OFFICE FOR PERSONAL DATA PROTECTION

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* UOOUX00DANPE *

Ref. UOOU-09633 / 18-25

DECISION

Chairwoman of the Office for Personal Data Protection as the appellate body competent under provisions of § 10 and § 152 paragraph 2 of Act No. 500/2004 Coll., Administrative Procedure Code, decided on 10 May 2019 according to the provisions of § 152 par. 6 let. a), § 152 par. 5 and § 90 par. 1 let. b) of the Act No. 500/2004 Coll., Administrative Procedure Code, as follows:

Decision of the Office for Personal Data Protection ref. UOOU-09633 / 18-20 of 22 February 2019 is based on the dissolution of the party, XXXXX, with its registered office at XXXXX, and the case is returned administrative authority of the first instance for a new hearing.

Justification

On the basis of an inspection carried out by the Office for Personal Data Protection (hereinafter referred to as the "Office") at the party to the proceedings, XXXXX, with XXXXX (hereinafter referred to as the “party to the proceedings”), terminated by the issuance of a protocol on control ref. UOOU-08429 / 17-33 of 26 June 2018 subsequently confirmed in the proceedings on objections, by a note of the President of the Office ref. UOOU-08429 / 17-36 of 27 September 2018 the Office issued a decision no. UOOU-09633 / 18-20 of 22 February 2019 ('the decision').

The decision was, in addition to submitting a report to the Office's inspector and reimbursing the costs of the proceedings, order the party to take the following corrective measures within the set time limit:

I. to ensure the erasure of personal data relating to XXXXX,

II. ensure the legal titles for the processing of personal data of all data subjects in accordance with Article 6 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on protection

individuals with regard to the processing of personal data and on the free movement of such data

and repealing Directive 95/46 / EC (the "General Regulation"), in the event that such security

it will not be possible for any data subject, then to delete such personal data

the data subject and

III. to conclude a processing contract within the meaning of Article 28 (3) of the General Regulation with all

tied agents within the meaning of Section 15 of Act No. 170/2018 Coll., on the Distribution of Insurance and Reinsurance, and

se

all other entities that process personal data for the party to the proceedings.

and the current case,

However, the party to the proceedings objected to the proper appeal in which he proposed the decision

cancel. In this context, he expressed his disagreement with the conclusion that it should be

in the position of personal data controller. Specifically, he stated that insurance intermediaries (tied

representatives) are independent entrepreneurs within the meaning of the relevant laws. At the time of the initial

address a potential client, which it should be

therefore it offers its

intermediary services and are in the position of personal data controller. Therefore, he must have consent

they, not the party to the proceedings. The tied agent does not become a processor until the moment he starts

to offer the products and services of the party to the proceedings, who thus becomes the administrator. To process, however

does not occur on the basis of consent, but due to the conclusion of a contract. But even at this stage, the participant

the proceedings do not have the processed personal data available, they only get to it at the moment

possible conclusion of a contract between the client and the contractual partner of the party to the proceedings.

The moment the tied agent and the client start negotiating a specific product from the portfolio

of the party to the proceedings, the administrator is the contractual partner of the party to the proceedings, as he determines

the purpose

processing. The party then

is the processor and the tied agent has the status

so-called sub-processors, and for these processing, as it is a specific conclusion

agreement, no consent is required.

Furthermore, the party to the proceedings challenged the findings concerning the processing contract, given that

to the fact that, under the agency agreement, the internal regulations of the party to the proceedings

become part of the contractual arrangements between the party to the proceedings and the subordinate insurance

undertakings

intermediaries. Nevertheless, the party to the proceedings has been concluding a separate contract since November 2018

on the processing of personal data, the concept of which, as he stated, should have been referred to the Office, which,

however,

as should be noted in particular, it does not correspond to reality.

Personal data processing consent form used by XXXXX when obtaining

the complainant's personal data was not a form used by the party himself. As

the party to the proceedings does not have the personal data of potential clients, it cannot be attributed to him

fault of a particular subordinated insurance intermediary. However, the party to the proceedings

introduced for its co-workers a model form for consent to the processing of personal data, which

at the same time, as he said, he should have been referred to the Office, which, however, as should be noted in particular,

does not correspond

facts.

The appellate body reviewed the decision in its entirety, including the previous process

its issue and first dealt with the arguments of the party to the proceedings.

In that regard, it states, in particular, that it is the administrator by definition in Article 4 (7)

general regulation, any body which alone or jointly with others determines the purposes and means

processing of personal data and by the processor as defined in Article 4 (8) of the General Agreement

Regulation, any entity that processes personal data for controllers. So if he does any

entity, especially a tied representative in the sense of Act No. 170/2018 Coll. certain tasks for the participant

proceedings connected with the processing of personal data, the participant in the proceedings is in the position of

administrator and entity,

who performs tasks related to the processing of personal data for him, is in the position of a processor.

