Decision on appeal with registration № PPN-01-111 / 20.02.2018 DECISION» PPN-01-111 / 2018 Sofia, 04.12.2018 Commission for Personal Data Protection ("Commission" / "CPDP") composed of: members - Tsanko Tsolov, Tsvetelin Sofroniev and Veselin Tselkov, at a regular meeting held on 10.10 .2018, based on Art. 10, para. 1, item 7 of the Personal Data Protection Act, considered on the merits a complaint with registration № PPN-01-111 / 20.02.2018, filed by VA against a financial institution (FI). The administrative proceedings are by the order of art. 38 of the Personal Data Protection Act (PDPA). The complainant informed that on 09.02.2018 he received a call on his mobile phone number. The searcher asked about a person who was his neighbor. Mr. V.A. learned that the call was from a representative of F.I., who, through the applicant, was looking for the woman in question, with whom F.I. there are unsettled relations. It was explained to him that in 2015 he was a client of F.I. and from there have access to his personal data. Given the fact that Mr. V.A. is not a party to the current contract with FI, the same submitted an application for access to personal data, with a copy to the CPDP. It also expresses a desire under Art. 28a of the LPPD for blocking and deleting his personal data. On March 22, 2018, Mr. V.A. inform the Commission that the administrator has not ruled on the request. On 9 May 2018, the applicant resubmitted the application, to which a reply was received. Considers that the answer does not meet the regulatory requirements and does not contain the required information. In addition to the complaint, Mr. V.A. informs that on 16.08.2018 he was again sought by an employee of F.I. in connection with the search for a third party. The applicant considered that the administrator F.I. in his capacity of controller of personal data has violated his rights under Chapter Five of the LPPD, and the violations continue to this day. Attached to the complaint and the additions to it are: application for access and deletion of personal data, receipt with data on the addressee and the addressee, response to the application. 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 letter ref. № PPN-01-111 / 2018 # 8 / 20.07.2018 the personal data controller F.I. has been notified on the grounds of Art. 26 of the APC for the initiated administrative proceedings. There is an opportunity to express an opinion with relevant evidence. The Commission received one with registration № PPN-01-111 # 7 / 02.07.2018 for unfoundedness of the complaint. From F.I. inform that they have not found an application from 09.02.2018. to have been registered in F.I. In F.I. An application was received from Mr. V.A. dated 09.05.2018, which is registered with ent. № 0100/2336 dated 14.05.2018. (“The Application”) and to which a reply was sent on 07.06.2018. Under item 1, item 2, item 3, item 5 and item 7 of the application,

they note that on 18.12.2014 between F.I. and Mr. V.A. a Consumer Credit Agreement № **** (“the Agreement”) has been concluded. Prior to the conclusion of the Contract and in implementation of the applicable to 18.12.2014 Law on Personal Data Protection of Mr. VA is provided against the signature Request-declaration for consumer credit. The submitted Request-Declaration dated 18.12.2014 comprehensively answers the questions posed in the Application. 1, item 2, item 3, item 5 and item 7 questions. The applicant, Mr V.A. has signed the information thus provided to him, thereby declaring that he is aware of it. Information regarding the processing of personal data was again provided to the complainant in the Contract signed by him (Article 25.13.2). Information on the issues raised by the complainant at the initial conclusion of the Contract was not provided only under item 7 of the Application, insofar as the LPPD does not require the controller to indicate in the information to the data subject the guarantees for personal data protection. The right of access according to art. 28 of the LPPD (respectively Article 13 of the General Regulation on Data Protection) also does not provide for an obligation for the controller to inform the data subject about the protection measures applied by the controller. From F.I. note that in their reply to the complainant they stated that his data were processed to acquaint him with "information to enhance financial culture, including information with advertising and promotional content, through the available channels of distance communication", which is a kind of direct marketing. They note that on the basis of the consent given for the processing of personal data for the purposes of direct marketing, which was not withdrawn in the time after the conclusion of the Contract, Mr. V.A. advertising SMS messages were also sent, which the complainant unjustifiably claimed to have been sent illegally. The dates on which the messages were sent precede the date of June 7, 2018, on which the Application was processed and the response was sent to Mr. V.A. In this sense, it was not possible F.I. reflect the complainant's objections to the use of his personal data for direct marketing purposes at the time the messages in question were sent. In connection with item 6 of the Application, in the response of 07.06.2018. it is explicitly stated that the personal data of the complainant are processed only by authorized employees of F.I. or by natural or legal persons with the status of "data processors" within the meaning of the Regulation. What V.A. request under item 6 to find out in what way the employees of F.I. are authorized to process personal data is inadmissible due to its excessiveness and insofar as it requires the provision of job descriptions and other confidential information, to which neither the LPPD nor the Regulation grants the right of access to data subjects. Regarding the issues set out in item 4 of the Application, the opinion of F.I. is that it takes due care to protect the personal data of its customers, current and former. From F.I. consider that they have always applied the requirements of the applicable legislation on personal data protection in the

