Act. Account is also taken of the fact that Regulation (EU) 2016/679 has direct effect, and legal facts and the consequences arising from them before the application of the Regulation should be assessed according to the substantive law in force at the time of their occurrence. In the specific case such are the material provisions written in the LPPD in the wording before 02.03.2019, in view of the fact that the legal facts and legal consequences related to the processing - the provision of data and the conclusion of the guarantee contract was made on 15.09.2017. The fact that the provisions of Art. 2, para. 2, items 1 and 2 of LPPD (revoked, but effective as of the date of processing) correspond to the provisions of Art. 5, para. 1, letter "a" and "b" of the Regulation and do not contradict them. In Art. 2, para. 2 of LPPD (repealed), but applicable at the time of processing, provides for the obligation of the personal data controller to process personal data in accordance with the principles set out in the cited provision, namely to process them lawfully and conscientiously, and to collect the same for specific, explicitly stated and legitimate purposes and not to further process them in a manner incompatible with those purposes. In the applicable at the time of consideration of the complaint on the merits and ruling of the Commission Art. 5, para. 1 letter "a" and "b" of the Regulation is an identical obligation to the administrator. The

subject of the complaint is illegal processing, in the case of providing by F.I. AD of F.I. EOOD, of the personal data of the complainant in a volume of three names, unified civil number, address and ID card number and their processing - their use by F.I. Ltd. for the purposes of concluded with F.I. EOOD guarantee contract, the same dated 15.09.2017, in connection with concluded between Mr. E.M. if I. AD loan agreement in the amount of BGN 600 from the same date. It is not disputable between the parties, and from the evidence gathered in the file it was established that on 15.09.2017 between the applicant, in his capacity as a borrower, and F.I. AD, in its capacity as a creditor, a consumer loan agreement № ***** was concluded for an amount of BGN 600. The agreement was requested by telephone, and for the purposes of its conclusion the complainant voluntarily provided his personal data to the company. A copy of the contract, together with a standard European form for providing information on consumer credit and the General Terms and Conditions of the company were provided to the complainant on 15.09.2017 at 14:15 at the e-mail address specified by him, namely * *****. It was indisputably established that on the same e-mail the same day, a few minutes later, namely at 2:19 pm, the applicant had received an e-mail from F.I. EOOD by email ***** containing a contract for the provision of a guarantee dated 15.09.2017 with parties F.I. Ltd. - guarantor and E.M. - user. The contract contained three names, a unique civil number, address and identity card number of the applicant, the latter processed by F.I. Ltd. for the preparation of the contract. It is not disputed that the applicant's data were provided by F.I. AD of F.I. EOOD, and a guarantee contract has been concluded between the companies, to which the complainant is not a party. The applicant's allegations that his personal data had been provided by F.I. AD of F.I. Ltd. without him knowledge and consent are justified. The same, although disputed by the defendants, is supported by the evidence gathered in the case. As can be seen from the content of the presented by F.I. AD records of telephone conversations is that an employee of F.I. AD asked the complainant to dictate a unique code received from him by phone to confirm the loan agreement. In pursuance of the instructions, Mr. E.M. has dictated the code - **** received through a multiple text message, and the employee of the company has informed him that the loan has been granted with instructions for installments due under the contract. There is no evidence that the complainant was informed that by providing the access code his personal data would be provided to a third party other than the parties to the credit agreement, namely to secure the obligation and conclude a guarantee agreement between Mr. E.M. if I. Ltd. Even less is there a lack of consent - a freely expressed, concrete and informed statement of intent within the meaning of § 1, item 13 of the Additional Provisions of the LPPD (effective at the date of data provision) by Mr. EM, which would justify the legality of the actions for providing his personal data by F.I. AD of F.I. Ltd.

