No. Fax: 11.17.001.006.043 October 25, 2019 DECISION Grading of sick leave of employees in the Louis Companies using the Bradford Coefficient I refer to the complaint submitted to my Office regarding the above matter and in continuation of the correspondence between us ending with the letter dated 02.09.2019, to which you attached the Assessment of the Legitimate Interest of your customers, LGS Handling Ltd, Louis Travel Ltd and Louis Aviation Ltd (hereinafter "the Louis Companies") as well as with your letter No. Ref.: E/MM/Company-89/6 and dated 02.09.2019, with which you listed the recommendations of your customers and I inform you of the following: Facts 1.1. On 06.06.2018, I received a complaint from the Free Trade Union of Private Employees SEK against the Louis Companies, which implement an automated system for the purpose of managing, monitoring and controlling employee absences due to illness, using a scoring tool known as " the Bradford Factor" (Bradford Factor). Said system is also accessible on the Louis Companies intranet. The Organizing Secretary of SEK, stated in his letter that, with two letters to the Director of Human Resources, Mr. XXXXXXXXX, he expressed his disagreement with the operation of the system in question and warned him that, if the operation of the system is not terminated, will inform my Office accordingly. As mentioned by the Organizing Secretary of the SEC, in his written response to the SEC, the Human Resources Director stated that he had no intention of deactivating the operation of the system and urged/challenged him to inform me in writing. 1.2. Based on the task of examining complaints provided to the Personal Data Protection Commissioner by article 57(1)(f) of Regulation (EU) 2016/679 (hereinafter "the Regulation") and article 24(b) of the Law which provides for the Protection of Natural Persons Against the Processing of Personal Data and for the Free Circulation of Such Data (Law 125(I)/2018), on 19.07.2018, following my own initiative, a meeting was held in my Office with representatives of the Companies Louis for discussion of said automated system. Present at the meeting were Mr. XXXXXXXXX, Managing Director of the LGS Handling and LOUIS TRAVEL companies and Mr. XXXXXX, Human Resources Director of the LGS Handling and LOUIS TRAVEL companies. Among other things, they told me that the system works based on an algorithm and recognizes which employees are systematically absent from work due to illness. They reported that they face a particular problem at Larnaca airport, where due to the nature of the work (shift work), several employees, especially on weekends, are systematically absent from work and present sick leave. 1 I informed Mr. XXXXXXXXX for my initial concerns about the operation of such a system, emphasizing in particular that: There does not appear to be a legal basis for carrying out such processing. It is possible to make an observation in the evaluation of the employee on the issue of the frequency of taking sick leaves. The employer has the power under the existing labor legislation to take measures against the employee and thus the

operation of such a system, which aims to carry out profiling after the scoring of sick leaves, is neither necessary nor necessary. For such processing, which carries out a systematic and extensive evaluation of personal aspects, an impact assessment must be carried out. The consent cannot be valid because the employer is in a power relationship with the employees and therefore the consent would not be considered free, as provided in the provisions of article 7 of the Regulation. The representatives of the Louis Companies pledged to come back with their positions/opinions on the disputed matter. 1.3. Since there was no response from the Defendants to the complaint, on 21.08.2018, a letter was sent to Messrs. XXXXXXXX, with which I requested to be informed about the actions that have been taken so that the control of the sick leaves of the Louis Companies staff is carried out in a manner that is consistent with the provisions of the Regulation. 1.4. Mr. Human Resources Director, in a letter dated 29.08.2018, which he sent by fax, informed me that they will contact my Office as soon as possible to inform me of the actions they have taken. He clarified that the "Bradford Factor" system applies only to the companies LGS Handling Ltd and Louis Travel and not to the other companies of the Louis Group. 1.5. On 12.09.2018, the company Grant Thornton, as the Data Protection Officer of the Complainant (based on Article 37 of the Regulation), sent a letter to my Office, in which it stated, among other things, the following: The Assessor Bradford used by LGS Handling Ltd, Louis Travel and Louis Aviation. The Bradford Coefficient is used by organizations in the European Union and worldwide. Its operation is lega based on recital 71 and articles 6, 13 and 22 of the Regulation. Specifically, the processing carried out through the aforementioned Coefficient is lawful: (a) Based on Article 6(1)(f) of the Regulation, because it is carried out under the legal interests of the Companies, to minimize the disruption caused by frequent, unscheduled absences and it is the organisation's duty to flag and address any potential employee health concerns. (b) Based on article 13 of the Regulation, the Companies informed the employees about the processing in question through the sick leave policy, which was approved in 2011. 