Republic of Bulgaria, and have never allowed themselves to compromise in the application of legal requirements. Under item 8 of the Application by F.I. note that they will accept the Application of V.A. as an exercise of the right to limit processing and the necessary steps in this direction will be taken. Also F.I. will accept the application as an exercise of the right to object to the receipt of information with advertising and promotional content and will suspend the processing of Mr. VA's data. for this purpose. With a letter ex. № PPN-01-111 / 2018 # 8 / 20.07.2018 by F.I. was required to provide the results of the inspection in connection with the conversation held on 09.02.2018 between an employee of F.I. and Mr. VA, as well as the conversation itself. In response, a statement was received with the requested information and a recording of the conversation. The Commission received an addendum to the complaint, filed with Reg. № PPN-01-111 # 10 / 22.08.2018. notifies of a repeated conversation at the initiative of an employee of F.I. In order to exercise its powers, the Commission must be properly seised. The considered complaint contains the obligatorily required requisites, specified in art. 30, para. 1 of the Rules of Procedure of the Commission for Personal Data Protection and its administration, namely: there are data about the complainant, nature of the request, date and signature, in view of which it is regular. The appeal is procedurally admissible - filed within the term under Art. 38, para. 1 LPPD by a natural person with a legal interest. It is the subject of an allegation of unlawful processing of the complainant's personal data and is directed against a personal data controller. The complaint is addressed to a competent body to rule - the Commission for Personal Data Protection, which according to its powers under Art. 10, para. 1, item 7 of the LPPD considers complaints against acts and actions of the personal data controllers, which violate the rights of individuals under the LPPD. At a meeting of the Commission held on 05.09.2018, the complaint was accepted as procedurally admissible and as parties in the administrative proceedings were constituted: complainant - V.A. and respondent - FI, in the capacity of personal data controller. The parties have been regularly notified of the open meeting of the Commission for consideration of the merits of the complaint scheduled for 10.10.2018. The second conversation, listed in the addendum to the complaint, was requested to clarify the case. The required evidence has been received by the Commission. In the open hearing for consideration of the complaint on the merits the parties do not appear, do not represent themselves. In the factual situation thus established, the Commission examined the complaint on the merits, accepting the complaint as partially well-founded, on the basis of the following conclusions: The Commission acknowledges from 25.05.2018), and others - after 25.05.2018. In this sense, the processing covers the application of both regulations - LPPD and Regulation 2016/679. The Personal Data Protection Act regulates the protection of the rights of individuals in the processing of their personal data. The purpose of the

law is to guarantee the inviolability of the person and private life by ensuring the protection of individuals in the event of improper processing of related personal data in the process of free movement of data. 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 and repealing Directive 95/46 / EC (General Regulation on Data Protection) regulates the rules on the protection of individuals with regard to the processing of personal data, as well as the rules on the free movement of personal data. The purpose of the Regulation is to protect the fundamental rights and freedoms of individuals , and in particular their right to protection of personal data. The complaint and the additions to it contain three allegations of violations: 1. Processing of personal data for contact with a third party. It is undisputed that there was a legal relationship between the parties in connection with the granting of consumer credit. The contract was fulfilled on 25.09.2015. There is no dispute about the conversations held on 09.02.2018 and 16.08.2018 between employees of F.I. and Mr. V.A. The talks took place before and after the implementation of Regulation 2016/679, respectively. The provisions relevant to the present case are similar in content and there is no contradiction between them. According to the legal definition given in Art. 2, para. 1 of the LPPD, personal data are any information relating to a natural person who is identified or can be identified directly or indirectly by an identification number or by one or more specific features. The scope of the concept of personal data is further developed in Art. 4, para. 1, item 1 of Regulation (EU) 2016/679 - "personal data" means any information relating to an identified or identifiable natural person ("data subject"); an identifiable natural person is a person who can be identified, directly or indirectly, in particular by an identifier such as name, identification number, location data, online identifier or one or more features specific to the natural, the physiological, genetic, mental, intellectual, economic, cultural or social identity of that individual. From the records of the conversations presented, it was established that the applicant was indisputably identified by F.I. It follows from the attached Consumer Credit Application-Declaration and the subsequent conclusion of the credit agreement itself that the personal data of Mr. VA have been processed by the administrator on the grounds of art. 4, para. 1, items 1, 2, 3 and 7 of LPPD, respectively Art. 6, para. 1, p. "A", "b", "c", "f" of the Regulation, but the stated grounds refer only to the processing of data for the specific purpose for which the data were collected - the specific consumer credit agreement. The use of the complainant's personal data when calling him to contact a third party unrelated to Mr VA's credit agreement constitutes the processing of "use" data within the meaning of § 1, item 1. of the Additional Provisions of LPPD, respectively Art. 4, item 2 of the Regulation. As a data processing action, the same should be done in accordance with the provisions of the

