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OPINION OF THE COMMISSION FOR THE PROTECTION OF PERSONAL DATA reg. No. PNMD-01-78/2022 Sofia, 14.09.2022 REGARDING: Access and provision of data contained in the National Automated Information Fund "National Register of Bulgarian Personal Documents" and the Unified Register of Foreigners

The Commission for the Protection of Personal Data (CPDP) in composition - Chairman: Vencislav Karadjov and members: Tsanko Tsolov , Maria Mateva and Veselin Tselkov, at a meeting held on 07.09.2022, considered a request with reg. No. PNMD-01-78/29.07.2022 from Mr. Bozhidar Bojanov - Mr. Minister of e-Government, who turns to the CPLD with a request to express an opinion on the possibility of the Ministry of E-Government (MEG) getting access to data contained in the National Automated Information Fund "National Register of Bulgarian Personal Documents" and the Unified Register for foreigners supported by the Ministry of Internal Affairs, on the basis of Art. 70, para. 1, item 1 of the Law on Bulgarian Personal Documents (BLPD) and Art. 6, par. 1, b. "e", proposal two of Regulation (EU) 2016/679 - exercise of official powers granted to the administrator pursuant to Art. 7c, para. 2 of the Law on Electronic Government (ELG).

The request sets out the following factual situation: By Decision No. 133 of March 10, 2022, the Council of Ministers has assigned the Minister of e-Government to take actions to build a technological possibility for electronic identification through a mobile device in the provision of electronic administrative services, as well as to propose changes in the related legislation within the framework of 2022. In fulfillment of item 1 of the referred decision, the MEU prepared a technical specification and on 21.04.2022 concluded a contract in accordance with Art. 7c from ZEU with the system integrator - "Information Service" AD, which has as its subject the construction of a mobile application for electronic identification and electronic signature - BGID. In the technical specification - annex to the contract and the system project, prepared by "Information Service" JSC, it is stipulated that, as part of the initial identification process, the user will take a photo of his personal document. From this photo, by visually reading the MRZ zone (the machine-readable data zone in identity documents), information about the document is extracted - type, number, date of validity, names of the holder. In addition, the user performs a static capture of his face with the front camera of the mobile device (self-portrait or selfie), then records a short video with movements according to instructions with the front camera of the mobile device. With the video made in this way, the presence of a live person is

verified during the initial identification (liveness detection). The activities of extracting elements of graphic and video information are performed in the visual biometric identity module. The following functionality will be developed in it:

Decompression of the submitted content in a form suitable for post-processing; Extraction of information from the MRZ zone of the document - for data validation at the level of the user's mobile device; Biometric comparison of faces from two static images - a self-portrait and a photo extracted from the automated information system "Bulgarian Identity Documents" (AIS "BDS"), as well as a software-selected frame from the liveness detection video and a photo from the AIS "BDS". The system project also provides that a pre-trained neural network will be used for the implementation of this functionality, which provides a high level of recognition accuracy. In order to improve the learning of the neural network, it is technologically necessary to carry out additional training/self-training with the available photos in AIS "BDS" - locally in the Ministry of the Interior, without this information leaving the network of the Ministry of the Interior, for which the Contractor will also provide the necessary high-performance hardware . The results of the self-study and test scenarios, which will be developed jointly with the Ministry of Internal Affairs, will remain entirely within the environment of the Ministry of Internal Affairs. As a result, the trained neural network will increase the recognition rate, thus preventing counterfeiting attempts. The model thus created can be used for other needs within the Ministry of the Interior. The request states that for this purpose it is necessary to grant access to experts from the Ministry of Internal Affairs and "Information Service" JSC to data from the database of AIS "BDS", where the Ministry of Internal Affairs is the primary administrator of the data from the Bulgarian personal documents pursuant to Art. 2, para. 2 of the LEU in connection with the Law on Bulgarian personal documents and as such an obligation arises for him to provide access to these data automatically and electronically as an internal electronic administrative service (art. 4, para. 1 LEU in relation to art. 70, paragraph 1, item 1 of the Labor Code). In order to carry out the process of identifying citizens who create a profile in BGID, it is necessary for the MEU to access the data contained in the National Automated Information Fund "National Register of Bulgarian Personal Documents" and the Unified Register for Foreigners. The request sets out the reasons supporting the need to provide access as follows: The issue considered in this request is related to the provision of data contained in the National Automated Information Fund "National Register of Bulgarian Personal Documents" and the Unified Register for Foreigners at the time of creation of a profile in the mobile application for electronic identification and electronic signature - BGID. The powers of the Minister of e-Government, in his capacity as an administrative body, are regulated in the Law of Ukraine. In Art. 7c, para. 1 of the ZEU states that the minister implements the state policy in the field of e-government

and in the field of the information society and information technologies in interaction with other bodies of the executive power.

