

On the letterhead of the Commission for Personal Data Protection

DECISION
OF
THE COMMISSION FOR PERSONAL DATA PROTECTION
reg. No НДМСПО-01-135/2019
[NDMSPO-01-135/2019]
City of Sofia 25.03.2019

REGARDING: *a request for a decision pursuant to Article 46(3)(b) of Regulation (EU) 2016/679.*

On 20 March 2019, the Commission for Personal Data Protection (the CPDP), consisting of: Tsanko Tsolov, Tsvetelin Sofroniev and Veselin Tselkov, examined a letter with an incoming No НДМСПО-01-135/07 March 2019 from Mr Boyko Atanasov regarding the Chair of the Financial Supervision Commission (the FSC). The request pointed out that the FSC had received a draft administrative arrangement jointly drawn up by the International Organisation of Securities Commissions and the European Securities and Markets Authority pertaining to the provision of personal data to a third country or an international organisation. It states that under Article 46(1) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), due to the absence of a decision assessing the adequacy of the level of protection under Article 45(3) thereof, personal data may only be transferred to a third country or a public authority subject to appropriate safeguards and subject to the provision of effective and enforceable rights and effective redress to data subjects.

Mr Atanasov is pointing out that, pursuant to Article 46(3)(b) of the General Data Protection Regulation, appropriate safeguards can be, *inter alia*, provisions to be inserted into administrative arrangements between public authorities or bodies which include enforceable and effective data subject rights, provided that the competent authority has authorised their

implementation. In this regard it was stated that, during its meeting on 12 February 2019, the European Data Protection Board had given a positive opinion on the proposed administrative arrangement.

Given the above and the circumstance that each regulator (including the FSC) exchanging information with at least one third country must initiate the communication with the competent national data protection authority in order to obtain signing authorisation and observe the administrative arrangement for the provision of appropriate safeguards for the protection of personal data transferred to a third country, as well as the fact that the FSC, as a member of the International Organisation of Securities Commissions, is a party to the Multilateral Memorandum of Understanding on Consultation, Cooperation and Exchange of Information, a request for a decision was submitted to the CPDP for an opinion on the attached administrative arrangement.

Legal Analysis

The incorporation of provisions to be inserted into administrative arrangements between public authorities or bodies which include enforceable and effective data subject rights was introduced in Article 46(3)(b) of the General Data Protection Regulation as a possibility where, in the absence of a decision under Article 45(3) of the GDPR (a decision for an adequate level of data transmission protection), a controller or processor may transfer personal data to a third country or an international organisation only if the controller or processor has provided appropriate safeguards, and if enforceable data subject rights and effective legal remedies for data subjects are available. The aforesaid appropriate safeguards envisaged under an administrative arrangement are applicable subject an authorisation by the competent supervisory authority.

Pursuant to Article 70, the European Data Protection Board (the EDPB) ensures the consistent application of the GDPR within the European Economic Community, and under Article 64(2) thereof the Chair of the Board or the Commission may request that any matter of general application or producing effects in more than one Member State be examined by the Board with a view to obtaining an opinion.

The administrative arrangement put forward for examination is the result of two years of work by the EDPB, in particular by the International Data Transfer and Financial Affairs working subgroups, in cooperation with the European Securities and Markets Authority (the

ESMA), which acted both on its own behalf and as an intermediary of the positions of the national financial supervision authorities, including in the negotiations with the International Organisation of Securities Commissions (the IOSCO), providing assistance to the two international organisations in the preparation of the document, particularly with regard to the inclusion of the appropriate safeguards required under the GDPR for the transfer of data subject data. The administrative arrangement was developed in six working versions and in September of 2018 it was proposed for approval during the plenary session. Then the structure of the administrative arrangement was approved, and specifically the compensation and supervision mechanisms. The final version was presented to the Chair of the EDPB via the respective letter by the ESMA and the IOSCO of 2 January 2019, based on which the Chair requested the opinion of the Board pursuant to Article 64(2), in conjunction with Article 70 of the GDPR.

The subject matter of the administrative arrangement is the transfer of personal data of data subjects by financial supervision authorities from the European Economic Community (a list of the countries will be included as an Annex A to the administrative arrangement) and financial supervision authorities outside the European Economic Community (a list of the countries will be included as an Annex B to the administrative arrangement). The administrative arrangement represents a supplement to the already existing arrangements for the exchange of information pertaining to financial supervision, and it will affect both supervision actions and enforcement actions. The arrangement incorporates all relevant rights of the subjects guaranteed by the GDPR, such as the right of access, to erasure, of information, to rectification, to restriction of processing, and data transfer is limited only to the legitimate and specific purpose in support of the supervisory authority receiving the data, in adherence to their legal duties of oversight, control, imposing of penalties and enforcement.