The allegations of the representative of F.I. AD that “the payments are a recognition of the conclusion of each of the contracts (Loan Agreement and Guarantee Agreement), by which the complainant directly and unequivocally states that he was obliged to F.I. AD and F.I. EOOD under the contracts in question and they have duly processed his personal data. From the evidence gathered in the file it is established that the processing was not performed in fulfillment of a statutory obligation of the personal data controller, it is not necessary to protect the life and health of the individual, nor to perform a task in public interest or exercise of powers granted to the administrator by law, as well as for the realization of the legitimate interests of the administrator, before which the interests of the natural person have no priority. It is necessary to conclude that the data have been processed - provided illegally - without a condition for admissibility of the processing in violation of the principle of legality and good faith referred to in Art. 2, para. 2, item 1 of LPPD (repealed), respectively Art. 5, para. 1 (a) of the Regulation. Given the fact that the data were collected by F.I. AD for the purposes of the loan agreement, and have been further processed in a manner incompatible with these purposes, namely - provided to F.I. EOOD for concluding a contract for suretyship, it is necessary to conclude that the processing is in violation of the principle under Art. 2, para. 2, item 2 of LPPD (repealed), respectively Art. 5, para. 1, letter "b" of the Regulation on "limitation of the purposes" of data processing. From the evidence gathered in the file, the conclusion for illegal processing of the personal data of the complainant and by F.I. Ltd. The personal data of the complainant were used for the preparation of a contract for the provision of a guarantee dated 15.09.2017, the same sent to the complainant, without the presence of any of those specified in the provision of Art. 4, para. 1 of LPPD (repealed), but acted as of the date of the violation, conditions for admissibility and legality of the processing, respectively in violation of Art. 6, para. 1 of the Regulation. There is no evidence to the contrary in the file, despite the explicit opportunity provided to the company to engage such in connection with the actions made by Mr. E.M. evidentiary requests in opinion PPN-01-151 # 11 / 14.03.2019. The Commission considers that the corrective measures under Art. 58, § 2, letter "a", "b", "c", "d", "e", "e", "g", "h" and "j" of the Regulation are inapplicable and inappropriate in this case, having regard to the gravity of the infringement and the fact that it has been completed, it has also resulted in pecuniary damage to the applicant. Given the nature and type of the violations found, the Commission considers it appropriate, proportionate and dissuasive to impose a corrective measure under Art. 58, § 2, letter “i” of the Regulation, namely the imposition of property sanctions on personal data controllers F.I. AD and F.I. EOOD, considering that they will have a warning and deterrent effect and will contribute to the observance by the administrators of the established legal order. As well as a purely sanctioning measure, a reaction of the

state to the violation of the normatively established rules, the property sanction also has a disciplinary effect. The administrators are obliged to know the law and to observe its requirements, moreover, that they owe the necessary care, provided in the LPPD and the Regulation and arising from their subject of activity, human and economic resources. Considering, in view of the principle of proportionality between the gravity of the infringement and the amount of the sanction, the Commission considers that, the imposed property sanctions should amount to BGN 10,000 - an amount well below the average minimum provided in the Regulation for these violations, the same provided in the norm of Art. 42, para. 1 of LPPD for violation of Art. 4, para. 1, respectively Art. 2 of the same law. In determining the amount of the sanction and in accordance with the conditions under Art. 83, para. 2 of the Regulation, the Commission took into account that the infringement was the first for the administrators, as well as that it concerned a violation of the rights of one person. As an aggravating circumstance in determining the amount of the sanction, the Commission took into account that there was no evidence of action taken by the controller to mitigate the damage suffered by the data subject and that the controllers were unaware of the breach and did not illegal. The violation was completed by the act of its commission and is irremovable, and the same became known to the CPDP as a result of its referral by the victim. As an aggravating circumstance was reported the fact that the processed personal data are in large volumes, namely three names, address, ID card number and a single civil number of the person, and the same were used to create a financial relationship with F.I. EOOD in connection with the guarantee contract. The circumstances under Art. 83, para. 2, letter "b" and "i" of the Regulation are irrelevant insofar as they concern personal data controllers - legal entities that do not form guilt, and at the time of the violations approved codes of conduct, respectively approved certification mechanisms are not introduced.Guided by the above and on the grounds of Art. 38, para. 3 of LPPD, the Commission for Personal Data Protection,

HAS DECIDED AS FOLLOWS:

1. Announces a complaint № PPN-01-151 / 12.03.2018, filed by E.M. against financial institution AD and financial institution EOOD, as well-founded.

2. On the grounds of art. 83, § 5, letter “a”, in connection with Art. 58, § 2, letter “i” of EU Regulation 679/2016 imposes on a financial institution AD with UIC ****, in its capacity of personal data controller, a property sanction in the amount of BGN 10,000 (ten thousand levs) for processing the personal data of the complainant in violation of Art. 2, para. 2, items 1 and 2 of LPPD (repealed), respectively Art. 5, para. 1, letter "a" and "b" of EU Regulation 2016/679.

3. On the grounds of art. 83, § 5, letter “a” in connection with Art. 58, § 2, letter “i” of EU Regulation 679/2016 imposes on a financial institution EOOD with UIC ****, in its capacity of personal data controller, a property sanction in the amount of BGN 10,000 (ten thousand levs) for processing the personal data of the complainant in violation of Art. 4, para. 1 of LPPD (repealed), respectively Art. 6, para. 1 of EU Regulation 2016/679.

After the entry into force of the decision, the amount of the imposed penalties to be transferred by bank transfer:

Bank of the BNB - Central Office, IBAN: BG18BNBG96613000158601, BIC BNBGBGSD

Commission for Personal Data Protection, BULSTAT 130961721

The decision is subject to appeal within 14 days of its service through the Commission for Personal Data Protection before the Administrative Court Sofia - city.

MEMBERS:

Tsanko Tsolov

Tsvetelin Sofroniev / p /

Maria Mateva / p /

Veselin Tselkov / p /

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