In addition, para. 2 of the cited provision expressly provides that the Minister of e-Government implements state policy in the field of electronic identification as well. When exercising its powers in the field of electronic identification and in fulfillment of Art. 5, para. 3 of the LEU, the Minister of e-Government has built and maintains a horizontal system for electronic authentication, which serves for the identification of all entities, objects and information systems participating in e-Government.

The means of electronic identification specified in art. should be integrated with the system. 5, para. 2 of ZEU, incl. and the cited mobile application for electronic identification and electronic signature - BGID, which is currently under development. As stated above, by decision of the Council of Ministers No. 133 of March 22, 2022, the Minister of e-Government, in addition to being tasked with creating a technological possibility for electronic identification through a mobile device in the provision of public services, is also charged with to amend the relevant legislation within 2022 - item 2 of the RMS. The main legislation in the field is the Law on Electronic Identification (ELI) and the Regulations for its implementation. The powers of the Minister of e-Government in the field of electronic identification, as well as the basis for access to records of the Ministry of Internal Affairs, will be detailed in the ZEI. The amendment and adoption of the law and the regulations imply the performance of a series of actions regulated in the Law on normative acts, which in terms of time will take at least 5 months and would result in non-fulfillment of item 2 of the RMS. A preliminary full impact assessment of the bill is currently being prepared. Due to the above and with a view to the timely implementation of the RMS, a draft of the ZED of ZEU has been prepared. In Art. 5 of the draft law explicitly stipulates that the Minister of e-Government creates an electronic identification scheme that corresponds to a "high" security level according to Regulation No. 910/2014. The project was published on 15.06.2022 for public discussion on the Portal for public consultations. The above discussed powers of the Minister of e-Government in the field of electronic identification are, by their very nature, powers of authority, which are related to his competence in the relevant sphere of public relations. The EU Law does not aim to regulate rules and create additional grounds for processing personal data, as they are exhaustively listed in Art. 6, par. 1 and Art. 9, par. 2 of Regulation (EU) 2016/679. For its part, the PBLD regulates the terms and conditions for the issuance, use and storage of Bulgarian personal documents. It provides (Art. 70, Para. 1, Item 1) that the data from the information funds for Bulgarian personal documents, with the exception of fingerprints taken in accordance with this law, shall be provided to state bodies and organizations in accordance with their statutory powers. This is also the issue under consideration, consisting in the provision of data from AIS "BDS" for the purposes of the exercise of authority

powers assigned to the Minister of e-Government pursuant to Art. 5 and Art. 7c, para. 1 and 2 of the EU Law. Carrying out actions to provide personal data (including through access) constitutes processing of personal data within the meaning of Regulation (EU) 2016/679 and the same should be carried out in compliance with the conditions for legality and the principles of processing, regulated in art. 5 of the Regulation, so that the volume of data is comprehensively determined, sufficient and not exceeding the purpose for which it is needed. Since in the specific case it concerns the provision of data collected in connection with the issuance of Bulgarian personal documents, their provision should also take place taking into account the requirements of Art. 70 of the ZBLDA. Art. 70, para. 1, item 1 of the cited law provides that data is provided to state bodies and organizations in accordance with their statutory powers. In this regard, it is necessary to clarify how the provision of Art. 70, para. 1, item 1 of the Civil Code and, in particular, the term "statutory authority" of a state body. According to the permanently established practice of the CPDP, public bodies have powers of authority that are related to their competence. In a significant part of the cases, the exercise of powers, respectively the realization of competence, is related to access and processing of personal data, which are administered by another administrative body - primary data controller. Moreover, access to and processing of personal data is in certain cases necessary for the exercise of official powers. This means that the realization of the powers is directly related to the need to process a certain volume of personal data - otherwise, it may be hindered or lead to the impossibility of exercising the powers assigned by law (arg. art. 6, par. 3 of Regulation (EU) 2016/679). In this sense, access and processing of personal data cannot be a power in itself and for its own sake. It is a necessary and essential element of the complex factual composition of the exercise of sovereign powers. In the specific case, in order to implement and function the electronic identification through the mobile application developed by the MEU and in this way the Minister of e-Government can exercise his powers provided for in the ZEU, access to data contained in the National Automated information fund "National Register of Bulgarian Personal Documents" and Unified Register for Foreigners. It should not be required to have an obligation/right to access the data from the said register explicitly described in a regulatory act, since such an approach would expand both the grounds for processing personal data under Regulation (EU) 2016/679 and would also be contrary to the special status of public bodies, provided for by the clear distinction of legal entities within the meaning of Art. 70, paragraph 1, item 1 of the Labor Code. However, the MEU will offer in the ZEI an explicit legal basis for access to the National Automated Information Fund "National Register of Bulgarian Personal Documents" and the Unified Register for Foreigners. In addition to the above, it is necessary to take into account Art. 2, para. 1 of the ZEU, according to which the

