

Home »Practice» CPDP Opinions for 2018 »CPDP Opinion on a Request Received by Bulgarian Posts EAD on Issues Concerning the Application of Regulation (EU) 2106/679 CPDP Opinion on a Request Received by Bulgarian Posts EAD on matters relating to the application of Regulation (EU) 2106/679 OPINION OF THE COMMISSION FOR THE PROTECTION OF PERSONAL DATA Reg. № NDMSP0-01-859 / 01.08.2018 Sofia, 27.09.2018 on the implementation of Regulation (EU) 2016/679 of Bulgarian Posts EAD The Commission for Personal Data Protection (CPDP) composed of: Members: Tsvetelin Sofroniev, Maria Mateva and Veselin Tselkov at a meeting held on 19.09.2018, considered request for opinion with ent. № NDMSP0-01-89 / 01.08.2018 by Mr. Deyan Daneshki, Chief Executive Officer of Bulgarian Posts EAD, which informs us that the company has an individual license to provide universal postal service (UPS) on the territory of the whole country, issued by the Communications Regulation Commission (CRC). It delivers UPS to the users by providing them with equal access to its postal network and under General Terms and Conditions, which on the grounds of Art. 21, para. 5 of the Postal Services Act (PSA), approved by a decision of CRC. The universal postal service includes the following: reception, transportation and delivery of domestic and international postal items; acceptance, transportation and delivery of domestic and international postal parcels - up to 20 kg. and additional services "recommendation" and "declared value". Mr. Daneshki adds that the PSA does not set a requirement, but does not prohibit the postal operator from performing the PSA by signing an individual contract with consumers. This is the practice of the company when the sender of a postal service is a legal entity (state or municipal institution, bank, commercial company, etc.). Due to the fact that they use the service within guaranteed terms and a significant volume, their legitimate interest and / or legal obligation require the conclusion of an individual written contract with Bulgarian Posts EAD. In connection with the above, as well as in order to comply with the rules set out in Regulation (EU) 2016/679, Mr. Daneshki asks for an opinion on the quality of Bulgarian Posts EAD processes the personal data of the sender or recipient of the universal postal service. The following arguments are presented: 1. In its capacity of postal operator and provider of UPS, and in order to deliver the postal item to the recipient, and in case of refusal or inability to find it, return it to the sender, the company processes personal data - name and address of the sender or recipient. When they are natural persons, these data have the status of personal data within the meaning of Regulation (EU) 2016/679; 2. When the service is provided at the postal service, there is a need for indisputable and sustainable identification of the natural person - recipient of the service. The processing of limited to the necessary personal data, including a unique civil number, aims to protect the interests of the rightful recipient from illegal and unscrupulous actions of third parties; 3. Bulgarian Posts EAD independently determines the

purposes and means for processing these personal data; 4. With regard to any personal data contained in postal items and parcels, the company shall only carry out their physical transmission within its postal network. In these cases, the company physically holds personal data, but the process is different from the "storage" operation; 5. The Company does not exercise control over the purposes, grounds or reasons for the presence of personal data in postal items and parcels. The physical transfer of personal data in this case corresponds in its legal construction with the transfer of data from intermediate service providers. Legal analysis Regulation (EU) 2016/679 (General Regulation on Data Protection), which has been in force since 25 May 2018, is the normative act defining the rules related to the protection of personal data of individuals during their processing. The General Regulation builds on the previous data protection regime introduced by Directive 95/46 / EC, transposed into the Bulgarian Personal Data Protection Act of 2002, while taking into account the dynamics of the development of new technologies and data processing activities. personal data. The concept of controller and processor has been introduced by Directive 95/46 / EC and has been further developed in the new European legal framework for the protection of personal data. According to the legal definition of Art. 4, item 7 of the General Regulation, a controller is "a natural or legal person, public body, agency or state structure, which alone or jointly with others determines the purposes and means for the processing of personal data". The quality of administrator is a direct consequence of the fact that a particular legal or natural person has chosen to process personal data for their own purposes or purposes that are regulated by law. In this situation, except where legally required, the controller decides on the need to collect personal data, the categories of personal data, whether to change or modify it during processing, where and how to use this data and for what purpose, whether the data should be disclosed to third parties and what they should be, as well as for how long they will be stored and when and in what way they will be destroyed. In addition, the General Regulation imposes a certain range of obligations on the administrator. It must take appropriate technical and organizational measures relating to data security, taking into account the nature, scope, context and objectives of the data processing, as well as the existing risks to the rights and freedoms of data subjects. In addition, according to the provision of Art. 30 (1) of the General Regulation, the administrator shall maintain a register of the processing activities for which he is responsible. This commitment stems from the principle of accountability and the need for the administrator to be able to demonstrate at all times that he complies with the requirements set out in the Regulation. Processor of personal data is "a natural or legal person, public authority, agency or body which processes personal data on behalf of the controller" (Article 4, item 8 of the General Regulation). The main difference between an