2 (c) Based on recital 71 of the Regulation, since the criteria of " appropriate mathematical or statistical procedures." (d) Calculations are used to identify employees for further inspection. Determining next steps requires human involvement. All employees have access to said file, which is accessible on the Louis Companies intranet. the method used for 1.6. On 14.02.2019, with the same letter from my Office, I requested the Grant Thornton company to send me copies of: (a) the Records of the processing activities kept by the Louis Companies for the recording, control and monitoring of employees' sick leaves using the Bradford Coefficient (Article 30 of the Regulation), (b) the Impact Assessment they have carried out to assess the effects/risks of the use of such processing (Article 35 of the Regulation) and (c) the text informing the staff about the use

and purpose of complying with said processing, the effects/consequences of these results (articles 12-14 of the Regulation). In addition, in the same letter, I asked to be informed regarding: (a) The person who has the responsibility of keeping the record, (b) the person who determines the absence scores as "trigger points" and (c) the time period of retention of the data collected and generated. 1.7. On 14.02.2019, I informed in writing the Organizing Secretary of SEK about my above letter to the company Grant Thornton. 1.8. In response to her letter dated 04.03.2019, which was sent by e-mail, Ms XXXXXXX, Assistant Manager, Technology Risk Services of the Grant Thornton company, informed me that: extracting results and the The person responsible for maintaining the file is the Director of the Human Resources Department, as well as of LGS Handling Ltd. The scores have been determined by the Director of the Human Resources Department when the system was installed, based on international standards and also taking into account the specificity and nature of the organization. The company LGS Handling Ltd is in the process of defining and implementing the retention time of said data. With the same e-mail, copies of the following documents were attached: (a) Log of processing activities for the recording, control and monitoring of staff sick leave using the Bradford Coefficient, in which it has been stated that the processing purposes, through the system, of name, surname, type of illness, medical certificate, sick leave certificate, duration of absence and dates of absence concerning employees are: - The registration and counting of sick leave of employees and 3 - the identification of frequent absences due to sick leave. (b) Impact Assessment carried out to assess the effects/risks of the usesuch Factor, through which it appears that the Louis Companies took the basic processing security measures, as mentioned on page 18 of the Impact Assessment, although to mitigate the risks, they had to additionally adopt a Data Retention Policy and a Disposal and Destruction Policy (Disposal and Destruction Policy), as recommended by the company Grant Thornton (page 18 of the Impact Assessment). (c) Staff information text through the Sick Leave Policy Scope & Purpose, on the use and purpose of said processing, which includes the method used to derive results and the effects/consequences of the results of these (articles 12-14 of the Regulation). 1.9. With separate letters from my Office, dated 30.5.2019, the Plaintiffs and the Organizing Secretary of SEK were informed, on behalf of the employees of the Plaintiffs, that I have thoroughly investigated the matter and disagree with the legal basis of the processing that the Louis Companies mention, that is to say that the processing in question is necessary for the purposes of the legal interests they pursue (Article 6(1)(f) of the Regulation). In the same letter, they were informed that, within the framework of the cooperation and coherence mechanism provided for in Article 61 of the Regulation, I sent a relevant question to the respective Personal Data Protection Authorities and I await their assistance in order to reach a conclusion on a matter