administrative authorities cannot demand from citizens and organizations the presentation or proof of already collected or created data, but are obliged to collect them ex officio from the primary data controller. Pursuant to Art. 2, para. 2 of the CEU, the primary data controller is an administrative authority that, by virtue of law, collects or creates data on a citizen or organization for the first time and amends or deletes this data (in this case, it is the Ministry of Internal Affairs). Moreover, Art. 3 of the ZEU imposes on the primary administrator an obligation to send the data ex officio and free of charge to all administrative bodies that, based on the law, also process this data and have expressed a desire to receive it. This obligation also corresponds to the functions of the information funds, regulated by Art. 70 of the ZBLDA. On the basis of the above and in view of the specifics of personal data and the special protection that the legislation regulates in relation to them, the MEU asks the CPLD to issue an opinion on the following issues: - is it necessary in the legislation, and in particular in the ZEU, to contain an explicit legal norm governing the possibility of providing the MEU with access to data contained in the National Automated Information Fund "National Register of Bulgarian Personal Documents" and the Unified Register for Foreigners maintained by the Ministry of the Interior, with the aim of identifying citizens who create a profile in the mobile application for electronic identification and electronic signature - BGID, administered by the MEU; - whether an impact assessment should be carried out by the MEU; - is it necessary, along with the requirements mentioned above, to have permission from the CPLD in order for the MEU to have access to data contained in the National Automated Information Fund "National Register of Bulgarian Personal Documents" and the Unified Register for Foreigners. Legal analysis: According to Art. 70 of the Law on Bulgarian Personal Documents (BLPD), the data from the information funds for Bulgarian personal documents, with the exception of fingerprints, taken in accordance with this law are provided to: 1. state bodies and organizations in accordance with their statutory powers, as well as to individuals, who are assigned by law to perform state functions; 2. citizens holding Bulgarian personal documents, only if the data does not affect third parties; 3. legal entities based on law or by an act of the judiciary. The data shall be provided within 14 days from the registration of the request or the submission of the written application in accordance with the procedure determined by an act of the Council of Ministers. The provision of data from the information funds for Bulgarian personal documents, with the exception of fingerprints, is regulated in a similar way as the provision of data from ESGRAON in the sense of Art. 106 of the Civil Registration Act (CRA). In both cases, data is provided to state bodies and organizations in accordance with their statutory powers. In this sense, the reasons for the lawful provision of the data should be analogous. CPLD has repeatedly issued opinions on specific cases¹ related to the provision of data to state bodies and

organizations in accordance with their statutory powers. As a central sole authority of the executive power with special competence, the Minister of e-Government falls under the hypothesis of Art. 106, para. 1, item 2 of the General Administrative Law, according to which he has the right to receive from ESGRAON the categories and volume of data necessary for the implementation of his powers related to the implementation of state policy in the field of electronic identification. In addition, with Decision No. 133/10.03.2022, the Council of Ministers assigned the Minister of e-Government a specific task - to take actions to build the technological possibility for electronic identification through a mobile device when providing administrative services. For this purpose, there is a need to access the data contained in the National Automated Information Fund "National Register of Bulgarian Personal Documents" and the Unified Register for Foreigners, maintained by the Ministry of the Interior, in order to identify the citizens who create a profile in the mobile application for electronic identification and electronic signature - BGID, administered by the MEU. For the provision of data in the hypothesis of Art. 70, para. 1, item 1 of the GDPR can be supported by the same considerations as those for the provision of data under Art. 106, para. 1, item 2 of the ZGR. It should be borne in mind that in both cases the issuance of a permit by the CPLD is inadmissible. When providing the data, the principles declared in Art. 5 of Regulation (EU) 2016/679, taking into account the necessity and proportionality of the processing of certain categories of data in the exercise of the powers and the performance of the assigned specific tasks within these powers. In the current legal analysis, it is also worth emphasizing the scope of the Electronic Government Act (E-Government Act), which regulates public relations between administrative bodies related to the work with electronic documents and the provision of administrative services electronically, as well as the exchange of electronic documents between administrative bodies. Pursuant to the provisions of the Law of the European Union, administrative authorities cannot require citizens and organizations to present or prove already collected or created data, but are obliged to collect them ex officio from the primary data administrator. According to Art. 35 of Regulation (EU) 2016/679 when there is a possibility that a certain type of processing, in particular where new technologies are used, and given the nature, scope, context and purposes of the processing, will create a high risk for the rights and freedoms of natural persons, before the processing is carried out, the controller performs an assessment of the impact of the intended processing operations on the protection of personal data. An assessment may consider a set of similar processing operations that pose similar high risks. A basis for carrying out an assessment of the impact on the protection of personal data can also be sought in the List of types of personal data processing operations for which a data protection impact assessment is required according to Art. 35, par. 4 of Regulation (EU) 2016/679,

