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CORRELATIONS BETWEEN THE OUTSOURCING ACTIVITY THAT CAN BE CARRIED OUT BY CREDIT INSTITUTIONS AND THE PROTECTION OF PERSONAL DATA

Judit Lisák[1]

ABSTRACT

In the operation of credit institutions, the legal institution of outsourcing is becoming increasingly important. In the framework of this, credit institutions perform some of their activities for financial reasons, economies of scale, or for other reasons, such as their need for access to new technologies, not independently within their own organizational framework, but with the assistance of an external service provider.[2] In order to comply with prudential requirements, credit institutions shall meet a number of legal and supervisory criteria even if they wish to use the assistance of a third party for any of their activities. However, if the governing regulatory regulations are not in compliance with each other, even just in terms of concepts, it may cause a practical problem for credit institutions, which may unreasonably reduce the efficiency of their activities.

Among its interpretative provisions, Act CCXXXVII of 2013 on Credit Institutions and Financial Enterprises (hereinafter referred to as Hpt.) defines the term of outsourcing: *'outsourcing' shall mean an arrangement where a financial institution enters into an agreement with a functionally independent service provider, by which that service provider performs continuously or regularly the activities related to its financial services or financial auxiliary services or as prescribed by law, involving the management, processing and storage of data, which would otherwise be undertaken by the financial institution itself."* [Point 58 of Section 6 (1) of Hpt.]. However, in relation to the interpretation of certain factual elements included in the definition of outsourcing, a question may arise as to which legislation is applicable to define the terms „data management, data processing, data storage"? Can data protection laws be used as background legislation for this? If the effective data protection laws are taken into account, does the legislator clearly define the

1 *Judit Lisák*, Data Protection Officer, E-mail: lisak.judit@otpjzb.hu.

2 MNB (2020): A Magyar Nemzeti Bank 7/2020. (VI.3.) számú ajánlása a külső szolgáltatók igénybevételéről, 1. [Recommendation 7/2020 (VI. 3.) of the National Bank of Hungary on the usage of external service providers, 1.]. (Source: https://www.mnb.hu/letoltes/7-2020-kulso-szolgaltato-igenybevetele.pdf; downloaded on: 19/07/2022.)

concept of the Credit Institutions Act for practitioners in accordance with such laws, as well? I will examine these questions in more detail below.

JEL codes: G2, K23

Keywords: outsourcing, data protection, management of personal data, credit institutions

1 APPLICABILITY OF DATA PROTECTION LEGISLATION

The terms „data management, data processing, data storage" included in the above definition of outsourcing are not defined by the Credit Institutions Act. The question therefore necessarily arises, what kind of legislation can be used to interpret these and other related terms (e.g., data subjects)?

Perhaps the most obvious solution seems to be the application of certain provisions of the effective data protection legislation, primarily those 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 (hereinafter referred to as the General Data Protection Regulation) and Act CXII of 2011 on the Right of Informational Self-Determination and on Freedom of Information (hereinafter referred to as the Info Act). However, it should be taken into account that the General Data Protection Regulation only contains regulations regarding the management of personal data, therefore it does not apply to the management of other data (e.g., data of legal entities, business secrets that do not qualify as personal data, other protected data, etc.). Accepting the application of the General Data Protection Regulation would therefore also mean that we narrow the range of data to be examined to personal data.