LPPD and Regulation 2016/679. As stated, the personal data of Mr. V.A. are collected for a specific purpose - concluding and executing a consumer loan agreement. The use of the applicant's data to search for a third party through him has nothing to do with the purposes for which the data were originally collected. Moreover, the contractual relationship between F.I. and the complainant were completed in September 2015 and the processing should have been limited to storing the data for a certain period in connection with the statutory obligations to the administrator and the legitimate interests of the administrator (for provability in counterclaims, inspections by public authorities in the exercise of their powers). The search for a third party - a debtor of F.I. does not represent a legitimate interest, as the interests of the administrator do not take precedence over those of the natural person to whom the data relate, as required by Art. 4, para. al. 1, item 7 of LPPD, respectively Art. 6, para. 1, letter "e" of the Regulation. From the above it is necessary to conclude that the personal data of Mr. VA have been additionally processed for purposes different and incompatible with the initial specific, explicitly indicated and legitimate purposes for which they have been collected, whereby the principle of limiting the purposes of processing under Art. 2, para. 2, item 2 of LPPD, respectively Art. 5, para. 1, p. "B" of Regulation 2016/679. In the event of such an infringement, the action must be upheld in that regard. The Commission has operational independence, assessing which of its corrective powers under Art. 58, para. 2 of Regulation 2016/679 to implement. The assessment is based on the considerations of purposefulness, expediency and effectiveness of the decision, and an act should be enacted that best protects the interests of society and the data subject. The powers under Art. 58, para. 2, without the letter “i”, have the character of coercive administrative measures, the purpose of which is to prevent the commission of a violation or, if the commission has started, to stop it, thus objectifying the conduct required by law. The administrative penalty "fine" or "property sanction" under Art. 58 par. 2, letter "i" has a sanction character. Regarding the application of the appropriate corrective measure under Article 58, para. 2 of the Regulation should take into account the nature, gravity and consequences of the infringement, assessing all the facts of the case. The assessment of what measures are effective, proportionate and dissuasive in each case will have to reflect the goal pursued by the chosen corrective measure, ie. restoration of compliance with the rules, sanctioning of illegal behavior or both (as provided for in Article 58, paragraph 2, letter "i"). In determining a corrective measure, the Commission takes into account that according to the nature of the violation, as well as the desire of the complainant not to be sought for contact with a third party, an appropriate measure is that under Art. 58, para. 2, letter “e” of the Regulation - to impose on the controller a final restriction on the processing of personal data until the expiration of the period for their storage, as the relationship between the complainant