that particularly concerned me . 1.10. The company Grant Thornton, Data Protection Officer of the Complainant, in its letter via e-mail dated 11.06.2019, indicated that it received my letter dated 30.05.2019 and that it expects further information as well as instructions regarding the said subject. 1.11. Subsequently, by my letter dated 15.07.2019, the Complainants were informed that, prima facie, I found a violation of their obligation under Articles 6(1) and 9(2) of the Regulation and they were asked to submit their positions to me /their views on the above and the reasons why they believe that any administrative sanction should not be imposed on them, within a period of 4 weeks from the above date. In addition, in the same letter, they were asked to inform me of the number of employees of the Louis Companies as well as their turnover. 1.12. On 23.07.2019, lawyer XXXXXXX (IOANNIDIS DIMITRIOU LLP), acting on behalf of his clients, Louis Companies, sent me a letter via fax (Ref. no. 2196E/EK/Company-89/6) and informed me that he is considering the subject of my letter dated 15 July 2019. He also asked me for a 4 week extension of time to submit views due to the fact that, as he stated, in view of the summer season many of those involved were absent. 1.13. The lawyer XXXXXXXX sent me a letter with No. Ref. 2298E/EC/Company-89/6 and dated 08.08.2019, via fax, with which he requested my written response on the matter of the extension of time for submitting the positions of his clients. 1.14. On 09.08.2019, the lawyer XXXXXXXX, sent a letter with No. Ref. 12E/MM/Company-89/6, via facsimile, with which, among other things, he submitted a request for access to the administrative file of the case in order to obtain knowledge of all relevant information concerning it and requested that he be granted an extension of time for submission of their presentations until 16.09.2019. 1.15. On 09.08.2019, via fax, I informed the lawyer XXXXXXXXX, that his arguments for granting an extension of time to submit their representations on the substance of my letter dated 15.07.2019, until 16.09.2019, is reasonable and logical, but in the context of fair treatment 4 and usual practice followed with all the Complainants, an extension could be given until 02.09.2019. Also, regarding his request for access to the administrative file of the case, in my same letter, I informed him that he could visit my Office as soon as possible and contact my Office Officer, XXXXXXXX to serve him. 1.16. On 12.08.2019, lawyers XXXXXXXXX from the law firm IOANNIDIS DIMITRIOU DEPE visited my Office and had access to the administrative file of the case. 1.17. With her letter by fax, with No. Ref.: 12E/MM/Company-89/6 and dated 12.08.2019, the lawyer XXXXXXXX, reported to me, among other things, that during their visit to my Office with the aim of accessing the administrative file of the case, it was not allowed to their access to the relevant correspondence I had with the respective Personal Data Protection Authorities based on the mutual assistance of Article 61 of the Regulation and/or to related decisions and other material that was taken into account for the purposes of documenting my

prima facie decision. In the same letter, a request was made that either they be given access to the administrative file of my office with the right to see the relevant documents including, without limitation, the completed questionnaires that I received from the respective authorities, or that they be given copies of the relevant documents. 1.18. By letter from my Office, with No. Fac.: 11.17.001.006.043 and dated 12.08.2019, I informed the lawyer XXXXXXXXX the following: Article 61 of the Regulation concerns exclusively the provision of information and mutual assistance between the supervisory authorities. Specifically, according to the provisions of Article 61(1) of the Regulation: "The supervisory authorities shall provide each other with relevant information and mutual assistance, in order to implement and apply this Regulation in a coherent manner, and shall establish measures for effective cooperation their. Mutual assistance covers, in particular, requests for information and control measures, for example requests for prior consultations and approvals, checks and investigations." Article 63 of the Regulation concerning the Coherence Mechanism provides that: "In order to contribute to the coherent application of this Regulation throughout the Union, the supervisory authorities shall cooperate with each other and, if necessary, with the Commission, through the coherence mechanism as provided for in this section.". In any case, all the necessary information that they would need to know in order to submit their own submissions, was already mentioned in my prima facie decision dated 15.07.2019. It was noted that the opinions of the other Supervisory Authorities do not bind me, they simply represent a pilot for the way each Authority deals with similar issues. My decision will be made without any influence. 1.19. On 02.09.2019, lawyer XXXXXXX sent two documents to my Office. The first related to his clients' representations (Ref. No. E/MM/Company-89/6) and the second related to the Legitimate Interest Assessment carried out on behalf of the Louis Companies in relation to the use of the Bradford System. 