The purpose of the processing must be considered to be defined by defining the relevant tasks.

The moment in which the controller has access to personal data is in this context

in principle indecisive, which can also be stated regarding the position of tied agents, resp.

other similar entities as sole proprietors. Of course, it is not excluded

that the above-mentioned involved entities will at the same time in relation to other personal processing

data in a different position. In this context, however, it must be recalled that from a practical

From this point of view, it is impossible for anyone to offer mediation services as such, and these

therefore, the services must be specified in some way. If then based on this

specification, the provision of services of the party to the proceedings, resp. this would be

manifestly unrealistic, it should be acknowledged that the party is not in a position to do so

administrator. On the contrary, if the provision of services by the party to the proceedings is not fundamentally excluded, resp.

these can be

realistic, the party to the proceedings must be regarded as the administrator. Consent must therefore be in this

in the latter case, testify to the party to the proceedings. It should also be noted that the legal title mentioned

in Article 6 (1) (a) b) of the General Regulation is applicable in the case of pre-contractual negotiations

only if those negotiations were initiated at the request of the data subject and therefore not in the data subject

condition is met, it is necessary to have another legal title, usually represented

with the consent of the data subject.

The party to the proceedings is therefore obliged to adjust the relationship with the processors in accordance with Article 28 of

the General Agreement

Regulation, which is of course also possible through the application of the validity of internal rules

of the party to the proceedings to the processor, but these internal regulations must contain the requisites

prescribed by Article 28 of the General Regulation. The party must also ensure that not only
he himself, but also the processors who carry out the processing tasks for the party to the proceedings
personal data, had a proper legal title, ie proper consent
data subject. It should be added that even if a proper concept was presented in the decomposition
personal data processing agreement and the consent of the data subject, this could be found
only as a partial step to comply with the remedial measures in question. This is because they require execution
implementation of imposed remedial measures against relevant entities.
The appellant therefore rejected the party's arguments. On the other hand, the appellate body
after an overall examination, it found that corrective action I. generally requires a decision
delete specified personal data. The inspection in question then proved that the participant
the proceedings were in the position of controller in relation to this personal data without any disposal
with the consent of the data subject and did not bear any other legal title according to § 5 par. a) to g)
Act No. 101/2000 Coll. However, the justification states that the deletion obligation does not apply
obligations imposed by special laws. The explanation given in the justification is then needed
considered correct, however, does not correspond to the statement of the I. decision. Operative part of the decision
therefore, it should focus on the processing of personal data for the purpose of offering the relevant services,
resp. for purposes which require the consent of the data subject.
Corrective action II. the decision is, as the appellate body further found, from a formal point of view
correct, however, is so general that it will obviously be a problem based on the report submitted
the level of measures actually taken by the party to the proceedings. Some ambiguity then
It also recalls the reasoning of the decision concerning corrective action II, according to which
'The status of a party as a controller of personal data cannot be understood in general, but only
in relation to the present case. It is clear from the description of the party's business that
that this finds itself in a dual position, both as a controller of personal data (for cases where
himself determined the purpose and means of personal data processing), so the processor of personal data who
processes personal data of data subjects for others (eg contractual cooperation with individual data subjects)

insurance companies in which their products are offered). In this case, however, it was
the inspection found that the party to the proceedings is in the position of a controller of personal data,
as he determined the purpose and means of their processing (see the file, ref. UOOU-
09633 / 18-3, audit finding No. 5). ”However, the audit finding No. 5 in question explicitly states
the status of the processor vis-à-vis the administrator explicitly only in relation to XXXXX., and further
deduce the same from audit finding No. 6 against XXXXX. In both of these cases, of course
agree with the conclusions, but it is not clear to which other processors it should be subject

the corrective action is also effective against which personal data the party to the proceedings is in a position
administrator.
The Appellate Body also found corrective action III to be formally correct. decision, however
Again, it should be recalled that, in view of the above, it is not clear to which entities
which is also problematic given that it is intended to cover “all other entities that
process personal data for the party to the proceedings'. So even in this case, it will be obvious
verify the level of factual implementation on the basis of a report submitted by the party to the proceedings
measures.
For those reasons, the appellate body found the decision to be incorrect and ruled as follows
is set out in the operative part of this decision. The appellate body then expects the administrative body
the first instance reformulates corrective action I., so that it corresponds
with a justification which, as stated above, the appeal body considers to be correct. As far as
corrective action II. and III., the Appellate Body expects to be an administrative body of first instance
specify in such a way as to correspond to the specific situation found, in particular
through prior inspection (sub ref. UOOU-08429/17).
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 10, 2019

official stamp imprint

JUDr. Ivana Janů, v. R.

chairwoman