To answer this question, you can use the commentary to the Credit Institutions Act, as well as opinions issued by the National Bank of Hungary (hereinafter referred to as the MNB or Supervisory Authority) containing orientational interpretations of the law in relation to legislation.[3] According to the explanation for outsourcing in the Hpt, since the Credit Institutions Act does not define terms

3 Opinion by the Hungarian Financial Supervisory Authority/MNB: As a result of its regulatory responsibilities, the Hungarian Financial Supervisory Authority issued orientational legal interpretations, i.e. opinions for financial organizations in relation to the relevant legislation. This activity has been carried out by the MNB since 1 October 2013. The purpose of the opinions is to explain the position of the Supervisory Authority in relation to the interpretation of a specific legal provision, so that the person requesting the opinion can formulate his own legal position

related to data management, the data protection law in force at the time of writing the commentary, i.e. the Info Act, shall be considered as governing.[4]

The opinions of the supervisory authority are not completely consistent, but typically the application of the currently effective data protection legislation was/is considered to be exemplary. The Hungarian Financial Supervisory Authority (hereinafter referred to as the Hungarian Financial Supervisory Authority, which was then authorized to issue opinions for credit institutions in relation to Act CXII of 1996 on Credit Institutions and Financial Enterprises (the old Hpt.), recorded in some of its opinions the expediency of the application of Act LXIII of 1992 on the Protection of Personal Data and the Disclosure of Information of Public Interest (hereinafter referred to as the Avtv.), the then highest-level legislation on data management and data protection.[5,6,7] Later on, the MNB also came to the conclusion several times in its opinions issued in individual cases in connection with the currently effective Credit Institutions Act that the Info Act then in force should be used to define the concept of data management.[8,9]

However, there is also a legal conclusion contrary to the above among the opinions of the MNB. In one individual case, contrary to the opinions referred to

based on the – non-binding – position of the Supervisory Authority (Source: https://www.mnb.hu/felugyelet/szabalyozas/allasfoglalasok; downloaded on: 19.07.2022.)

4 Gálfalvi–Kovács–Palasikné Kirschner–Seregdi (2016): *Kommentár a hitelintézetekről és a pénzügyi vállalkozásokról szóló 2013. évi CCXXXVII. törvényhez* (Kommentár a Hpt. 68. §-ához) [Commentary to Act CCXXXVII of 2013 on Credit Institutions and Financial Enterprises (Commentary to Section 68 of the Hpt.]. Budapest: Wolters Kluwer.

5 Hungarian Financial Supervisory Authority: Hogyan értelmezendők a kiszervezés új, 2003. január 1-től hatályba lépő szabályai? [How should the new outsourcing rules, which come into effect on 1 January 2003, be interpreted?] (Source: http://alk.mnb.hu/data/cms2103227/penz113.pdf; downloaded on: 19.07.2022.)

6 Hungarian Financial Supervisory Authority: A banktitok átadása a külföldre történő kiszervezés során [Transfer of bank secrets during outsourcing abroad] (Source: https://alk.mnb.hu/data/cms2329697/allasfogl_penzpiac_111227.pdf (downloaded on: 19.07.2022.)

7 Hungarian Financial Supervisory Authority: Mely tevékenységtípusok minősülnek kiszervezett tevékenységnek? [Which activity types are considered outsourced activities?] (Source: http://alk.mnb.hu/data/cms2103240/penz126.pdf; downloaded on: 19.07.2022.)

8 MNB (2017): A Bszt. és a Hpt. kiszervezésre vonatkozó rendelkezéseinek értelmezése [The interpretation of the provisions of Bszt. and Hpt. concerning outsourcing]. (Source: http://alk.mnb.hu/data/cms2454413/tmpF6FC.tmp(14851343).pdf; downloaded on: 19.07.2022)

9 MNB (2016a): Állásfoglalás a hitelintézetekről és pénzügyi vállalkozásokról szóló 2013. évi CCXXXVII. törvény (Hpt.) 68. § (4) és (10) bekezdésében foglalt kiszervezéssel kapcsolatos egyes kérdések vonatkozásában [Opinion on certain issues concerning outsourcing as defined in Section 68 (4) and (10) of Act CCXXXVII of 2013 on Credit Institutions and Financial Enterprises]. (Source: https://alk.mnb.hu/data/cms2447027/tmp2C8A.tmp(13566306).pdf; downloaded on: 19.07.2022)