and the controller has ended. Along with the specified corrective measure, considering the specific circumstances of the case in accordance with Art. 83, paragraph 2, the Commission finds that it should impose in addition a property sanction on the administrator on the grounds of art. 58 (2) (i) of Regulation 2016/679. In determining whether to impose a pecuniary sanction, as well as its amount, the following circumstances have been taken into account according to Art. 83 (2) of the Regulation: Letter "a" - this is the main reason for imposing a pecuniary sanction. There are two calls - on 09.02.2018 and 16.08.2018, and the second was made after notifying the administrator of the initiated proceedings in the Commission in connection with the same processing. In their opinions to the supervisory authority, the representatives of the controller stated that they found the complaint in the complaint worrying, appointed an internal inspection, which found that the employee had acted illegally and on his own initiative in deviation from the rule that personal data can only be processed. for the purposes for which they were collected, but nevertheless on 16.08.2018 the same violation followed. As mitigating circumstances are taken into account that the personal data of one subject were processed illegally and no property damage occurred; Letter "b" - the administrator is a legal entity that does not form a will; Letter "c" - no property damage caused that requires removal; Letter "d" - not enough steps have been taken to bring the due behavior in line with Art. 32, para. 4 of the Regulation, even after the proceedings before the Commission; Letter "e" - the subject of the complaint does not affect the breach of data security within the meaning of Article 33 of the Regulation; Letter "e" - the administrator acknowledges the violation, in the course of the proceedings cooperates with the supervisory authority, has conducted an internal investigation into the case; Letter "g" - names, address and telephone number are processed. These data are not special categories of personal data or national identifier that are subject to greater protection; Letter "h" - after referral to the supervisory authority by the data subject; Letter "i" - no measures have been imposed under Art. 58, para. 2 of the Regulation; Letter "j" - at the time of implementation there are no approved codes of conduct; Letter "k" - not established. In the light of the circumstances thus discussed, the Commission finds that the pecuniary sanction should be close to the minimum. 2. Violated right of access to personal data and request for their deletion. 2.1. Applications submitted and deadline for response. The complainant claims that on February 9, 2018 he submitted an application to F.I. for access to personal data and a request for their deletion, to which there is no answer. As far as there is no evidence of its sending and receiving by the administrator, no definite conclusion can be made about bringing it to the attention of F.I. In this sense, the allegation of non-response remains unproven. On 09.05.2018 another application was sent, received on 14.05.2018. In this case the application was submitted on the basis of the provisions of LPPD - Art. 26 in connection with

Art. 28, para. 1 and Art. 28a, item 1. The term for reply under LPPD is 14 days, but until its expiration the application of Regulation 2016/679 has started, in which the term is one month from the receipt of the request. In the event of a conflict of time limits, the more favorable time limit for the person for whom it is set should apply. In addition, it is regulated by a normative act of a higher rank. In this sense, the claim of FI that the deadline for ruling is one month and the response sent on 07.06.2018 is on time is justified. 2.2. Content of the response to the application. The applicant disputes the answer received, which he finds does not provide the necessary information and does not specifically answer any of the questions asked. The application contains 7 questions. Four of the issues are not subject to the right of access under Art. 28, para. 1 of LPPD, nor under Art. 15, para. 1 of the Regulation. Questions 3 and 4 - related to the lawful processing of personal data in this case, as well as the relevance of the purposes of processing, may be subject to supervision by the CPDP or the court. Question 6 also does not concern the right of access, insofar as the employee of the administrator is not a "processor of personal data" within the meaning of Art. 4, item 8 of the Regulation. Question 7 - for the undertaken guarantees for personal data protection there is a statutory obligation for the controller according to the processed personal data and possible risks to take the necessary technical and organizational measures for their protection, but these measures are also not subject to the right of access by data subjects.Questions 1 and 5 relate to each other and provide partial information. It is stated that on the basis of the concluded credit agreement the personal data are stored as a form of processing, and the basis is a statutory obligation and a legitimate interest of the controller, which means that personal data are not deleted. With regard to the provision of data to third parties, it is stated that the complainant's data may be provided to "personal data processors". What is missing in the answer is the remaining part of Art. 15, para. 1, p. "C" of the Regulation, namely "recipients or categories of recipients to whom the data have been disclosed", i.e. the specific recipients to whom the data were actually disclosed are missing.

Item 2 of the Application does not contain information in the answer. The personal data controller is obliged to answer clearly whether there is an automated decision-making within the meaning of Art. 22, para. 1 of the Regulation. Regarding the logic of processing, both under the LPPD and under Regulation 2016/679, the information about the logic used is not due in all cases. According to Art. 15, para. 1, p. "H" of the Regulation of the data subject provides information on the existence of automated decision-making, including profiling, referred to in Art. 22, para. 1 and 4, and at least in these cases information on the logic used should be provided. This is a question related to the processing itself, which the administrator should assess whether it falls under the hypothesis of Art. 22, para. 1 and 4, taking into account the specifics of the specific automated processing.

In case of such established violations of the right of access of the subject under Art. 15 of the Regulation, the complaint in this part should also be upheld. As the most appropriate corrective measure within its operational independence in accordance with the reasons set out in item 1 of the statement, the Commission finds that it is the one under Art. 58, para. 2, p. "C" of the Regulation - to answer the questions posed in the application for access, which are respectively specified in Art. 15, para. 1 letters "c" and "h" of the Regulation.