published on the CPLD website². The assessment of the impact on the protection of personal data can be carried out as part of the general impact assessment in the context of the adoption of the normative act for the introduction into operation of the mobile application for electronic identification and electronic signature (arg. art. 35, par. 10 of Regulation (EU) 2016/679). In addition, it should be noted that the acceptable assessment of the impact on the protection of personal data under Regulation (EU) 2016/679 should contain: a systematic description of the processing (Article 35, par. 7, letter a)): taken into account the nature, scope, context and purposes of the processing (recital 90); the personal data, the recipients and the period for which the personal data will be stored are recorded; functional description of the processing operation; identifying the assets on which the personal data relies (hardware, software, networks, people, paper); possibly compliance with approved codes of conduct is taken into account (Article 35, paragraph 8); • necessity and proportionality of the processing (Article 35, paragraph 7, letter b)): the measures envisaged to comply with the regulation (Article 35, paragraph 7, letter d) and recital 90 are defined, taking into account: the measures contributing to proportionality and necessity of the processing based on: [] specific, explicit and legitimate purposes (Article 5, paragraph 1, letter b); [] lawfulness of processing (Article 6); [] adequate, relevant and limited to the necessary data (Article 5, paragraph 1, letter c); [] limited duration of storage (Article 5(1)(e)); [] measures contributing to the rights of data subjects: [] information provided to the data subject (Articles 12, 13 and 14); [] right of access and portability (Articles 15 and 20); [] right to correction, erasure, objection, restriction of processing (Articles 16-19 and 21); [] recipients; [] processor(s) (Article 28); [] guarantees related to the international transfer(s) (Chapter V); [] prior consultation (Article 36).

- risk management for the rights and freedoms of data subjects (Article 35(7)(c)): the origin, nature, characteristics and severity of the risks are assessed (see recital 84) or more specifically for each risk (unauthorized access , unwanted modification and disappearance of data) from the point of view of data subjects: [] the sources of risks are taken into account (recital 90); [] the potential impacts on the rights and freedoms of data subjects are identified in case of illegal access, unwanted modification and disappearance of data; [] threats that can lead to illegal access, identification of unwanted modifications and disappearance of data; [] assessment of likelihood and severity (recital 90); [] the measures envisaged to deal with these risks are defined (Article 35, paragraph 7, letter d) and recital 90);

- stakeholder involvement: consultation with the data protection officer (Article 35, paragraph 2); the opinion of the data subjects or their representatives is requested (Article 35, paragraph 9).

For these reasons and on the basis of Art. 58, par. 3, b. "b" of Regulation (EU) 2016/679 in conjunction with Art. 10a, para. 1 of the Personal Data Protection Act and Art. 51, item 2 of the Regulations for the activities of the CPLD and its administration, the Personal Data Protection Commission expresses the following

OPINION:

1. The request for access to the information funds of the Ministry of Internal Affairs is beyond the competence of the CPLD. Competent to consider such a request is the Minister of Internal Affairs, as the administrator of personal data under Art. 29, para. 1 of the Law on the Ministry of the Interior.
2. For the provision of access to data in the hypothesis of Art. 70, para. 1, item 1 of the ZBLPD, it is not necessary to issue a permit from the ZBLPD, since in this case no permissive legal regime is applicable.
3. Regardless of the fact that on the basis of Art. 70, para. 1, item 1 of the ZBLDA in connection with Art. 7c, para. 2, item 1, b. c) of the Law of Ukraine and Decision of the Ministry of Justice No. 133/10.03.2022 the Minister of e-Government may request access to data, there is no obstacle to the special legislation governing these legal relations including an express provision in this sense. Pursuant to Art. 51, para. 1 of the Law on normative acts, a request for interpretation of the legislation, in this case it is within the competence of the National Assembly.
4. Based on Art. 35, par. 10 of Regulation (EU) 2016/679, the MEU administrator should carry out an assessment of the impact on the protection of personal data, which is different from the assessment of the impact of normative acts in the sense of the Law on normative acts.

1 Opinion of the CPLD with reg. No. PNMD-01-64/2021; Opinion of the CPLD with Reg. No. PNMD-01-87/2020 (published on www.cdpd.bg in the "Practice" section).

2 <https://www.cdpd.bg/?p=element&aid=1186>

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