earlier, the MNB stated that *"when assessing outsourcing, the MNB - in the absence of a definition in the Hpt. - uses data protection regulations and certain definitions only with regard to the nature and technology of data management, regardless of the fact that the scope of the Info Act only covers the protection of the data of natural persons"*.[10] In my opinion, it appears that the MNB's statement in this particular case is not fully in line with the regulations laid down in the Hpt., the Info Act and the GDPR, or with other MNB opinions. Possible doubts about the correctness of the quoted statement are further confirmed by the fact that the MNB cites, seemingly ignoring the provisions in Section 2 (2) of the Info Act, the concept of data management defined in point 10 of Section 3 of the Info Act as a relevant legal provision from the point of view of the investigation of the facts, to which, however, the provisions of the GDPR shall be applied instead of the Info Act.

In view of the above, in my opinion, the current data protection legislation in force can and should be used as background rules for the interpretation of the definition of outsourcing.

2 ASSESSMENT OF THE CONCEPT OF OUTSOURCING IN THE LIGHT OF THE GDPR

I explained above why I consider data protection legislation to be applicable when interpreting the definition of outsourcing. In the following part of my study, I will examine the extent to which certain factual elements appearing in the concept of outsourcing, which are relevant in terms of data protection and law, can be reconciled with the effective data protection legislation, for which I also consider it important to briefly present the evolution of the relevant legal environment.

2.1 The emergence of the legal institution of outsourcing in domestic legislation

With regard to financial institutions, the legal institution of outsourcing appeared in the old Hpt. for the first time on 1 January 2001, when the concept of outsourcing was included in the interpretive provisions of the act by means of an amend-

10 MNB (2019): A kérelmező (Bank) állásfoglalás iránti kérelemében (Beadvány) a hitelintézetekről és a pénzügyi vállalkozásokról szóló 2013. évi CCXXXVII. törvény (Hpt.) 68. §-ának értelmezése kapcsán fordult az MNB-hez (In its request for opinion [Application], the applicant (Bank) contacted the MNB in connection with the interpretation of Section 68 of Act CCXXXVII of 2013 on Credit Institutions and Financial Enterprises (Hpt.)]. (Source: https://alk.mnb.hu/data/cms2464305/tmp7AD3.tmp(17613425).pdf; downloaded on: 19.07.2022.)

ment to the act [Point 41 of Chapter III of Annex 2 of the old Hpt.]. In addition, the requirements related to the announcement to the Supervisory Authority, the content elements of the outsourcing contract and other conditions were regulated in a separate section [Section 13/A of the old Hpt.]. At the time, the definition of outsourcing was the following: „*outsourcing: when a credit institution does not itself perform the administrative activities in connection with services, but rather entrusts a separate, organizationally independent business association with performing these activities.*" In the beginning, therefore, outsourcing referred to the provision of administrative activities, the person performing outsourcing could only be an independent business association, and the definition did not contain data protection provisions.

However, the amendment to Section 13/A of the old Hpt., effective from 1 January 2003, already stated that „*In due observation of the provisions on data protection, credit institutions shall be authorized to outsource financial services and activities auxiliary to financial intermediation as well as those mandatory activities prescribed by law that involve the management, processing and storage of data.*" Therefore, the range of activities which can be outsourced was amended, which could no longer only apply to administrative activities, but also to activities related to financial and auxiliary financial service activities or activities prescribed by the law.

The concept also included the condition that data management, data processing or data storage shall be carried out during the performance of the activity. In addition, the requirement that this type of activity could only be organized „*In due observation of the provisions on data protection*" was clearly stated. The justification for the amendment to the law regarding outsourcing was as follows: „*The law re-regulates the provisions on outsourcing which have hitherto been inapplicable in practice. Accordingly, outsourcing can only be interpreted as an activity during which data management, data processing or data storage is carried out continuously or regularly.*"[11] However, the terms of data management, data processing and data storage were not even defined in the old Hpt. In practice, according to the opinions of the Hungarian Financial Supervisory Authority referred to earlier, it was advisable to apply the concepts defined in Avtv.[12]

11 Egyes pénz- és tőkepiaci tárgyú törvények módosításáról szóló 2002. évi LXIV. törvény indokolása a 10. §-hoz [Justification by Act LXIV of 2002 on the amendment of certain laws relating to money and capital markets to Section 10].

