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»Practice» Opinions of the CPDP for 2019

»CPDP opinion on the quality of payment service companies CPDP opinion on the quality of payment service companies

OPINION

ON

THE COMMISSION FOR THE PROTECTION OF PERSONAL DATA

Reg. № NDMSPO-01-235 / 2019

Sofia, June 20, 2019

SUBJECT: The quality of companies offering payment services

The Commission for Personal Data Protection (CPDP, Commission) composed of: Chairman: Ventsislav Karadzhov and members: Tsvetelin Sofroniev and Veselin Tselkov, at a meeting held on 19.06.2019, considered a request for an opinion (entry № NDMSPO-01- 235 / 11.06.2019) by the Mayor of Sofia Municipality (SO), Ms. Yordanka Fandakova, requesting an opinion on the definition of the quality "administrator" or "personal data processor" of a contractor of Sofia - "EasyPay" AD . In order to facilitate the payment of due taxes and fees by taxpayers under the Local Taxes and Fees Act (LTFA) between Sofia Municipality and companies are concluded contracts with subject "Acceptance of amounts in the accounts of the CA intended for payment of taxes on Local Taxes, Household Waste Fee and Dog Ownership Fee, as well as Liabilities and Interest for Past Years ". Contractors under the contracts are banks, postal operators and other companies such as EasyPay AD, which provide payment services under the Payment Services and Payment Systems Act (PSPSA).

The referred contracts contain a clause that defines the contractor as a "processor of personal data" within the meaning of § 1, item 3 of the Additional Provisions of the Personal Data Protection Act (PDPA). It should be noted that the contracts were concluded under the previous version of the LPPD and before the CPDP issued an Opinion (Reg. № NDMSPO-01-873 / 10.08.2018) on the quality of banks in their relationships with customers. In order to bring the contracts in line with the requirements of Regulation (EU) 2016/679, correspondence was exchanged between the CA and the contractors, and the contractors expressed a firm opinion that their definition in the contracts as "personal data processors" does not properly reflect the essence of the process of providing the service for payment of amounts to the budget of Sofia Municipality. In view of the specifics of the activity, they express the position that they are independent controllers of personal data, referring to the

arguments set out in the above opinion of the CPDP. Moreover, they argue that given the difference between administrator and processor and in view of the fact that the latter does not act independently, but on behalf of the administrator and only on his documented order, the activities on the subject of contracts in accordance with Art. 28 of the Regulation would be practically unenforceable.

Legal analysis:

The provision of payment services to individuals and legal entities - subject to the above-mentioned contracts, is a regulatory activity comprehensively regulated in the Payment Services and Payment Systems Act (PSPSA) and relevant bylaws, which is carried out by banks, electronic companies money, payment institutions, etc. on the basis of a license issued and under the supervision of the Bulgarian National Bank (BNB). It should be noted here that one of the conditions for issuing a license is the provision of "security rules that protect payment service users against identified risks, fraud or illegal use of sensitive and personal data" (argument Art. 10, para. 4, item 6, item "k" of the Law on Public Procurement. In addition, the provision of Art. 3, para. 4 of the PDPA obliges payment service providers and payment systems to process personal data of payment service users in compliance with the requirements for personal data protection.

In connection with the above, there is a regulatory obstacle for Sofia Municipality to give instructions to EasyPay AD how to process personal data, as both parties to the contract are obliged to comply with relevant special legislation, including the relevant provisions. concerning the definition of the purposes and means of processing. This is also the case with regard to the specific obligations of payment service providers imposed on them under the Anti-Money Laundering Measures Act. In practice, this means that Sofia Municipality and EasyPay AD are limited in determining the purposes and means for processing personal data required for the provision of payment services. It is evident that the parties to the contract could not fulfill the imperative requirements (eg the performance of audits by the CA) of Art. 28 of the General Regulation governing the relationship "controller" - "processor".

In view of the above, it can be assumed that payment service providers, operating under strict and comprehensive regulations, on the basis of a license and under the control of explicitly authorized public bodies, such as banks and postal operators, would they could be considered as processors of personal data, but as independent administrators. In this regard, the CPDP has expressed a similar thesis in a number of its opinions / reg. № NDMSPO-01-859 / 01.08.2018, NDMSPO-17-604 / 20.06.2018 and NDMSPO-01-873 / 10.08.2018 / available on its official website.

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

OPINION:

Like banks and postal operators, payment service providers operating under strict and comprehensive regulations could not be seen as processors but as independent controllers of personal data.

THE CHAIRMAN:

MEMBERS:

Ventsislav Karadzhov

Tsvetelin Sofroniev / p /

Veselin Tselkov / p /

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