2. Introduction - Update on the Bradford Coefficient 2.1. The logic of the automated system that uses the Bradford Coefficient to rate the sick leave of Plaintiffs' employees (Louis Companies) is 5 that short, frequent and unplanned absences are more disruptive than longer absences. Louis Companies feed the system with the following details of the employee: first name, last name, type of illness, duration of absence and dates of absence. The Bradford coefficient is calculated using the following formula: Bradford coefficient = total number of days absent from work due to sick leave x (number of cases)² The Louis Companies then, after scoring, conducts personal interviews with the employees whose score reached at the "trigger points", to determine whether their absence was accidental or intentional, in order to take action against them, if necessary. The measures even include terminating their employment. Personal interview questions may also concern health data. In accordance with the provisions of article 35 of Regulation 679/2016, the Data Protection Officer of Louis

Companies, a Grant Thornton company, submitted to my Office on March 4, 2019, an Impact Assessment regarding the protection of personal data, in which the following "points" are mentioned activation': 125 - 175 points during the last 52 weeks 176 - 200 points during the last 52 weeks More than 200 points during the last 52 weeks 2.2. The following excerpts from th Impact Assessment regarding the actions of the Louis Companies when employee scores reach/"touch" the "trigger points" are quoted in full:125 – 175 points within the last 52 weeks: A letter is prepared by the HR department if the high score is not justifiable and it is then sent to the employee via his departmental manager to notify him that hisfrequent absences have been observed. The employee is encouraged to have a meeting with his/her manager in order to find ways to improve attendance or find ways to expedite the employee's recovery. At no point during this process will the system generate any automatic messages to the affected data subject nor will any automated decision happen without HR's interaction. 176-200 points within the last 52 weeks: A second letter is prepared by the HR department if the high score is not justifiable and it is then sent to the employee in this case informing them of how disruptive it is to have frequent absences. Once again, the employee is encouraged to seek assistance from their manager. The employee is also informed that if further absences are observed they will have to meet the HR for further discussions. At no point during this process will the system generate any automatic messages to the affected data subject nor will any automated decision happen without HR's input. > 200 points within the last 52 weeks: A third letter is prepared by the HR department if the high score is not justifiable in which the employee is requested to meet the HR in order to discuss how the employee's attendance could be improved. At no point during this process will the system generate any automatic messages to the affected data subject nor will any automated decision happen without HR's input. Free translation: 125 - 175 points during the last 52 weeks: If the high score is not justified, a letter is written by the Human Resources Department and then sent to the employee through their department manager to inform them that frequent absences have been observed. The employee is encouraged to meet with his manager to find ways to improve his attendance at work 6 or to find ways to speed up his recovery. In no case during this process will automatic messages be produced by the system concerning the affected data subject nor will any decision of an automated form be made without the participation/intervention of the Human Resources Department. 176 - 200 points in the last 52 weeks: A second letter is prepared from HR if the high score is not justified and then sent to the employer, in which case they are told how disruptive the frequent absences are. Once again, the employee is encouraged to ask their manager for help. Also, the employee is informed that if further absences are observed, he should meet with the Human Resources Department for further discussions. In no

case during this process will automatic messages be produced by the system concerning the affected data subject nor will any decision of an automated form be made without the participation/intervention of the Human Resources Department. > 200 points in the last 52 weeks: A third letter is prepared from HR if the high score is not justified, inviting the employee to meet with HR to discuss improving attendance. In no case during this process will automatic messages be produced by the system concerning the affected data subject nor will any decision of an automated form be made without the participation/intervention of the Human Resources Department. 