12 It is interesting to mention that in the Guidelines No. EBA/GL/2019/02 published by the European Banking Authority on 25 February 25 2019 (which the MNB took into account during the drafting of Recommendation No. 7/2020 (VI.3.) on the use of external service providers), the concept of outsourcing does not include a condition regarding data management either, therefore

The importance of the examination of outsourcing by credit institutions regarding data protection and the lack of consistency between the laws were already evident within a short time after the legal institution appeared. In 2004, the data protection commissioner ex officio initiated an investigation to establish that - among other laws - the provisions of the old Hpt. on outsourcing, amended in 2003, were incompatible with the provisions of data protection legislation. The data protection commissioner - among other things - saw the problem in the fact that *„the data processing is carried out in accordance with the Avtv. is an activity that the data controller has performed by someone else, therefore the outsourcing of data processing cannot be interpreted based on the rules of the Avtv."* The data protection commissioner also emphasized that Hpt. could not provide an opportunity for data processing itself to be outsourced by the credit institution managing the data, given that this would conflict with the provision of the Avtv. described above, which states that the data processor may not use another data processor during the performance of its activities [Section 4/A (2) of the Avtv.].[13]

The effective Act on Credit Institutions - similarly to the old Hpt. - defines outsourcing among the Definitions: "*outsourcing shall mean an arrangement where a financial institution enters into an agreement with a functionally independent service provider, by which that service provider performs continuously or regularly the activities related to its financial services or financial auxiliary services or as prescribed by law, involving the management, processing and storage of data, which would otherwise be undertaken by the financial institution itself"* [Point 58 of Section 6 (1) of the Hpt]. However, in a separate sub-heading on outsourcing, the act states that "*In due observation of the provisions on data protection, credit institutions shall be authorized to outsource the activities connected to financial services and financial auxiliary services as well as those statutory activities prescribed by law that relate to the management, processing and storage of data."* [Section 68 (1) of the Hpt.]. It is clear that the conjunctive factual elements in the old Hpt., which define outsourcing, can also be found in the currently effective definition: connection to financial or auxiliary financial service activities, or the ordering of the performance of the activity by a law; realization of data management, data

it can be applied to a much wider range: *"an arrangement of any form between an institution, a payment institution or an electronic money institution and a service provider by which that service provider performs a process, a service or an activity that would otherwise be undertaken by the institution, the payment institution or the electronic money institution itself."* Irrespective of the above, in its recommendation, the MNB uses the concept according to the effective sectoral legislation as a basis for outsourcing.

13 ABI (2005): Az adatvédelmi biztos beszámolója (Report of the Data Protection Commissioner), 2004. Office of the Data Protection Commissioner, Budapest, 111–112. (Source: https://www.naih.hu/files/Adatvedelmi-biztos-beszamoloja-2004.PDF; downloaded on: 19.07.2022.)

processing or data storage; the continuity or regularity of carrying out the activity, the contribution of an organizationally independent person.

2.2 Criteria for data management, data processing and data storage

Simultaneously with the coming into force of the General Data Protection Regulation on 25 May 2018, the legislation governing the protection of personal data in Hungary changed such that, thereafter, the provisions contained in the EU Regulation became mandatory as the main rule for the management of personal data. Regarding the processing of personal data falling under the scope of the Regulation, the Regulation shall be applied with the additions listed in Section 2 (2) of the Info Act. Apart from the Info Act, currently, a wide range of sectoral legislation contains regulations regarding the management of personal data.

