OFFICE FOR PERSONAL DATA PROTECTION

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* UOOUX00DKAEU *

Ref. UOOU-09633 / 18-35

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 in accordance

with the provisions

§ 152 par. 6 let. b) of Act No. 500/2004 Coll., Administrative Procedure Code, as follows:

Dismissal of the party to the proceedings, the company XXXXXX, with its registered office XXXXXX, against the decision of the

Office for

personal data protection ref. UOOU-09633 / 18-30 of 26 June 2019, is rejected and challenged

the decision is confirmed.

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, XXXXXX, with its registered office at XXXXXX ('the party'),

terminated by issuing a protocol on inspection ref. UOOU-08429 / 17-33 of 26 June 2018

subsequently confirmed also within the objection proceedings, by a note of the President of the Office ref. UOOU-

08429 / 17-36 of 27 September 2018, the Office issued decision no. UOOU-09633 / 18-20 of 22.

February 2019.

By decision no. UOOU-09633 / 18-20 of 22 February 2019 was a party to the proceedings, except

submission of a report to the Office's inspector and reimbursement of the costs of the proceedings, imposed within the time

limit to perform

specified corrective measures concerning the processing of personal data carried out under the

business activities of the party to the proceedings.

However, on the basis of the dissolution of the party to the proceedings, the President of the Office issued a decision no. UOOU-

09633 / 18-25 of 10 May 2019, which was the decision no. UOOU-09633 / 18-20 of

22 February 2019 annulled and the case returned to the administrative body of the first instance for a new one

discussion. This was due to the fact that the appellate body found the corrective ones imposed

measures as worded incorrectly. Subsequently, it was issued by the administrative body of the first instance

decision no. UOOU-09633 / 18-30 of 26 June 2019 ('the decision'), which was

imposed on the party to the proceedings, in addition to submitting a report to the Office's inspector and reimbursing the costs of the proceedings

take the following corrective action within the set timeframe:

AND.

II.

Ensure that the personal data of the data subject XXXXXXX is deleted for the purposes of

processing which requires the consent of the data subject.

Ensure legal titles for the processing of personal data of all data subjects against whom it is

party to the proceedings in the position of personal data controller, ie where he has determined the purpose himself

and means of processing, in accordance with Article 6 of Regulation (EU) No

2016/679 of 27 April 2016 on the protection of individuals with regard to processing

personal data and on the free movement of such data and repealing Directive 95/46 / EC (hereinafter

"General Regulation"). In the event that such security does not exist with any data subject

possible, then delete the personal data of such data subject.

III. Conclude a processing contract within the meaning of Article 28 (3) of the General Regulation with XXXXXX,

as a tied representative within the meaning of Section 15 of Act No. 170/2018 Coll., on Distribution

insurance and reinsurance, and further with XXXXXX, so as to ensure that the introduction

processors who perform tasks related to personal processing for the party to the proceedings

data will have a proper legal title.

services a

they are in position

personal data controller,

However, the party filed a proper appeal against the decision. In this context, he expressed above all

disagreement with the conclusion that he should be in the position of controller of personal data. Specifically

stated that insurance intermediaries (tied agents) are within the meaning of the relevant laws

sole proprietors. Therefore, they address potential clients themselves, ie they offer their own

intermediary

as

brokerage activity represents its own (tied agent) determined purpose

processing of personal data. Therefore, they, not the party to the proceedings, must have the consent of the data subject.

The tied agent becomes a processor only when he starts offering products and services

the party to the proceedings, who thus becomes the administrator. However, processing does not occur on the basis of

consent, but due to the conclusion of the contract. At this stage, however, the party to the proceedings has not processed

personal data is available, they only get to it at the moment of possible conclusion of the contract

between the client and the contractual partner of the party to the proceedings. At the time of the tied agent

and the client begin to negotiate a specific product from the portfolio of the participant in the proceedings, the administrator is a

contractor

partner of the party to the proceedings, as he determines the purpose of the processing. The party to the proceedings is then

processor and tied agent has the status of a so-called sub-processor, while for these

processing, as this is a specific contract, 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, has been referred to the Office. Consent form processing of personal data used by XXXXXX in obtaining the complainant's personal data was not a form used by the party itself. As the party does not have personal data of potential clients, cannot be attributed to the fault of a particular subordinated insurance intermediary. However, the party introduced for its own associates a sample of the personal data processing consent form that they have forwarded Office.