Some of the other safeguards included in the administrative arrangement are guaranteeing the principle of transparency, with each supervisory authority being obliged to notify the data subject how and when their data may become the subject of a transfer, what kind of organisations may receive the data, the rights conferred to the subject under the General Data Protection Regulation, etc., via individual notifications to the data subject.

The obligations of the financial supervision authorities also include the identification of personal data subject to transfer, the provision of information, including on the relevant website, regarding the applicable safeguards in a data transfer to another supervision

authority, as well as ensuring the data subject's right of access for the purposes of the rectification, supplementation and updating of their data. These include the formal obligation for the non-disclosure of the information received under this arrangement, and the dissemination of this information is only admissible with the prior written consent of the supervisory authority providing it or for the protection of public interest or for the purposes of enforcement measures of civil or administrative nature. Last but not least, the arrangement envisages a time limit with regard to the personal data storage (no longer than necessary), as well as the right to compensation, including financial one, in the event of a potential breach of the data security of each subject, before the competent national jurisdiction.

As an additional safeguard, a supervisory mechanism has been introduced, envisaging that each financial supervision authority must periodically review their own policies and procedures for the implementation of the administrative arrangement, which is to be presented to an Assessment Group, established as a subcommittee under the IOSCO and conducting periodic reviews and assessments on the application of the safeguards envisaged in the administrative arrangement. It will have the capacity to not only track and assess the observance of the safeguards, but also to prescribe the termination of a data transfer to a given supervisory authority and to propose its exclusion from the arrangement. The termination of a transfer can also be done at the individual initiative of a transmitting supervisory authority, in the event that the latter establishes that the receiving authority does not abide by the safeguards envisaged in the administrative arrangement. Each of the supervisory authorities can leave the administrative arrangement via a thirty-day advance notice, and any amendment to the arrangement must be notified to the EDPB.

In view of this arrangement, pursuant to Article 64(2) of the General Data Protection Regulation, during a session held on 12 February 2019, the EDPB gave a positive opinion on the text and urged all national competent authorities, upon the announcement of an authorisation for this administrative arrangement, exercising their powers under Article 57(1)(a) of the GDPR, to envisage an obligation for the national financial supervision authority to report each suspension of transfer, to provide on an annual basis information regarding the complaints and objections received from data subjects, as well as to provide information regarding cases where data subjects have not been compensated pursuant to the terms and conditions under the administrative arrangement, as well as of the respective actions taken by the Assessment Group on the matter.

It should be noted that in the event that the national authority – the Commission for Personal Data Protection – does not accept the expressed positive opinion of the EDPB under Article 64(2) of the GDPR, the applicable provision will be Article 65(1)(c) of the GDPR and the EDPB will adopt a binding decision with regard to the national authority.

In view of the above and pursuant to Article 58(3)(i) of Regulation (EU) 2016/679, the Commission for Personal Data Protection adopted the following

DECISION:

1. The Commission for Personal Data Protection authorises the making of data transfers pursuant to Article 46(3)(b) of the GDPR, via the implementation of appropriate safeguards, as envisaged in the administrative arrangement, for the transfer of personal data between the financial supervision authorities of the countries from the European Economic Community and authorities that are not from the European Economic Community.

2. The personal data transfers envisaged in the administrative arrangement under item 1 can be carried out after the entry into force of the administrative arrangement, for the duration of the arrangement and only with regard to recipients in a third country or international bodies that have signed the arrangement.

3. The assessment whether data transfers under item 2 can be made for each individual case shall be the burden of the personal data administrator, and they must keep information about each transfer made.

4. The Financial Supervision Commission is obliged to report to the Commission for Personal Data Protection for each suspension of transfer and annually provide information regarding the complaints and objections received from data subjects, as well as information regarding cases where data subjects have not been compensated pursuant to the terms and conditions under the administrative arrangement, as well as the respective actions taken by the Assessment Group with the IOSCO.

MEMBERS:

TZANKO TZOLOV

CVETELIN SOFRONIEV

VESELIN TSELKOV