With the GDPR becoming applicable, the concepts of data processor and data processing have been changed, as well. In the Avtv., data processing as a definition of a form of data management was only mentioned in the concept of data management [Point 4 of Section 2 of the Avtv.], and the person of the data processor was referred to related to the definition of the data controller: *„shall mean a public authority, agency or a legal person which processes personal data or has data processed on its behalf"* [Point 7 of Section 2 of the Avtv.]. Only in later amendments to the law did the legislator clearly define the person of the data controller and the data processor, as well as the concepts of data management and data processing, the latter of which still represented a method of data management and was primarily aimed at performing technical tasks.

Subsequently, according to the version of the text of the Info Act that entered into force for the first time, data processing meant the performance of technical tasks related to data management operations, regardless of the method and tool used to perform the operations, as well as the place of application, provided at the same time that the technical task was performed on the data [Point 17 of Section 3 of the Info Act]. According to the then legislation, data processing meant tasks and operations specifically related to data management, which were of a technical nature, but at the same time were technology neutral.

As of 25 May 2018, the General Data Protection Regulation shall apply to the concepts of data controller and data processor, as well as that of data management. According to the GDPR "'*processor' means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller";* [Point 8 of Article 4 of the GDPR]. However, the definition of data processing is not in the Regulation, but from 26 July 2018 - based on Section 2 (2) of the Info Act - it can be found in point 17 of Section 3 of the Info Act: *"data processing' shall*

mean any operation or set of operations which is performed by a data processor on behalf of, or as instructed by, the data controller".

Based on the combined interpretation of these provisions of the GDPR and the Info Act, it can be established that data processing as an operation is synonymous with data management as an operation, that is, the data processor performs data management in the same way, only on the basis of another person's order. None of the laws contains a definition regarding data storage, it is considered a nominal operation of data management. Therefore, in the definition of outsourcing, it is not clear why, in addition to data management, it is necessary to name the operations of data processing and data storage separately.

The listing of certain data management operations in the text of the Act on Credit Institutions can easily lead to unnecessarily narrowing the possible data management operations related to outsourcing by excluding other operations (e.g., collection, recording, transmission, etc.) with this wording. However, this consequence cannot be considered in this case because the concept of outsourcing also includes the general concept of data management, which includes all operations. In addition, at the same time, it is not clear why it is necessary to name data processing and data storage separately in addition to data management among the operations. In my opinion, it is worth removing data processing and data storage operations from the concept of outsourcing in order to bring this part of the Act on Credit Institutions into line with the currently effective data protection legislation.

2.3 The definition of data subjects

The GDPR also includes the concept of „data subject", according to which the data subject is an identified or identifiable natural person (Point 1 of Article 4 of the GDPR). Based on the above, the data subject can be any natural person who is or can be identified on the basis of their personal data. Regarding data processing by credit institutions, the clients of the credit institution (who use financial services provided by the credit institution or contact the credit institution for this purpose [Section 160 (2) of the Hpt.], e.g., debtor, co-debtor, pledgee, etc.), its employees, senior officials, or the representatives and contacts of its contractual partners are typically affected. In the above definition of the Act on Credit Institutions does not narrow the definition to data subjects, therefore the data management, data processing or data storage included in the concept of outsourcing can in principle refer to the personal data of any natural person.