controller and a processor is that the latter does not act independently, but on behalf of the controller of personal data. Their relations are regulated by a contract, which regulates the subject, the term of the processing actions, the nature and purpose of the processing, the type of personal data and the obligations and rights of the controller, incl. to carry out inspections (audits). The General Regulation also introduces specific obligations for the data processor, which are not limited to data security. For example, he is obliged to process personal data only on a documentary order from the administrator. In cases where it is necessary to appoint another data processor, this is done only with the express written permission of the controller. Like the administrator, according to Art. 30 (2) of the General Regulation, the processor also maintains a register of the processing activities for which he is responsible. In addition, for the sake of even greater clarity, the provision of Art. Article 28 (10) of the General Regulation expressly provides that if the processor begins to determine the purposes and means of processing himself, he is automatically considered an administrator. The division of roles and responsibilities between the controller and the processor has one main purpose, namely to ensure that the processing of personal data takes place in accordance with the requirements of Regulation (EU) 2016/679 and accordingly ensures the protection of data subjects' rights.

. The public relations related to the performance of postal activity on the territory of the Republic of Bulgaria are exhaustively regulated in the Postal Services Act (PSA) and the respective by-laws. Postal services include receiving, transporting and delivering postal items; receiving messages transmitted in physical or electronic form by the sender, processing and transmitting them by electronic means and delivering these messages to the recipient as postal items; postal money orders and courier services. Postal operators (such as Bulgarian Posts EAD) are subject to licensing and control by the Communications Regulation Commission. In addition, according to Art. 21 of the PSA, the postal operators are obliged to prepare general conditions of the contract with the users of the services. They regulate the terms and conditions for the provision of this type of services and determine the rights, obligations and responsibilities of the parties to the contract. The above-mentioned norm also regulates the obligatory elements that the postal service operators must include in them, as it is not necessary to sign individual contracts with the consumers. The principle of accountability under Art. 5 (2) of Regulation (EU) 2016/679 requires participants in trade and civil turnover, taking into account their activities, to determine for themselves what is their legal relationship in relation to their personal data - independent controllers, controller and processor within the meaning of Art. 28 or joint administrators under Art. 26 of the General Regulation. Their choice should ensure not only formal but also substantive compliance with the requirements of Regulation (EU) 2016/679 and, accordingly, effective protection of

the rights of data subjects. Also, it should be borne in mind that the provision of services, which usually exchange personal data between the contracting authority and the contractor, does not automatically lead to a relationship between administrator and processor within the meaning of Art. 28. Another important aspect to which special attention should be paid is the high degree of regulation of the activity of postal operators. In practice, this means that both they and their customers have a limited opportunity to determine the goals and means of personal data processing in the provision of postal services. This circumstance must be fully taken into account when concluding contracts with other administrators. of personal data, incl. financial institutions and online merchants in order to avoid violating the applicable legal framework. In connection with the above arguments, without making it an absolute rule, it can be assumed that companies that provide services under strict and comprehensive legislation, on the basis of a license or similar individual permit from the state and under the control of explicitly designated public authorities, in principle could not be considered as processors of personal data, but as independent administrators. Examples of such administrators are postal operators, banks, insurance companies and others. In these cases, the contracting authority could not indicate to the service provider how exactly to process the personal data provided by him, as both parties are obliged to comply with the relevant special legislation, incl. the provisions on the processing of personal data contained therein.

In addition to the above, the Commission for Personal Data Protection has issued an opinion (NDMSPO-17-604 / 20.06.2018) on an identical case.

In view of the above and on the grounds of Art. 58 (3) (b) of Regulation (EU) 2016/679, the Commission for Personal Data Protection adopted the following

OPINION:

1. In principle, companies providing services under strict and comprehensive legislation, on the basis of a license or similar individual authorization from the state and under the control of explicitly designated public authorities, could not in principle be considered as processors of personal data, but as independent administrators. Examples of such administrators are postal operators, banks and insurance companies.
2. Given the diversity of public relations and in accordance with the principle of accountability, regulated in Art. 5 (2) of Regulation (EU) 2016/679, participants in trade and civil turnover should determine in each case what is their legal relationship in relation to their personal data - independent controllers, controller and processor or joint controllers. Their choice should not

be formal and should ensure maximum compliance with the requirements of Regulation (EU) 2016/679 and effective protection of data subjects' rights.

MEMBERS:

Tsvetelin Sofroniev / p /

Maria Mateva / p /

Veselin Tselkov / p /

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2106/679

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