2.3. Application for deletion of personal data.

In the second part of the application a request was made for deletion of the processed data of the applicant. The reply states that in fulfillment of a legal obligation to store data for a limited period of time, as well as in view of its legitimate interest, the controller stores personal data for a period of 5 years after the termination of the contractual relationship. The term thus determined is proportionate given the administrator's obligation to keep accounting documents, as well as the ability to prove his claims in the event of counterclaims or inspections by the competent authorities.

In this sense, the refusal to delete personal data is lawful.

3. Direct marketing.

The applicant informed of two communications received from F.I. with proposals for funding - on 24.04.2018 and 01.06.2018. The latter was sent after the submission of the application for access and deletion of personal data, but before sending the answer to it.

Direct marketing is the offering of goods and services to individuals by mail, telephone or other direct means, as well as a survey to investigate the goods and services offered. The content of the two text messages is precisely the provision of services. As for the answer that the data is also processed for the provision of "information to increase financial culture", the Commission shares FI's statement that this is a way to promote the activities of the financial institution and can be considered as variety of direct marketing.

In item 2 of the submitted Request-declaration for consumer credit, Mr. VA has given his explicit consent for his personal data to be processed for direct marketing within the meaning of the LPPD, including to be sent letters with advertising and promotional content, advertising SMS and e-mails, including those related to the offer of other financial or combined products.

In that regard, the applicant's assertion that he did not consent to the processing of his personal data for direct marketing purposes is unfounded.

The data subject has the right at any time to object to the processing of his data for the purposes of direct marketing. In this case, there is no explicit objection in this sense, although indirectly the request for deletion of personal data also aims at this. In connection with the latter, the administrator's statement is credited that the application for access and deletion of personal data was processed on 07.06.2018 - after sending the second text message on 01.06.2018. As the application for deletion was not accepted, the administrator has indicated to the applicant the possibility of a specific objection concerning the processing of data for the purposes of direct marketing.

It follows from the foregoing that the administrator did not infringe the applicant's rights in relation to the direct marketing.

The applicant's assertion that it restricts the possibility of filing an objection only by electronic means is also unfounded. Indeed, in the application of Mr VA the electronic means of communication is indicated as preferred, which is why the controller has indicated this way of exercising the rights of the data subject.

The Commission for Personal Data Protection, taking into account the facts and circumstances presented in the present administrative proceedings, and on the grounds of Art. 38, para. 2 of the LPPD,

RESOLVED:

1. Declares as unfounded the complaint Reg. № PPN-01-111 / 20.02.2018, filed by V.A. against a financial institution, under items 2.1, items 2.3 and 3 of the reasons;

2. Declares the complaint reg. № PPN-01-111 / 20.02.2018, filed by V.A. against the financial institution for violation of Art. 15 of Regulation 2016/679. Pursuant to Art. 58, paragraph 2, letter “c” of Regulation 2016/679 orders the administrator to provide the complainant with the requested information under Art. 15 (1) (c) and (h) of Regulation 2016/679 within 7 days of the entry into force of the decision, for which evidence must be provided to the Commission;

3. Declares the complaint reg. № PPN-01-111 / 20.02.2018, filed by V.A. against the financial institution for violation of Art. 5 (1) (b) of Regulation 2016/679. Pursuant to Art. 58, para. 2, letter “e” of Regulation 2016/679 imposes a final restriction on the processing of the complainant's personal data until the set deadline for their storage. In addition to the said measure on the grounds of Art. 58, paragraph 2, letter “i” in connection with Art. 83, paragraph 5, letter "a" of Regulation 2016/679 imposes on the administrator a financial institution with UIC ******, with registered office and address of management: Sofia, *****, administrative penalty - pecuniary sanction in the amount of BGN 1,000 (thousand) for violation of Art. 5 (1) (b) of Regulation 2016/679.

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.

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

Bank of the BNB - Central Office

IBAN: BG18BNBG96613000158601 BIC BNBGBGSD

Commission for Personal Data Protection, BULSTAT 130961721

In case the sanction is not paid within 14 days from the entry into force of the decision, actions will be taken for its forced collection.

MEMBERS:

Tsanko Tsolov

Tsvetelin Sofroniev / p /

Maria Mateva / p /

Veselin Tselkov / p /

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