In contrast to this, the commentary to the Law on Credit Institutions states that data management shall specifically refer to the individual data of clients, other-

wise we cannot talk about outsourcing.[14] Earlier, in one of its opinions, the Hungarian Financial Supervisory Authority also[15] narrowly interpreted the concept of data subject, when it came to the conclusion during the evaluation of a specific activity (computer system administration) that *„it is classified as an outsourced activity if, in the course of it, the system administrator actually may come into possession of client data that is considered personal data in accordance with the Data Protection Act."*

Accordingly, the MNB also consistently considers data management, data processing, and data storage operations to be interpreted only in relation to client data, i.e. it does not refer to the personal data of other natural persons (employees, senior officials, business partners of natural persons).[16,17] In one of its opinions issued in 2019, i.e. after the GDPR became applicable, the MNB expressly stated that: *"...in accordance with Section 68 (1) of the Hpt. the activities connected to financial services and financial auxiliary services as well as those statutory activities prescribed by law that relate to the management, processing and storage of data of the clients of the bank shall be considered to be outsourcing..."*. In addition, the opinion lays down that *"the MNB considers all activities involving data manage-*

14 Gálfalvi–Kovács–Palasikné Kirschner–Seregdi (2016): *Kommentár a hitelintézetekről és a pénzügyi vállalkozásokról szóló 2013. évi CCXXXVII. törvényhez* (Kommentár a Hpt. 68. §-ához) [Commentary to Section 68 of the Act CCXXXVII of 2013 on Credit Institutions and Financial Enterprises]. *"Therefore, if the data of credit institution's client is managed, processed or stored during the performance of activities by others, this conceptual element of outsourcing is realized, as well. If during the activity individual client data do not come into the possession of the person performing the activity, we cannot talk about outsourcing."* Budapest: Wolters Kluwer.

15 Hungarian Financial Supervisory Authority: Mely tevékenységtípusok minősülnek kiszervezett tevékenységnek? [Which activity types are considered outsourced activities?] (Source: http://alk.mnb.hu/data/cms2103240/penz126.pdf; downloaded on: 19.07.2022.)

16 MNB (2017): A Bszt. és a Hpt. kiszervezésre vonatkozó rendelkezéseinek értelmezése (The interpretation of the provisions of Bszt. and Hpt. concerning outsourcing) (Source: http://alk.mnb.hu/data/cms2454413/tmpF6FC.tmp(14851343).pdf; downloaded on: 19.07.2022.)

17 MNB (2016b): Állásfoglalás a bankbiztonsági tevékenységnek a hitelintézetekről és pénzügyi vállalkozásokról szóló 2013. évi CCXXXVII. törvény (Hpt.) szerinti kiszervezéssel kapcsolatos egyes kérdései vonatkozásában [Opinion on certain issues concerning outsourcing as defined in Act CCXXXVII of 2013 on Credit Institutions and Financial Enterprises]. (Source: http://alk.mnb.hu/data/cms2453653/tmp9A4F.tmp(14510620).pdf; downloaded on: 19.07.2022.)

ment, data processing or data storage which affect the data of the bank's clients, i.e., data classified as bank secrets, to be outsourced activities."[18,19]

In my opinion, the position of the MNB is understandable and aligned with the presumed purpose of the law's provisions on outsourcing, as the law presumably prescribes strict rules on outsourcing for credit institutions and those engaged in outsourcing activities, so that clients' personal data can receive even greater protection than under the general rules (considering the fact that these personal data typically are considered sensitive financial data). However, if the assumption is correct, it seems justified to clearly display in the concept of outsourcing that the data management in terms of outsourcing only applies to client data.[20]

In practice, the above-mentioned discrepancy between the Act on Credit Institutions and the GDPR can cause difficulties mostly at the start of the outsourcing activity, i.e., at the classification of the given agreement as outsourcing (whether it is a brokerage agreement or any other agreement). Based on the legislative environment, it is not necessarily clear whether activities that affect the data of employees or other natural persons, but not the data of clients, are considered outsourcing? The importance of classification is not only important because it also determines the exact scope of tasks related to the activity for the credit institution and the external service provider, but the inappropriate categorization of the legal relationship may result in supervisory fines or other sanctions for the credit institution, thus financial and reputational loss.