Finally, the party stated that the administrative body of the first instance had followed the instructions in the decision of the President of the Office ref. UOOU-09633 / 18-25 of 10 May 2019 properly did not settle. The decision is therefore unreviewable and unenforceable and therefore a party to the proceedings proposed its abolition.

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 connection, it stated, first of all, that the party to the proceedings merely repeated its own general arguments concerning the defining characteristics on the basis of which a particular entity defines the position of the controller or processor, with this argument being appealed the body has already settled within the reasoning of its decision ref. UOOU-09633 / 18-25 of May 10, 2019

Nevertheless, it reiterates that it is the trustee, as defined in Article 4 (7) of the General Agreement 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 the tasks associated with the processing of personal data for him is in the position of the processor.

The purpose of the processing must be considered as determined 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 as regards the status of tied agents,

as independent entrepreneurs, resp. other similar entities. Of course not

excluded from the above entities involved in the processing of personal data in question

they will also be in a different position in relation to other personal data processing. In that

In this context, however, it must be remembered that, from a practical point of view, it is impossible for anyone

offered mediation services as such and these services must therefore be in a certain way

specified. If, on the basis of this specification, it was clearly excluded

provision of services of the party to the proceedings, resp. this would be clearly unrealistic, it would have to be

that in this case the party to the proceedings is not in the position of administrator. Conversely, if there is no provision

services of the party to the proceedings are fundamentally excluded, resp. These can be realistically ensured by the participant

considered the administrator. In the latter case, the consent must therefore be evidenced by the participant

management. It should also be noted that the legal title referred to in Article 6 (1) (a) (b) general

the Regulation is applicable to pre-contractual negotiations only if those negotiations have taken place

initiated at the request of the data subject and is therefore necessary if this condition is not met

have another legal title, usually represented by the consent of the data subject.

The party to the proceedings is then 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 the submission of the concept of a contract for the processing of personal data

and the concept of the data subject's consent can only be found as partial steps to comply

remedial measures in question. These require the implementation of the imposed measures

to remedy the relevant entities.

As regards the remedial action in Decision I, this requires the deletion of the decisions in question

personal data only for the purposes of processing, the fulfillment of which requires the consent of the data subject.

Therefore, this obligation does not apply to obligations imposed by special laws. Appellate body

therefore, it found that the administrative body of the first instance formulated the corrective measure I. decision

in accordance with the instructions set out in the decision no. UOOU-09633 / 18-25 of 10 May 2019.

Regarding corrective action II. decision, this requires securing legal titles for

processing of personal data of all data subjects against whom the party to the proceedings is in a position

the controller of personal data, ie where he has determined the purpose and means of processing. So it happened

concretization, as required by the decision no. UOOU-09633 / 18-25 of 10 May

2019. The appellate body therefore found that the administrative body of the first instance of corrective action II.

formulated the decision in accordance with the guidelines in question.

III. decision, this requires the conclusion of the relevant

As for corrective action

whose position vis - à - vis

processing contract with two specified entities,

was reliably classified as a relationship in the previous proceedings

processors vis-à-vis the controller. Thus, it was concretized, as required by the decision

Ref. UOOU-09633 / 18-25 of 10 May 2019. The Appellate Body therefore found that the Administrative Authority

first instance corrective action III. formulated the decision in accordance with the relevant ones

instructions.

The appellant therefore rejected the party's arguments and, after an overall examination

notes that it did not find any errors in the procedure of the administrative body of the first instance. Therefore

decided as set out in the operative part of this decision.

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, September 24, 2019

official stamp imprint

JUDr. Ivana Janů

chairwoman

(electronically signed)