18 MNB (2019): A kérelmező (Bank) állásfoglalás iránti kérelemében (Beadvány) a hitelintézetekről és a pénzügyi vállalkozásokról szóló 2013. évi CCXXXVII. törvény (Hpt.) 68. §-ának értelmezése kapcsán fordult az MNB-hez [In its request for opinion (Application), the applicant (Bank) contacted the MNB in connection with the interpretation of Section 68 of Act CCXXXVII of 2013 on Credit Institutions and Financial Enterprises (Hpt.)]. (Source: http://alk.mnb.hu/data/cms2464305/tmp7AD3.tmp(17613425).pdf; downloaded on: 19.07.2022.)

19 In relation to the aforementioned opinion of the MNB, it is also worth pointing out that, in the opinion of the MNB, in terms of client data outsourcing, it is irrelevant whether the client is a legal entity or a natural person, which although is in line with the concept of client defined in the rules of bank secrecy, but less so with data protection legislation, especially with regard to the fact that the provisions of the GDPR shall be applied to the concept of data management by the MNB without dispute (as the Hungarian Financial Supervisory Authority also had a similar opinion regarding the applicability of the Avtv. as described above).

20 It should be noted that the concept of client is not defined in the interpretative provisions of the Hpt., as it appears in the law in the provisions on bank secrecy (Section 160 (2) of the Hpt.).

2.4 Continuity or regularity of the performance of the activity

In the concept of outsourcing, an interesting conjunctive factual element from a data protection point of view is the continuous or regular performance of the activity, from which means, at the same time, that the one-time or occasional performance of tasks by an external service provider does not qualify as outsourcing. The reason for this is presumably that, in the case of outsourcing, extremely strict rules must be observed, which would presumably represent a disproportionate burden for the credit institution and the external service provider during the provision of services in an individual case, thus possibly preventing the credit institution from performing the given activity at a higher level, more cost-effectively, or with more advanced technology.

In this regard, however, the question may arise as to whether the condition of continuity or regularity is more reasonable to expect in relation to data management? In fact, it may happen that during the performance of the activity, data management is only carried out on an occasional basis and not continuously or regularly, which does not necessarily justify compliance with the stricter outsourcing obligations from the point of view of risk proportionality. In my opinion, these questions can cause a dilemma for the credit institution in practice, if the credit institution intends to interpret the provisions of the Hpt. by also examining the possible objective goals of the law when evaluating a given activity.

3 SUMMARY

In the above, I examined the relevant factual elements in terms of data protection in the concept of outsourcing and was able to draw the following conclusions. One of the substantive elements of outsourcing - almost since the emergence of the legal institution - is data management (as well as data processing and data storage) carried out during the performance of the outsourced activity. Regarding this element, the highest level of legislation related to data protection and data management, namely the General Data Protection Regulation and certain provisions of the Info Act can be regarded as governing. The current legislation related to data management clearly and accurately defines the terms of personal data, data subject, data management and data processing.

However, in my opinion, the definition of outsourcing in Hpt. is not in line with these data protection concepts in many respects, therefore it is not clear why the legislator specifies data processing and data storage separately in addition to data management, and it is also not clear whether data management applies to all data subjects, or only specifically for natural person clients, and it is questionable

whether continuity or regularity is an essential condition for data processing, or whether it should also be applied to occasional data processing? In my opinion, the above questions can cause not only theoretical but also practical problems for legal practitioners.

As part of the financial sector, credit institutions play an extremely important role in the economy. Their continuous and safe operation from the point of view of the economic actors is therefore a fundamental public and social interest. In order to ensure this, it is necessary to regulate the sector. In addition, it is essential for the credit institutions applying the law and the external service providers they may wish to entrust that the legislation applicable to their activities is transparent, applicable and enforceable. In view of the fact that the lack of conformity between the laws can reduce the efficiency of the operation of credit institutions and cause uncertainty for appliers of the law, the review the current law on credit institutions and the amendment of the concept of outsourcing as necessary in order to ensure transparent and enforceable requirements and to develop uniform practice of law seem to be justified.

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