2.3. Purpose of sick leave processing through the automated system using the Bradford Coefficient In accordance with the provisions of Article 30 of the Regulation, the Data Protection Officer of Louis Companies, Grant Thornton company, submitted to my Office on March 4, 2019, a File of processing activities, in which it has been stated that the purposes of processing, through the system, the name, surname, type of illness, medical certificate, sick leave certificate, duration of absence and dates of absence concerning the employees are: (a) The registration and counting of sick leave of employees and (b) identifying frequent absences due to sick leave. 2.4. Original purpose of sick leave processing The correct administration of employees, which includes the registration and counting of sick leaves, in the context of the execution of a contract between the Louis Companies and these employees. Legal Framework 3.1. Article 4 - Definitions: ""personal data": any information relating to an identified or identifiable natural person ("data subject"); an identifiable natural person is one whose identity can be ascertained, directly or indirectly, in particular by reference an identifier such as a name, an ID number, location data, an online identifier or one or more factors that characterize the physical, 7 physiological, genetic, psychological, economic, cultural or social identity of that natural person. ». ""processing": any operation or series of operations carried out with or without the use of automated means, on personal data or sets of personal data, such as collection, registration, organization, structuring, storage, adaptation or the alteration, retrieval, retrieval of information, use, disclosure by transmission, dissemination or any other form of disposal, association or combination, restriction, deletion or destruction." ""profiling": any form of automated processing of personal data consisting of the use of personal data to assess certain personal aspects of a natural person, in particular to analyze or predict aspects related to work performance, financial situation, health, personal preferences, interests, reliability, conduct, location or movements of the natural person in question." "'filing system': any structured set of personal data that is accessible according to specific criteria, whether that set is centralized or decentralized or distributed on a functional or geographical basis.". ""controller": the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and manner of processing

personal data; when the purposes and manner of processing thereof are determined by Union law or the law of a Member State, the controller or the specific criteria for his appointment may be provided for by Union law or the law of a Member State." ""health-related data": personal data which relate to the physical or mental health of a natural person, including the provision of health care services, and which disclose information about the state of their health.". With reference to health-related data, recital 35 of the Regulation clarifies that: "(35) Personal health-related data should include all data related to the health status of the data subject and which disclose information about the data subject's past, current or future state of physical or mental health. This includes information about the natural person collected when registering for and providing health services as referred to in Directive 2011/24/EU of the European Parliament and of the Council (9) to that natural person; a number, a a symbol or an identifying feature assigned to a natural person for the purpose of fully identifying the natural person for health purposes; information resulting from examinations or analyzes of a part or substance of the body, including from genetic data and biological samples and any information, for example , regarding disease, disability, risk of disease, medical history, clinical treatment or the physiological or biomedical condition of the data subject, regardless of source, for example, from a physician or other health professional, hospital, medical device or diagnostic test in vitro.". 3.2. Article 6 – Legality of processing 3.2.1. According to the provisions of article 6 of the Regulation, regarding the legality of the processing: "1. The processing is lawful only if and as long as at least one of the following conditions applies: 8 a) the data subject has consented to the processing of his personal data for one or more specific purposes, b) the processing is necessary for the performance of a contract of to which the data subject is a party or to take measures at the request of the data subject before the conclusion of a contract, c) the processing is necessary to comply with a legal obligation of the controller, d) the processing is necessary to safeguard a vital interest of the data subject or another natural person, e) the processing is necessary to fulfill a duty carried out in the public interest or in the exercise of public authority delegated to the data controller, f) the processing is necessary for the purposes of the legal interests pursued by the data controller or a third party, unless these interests are overridden by the interest or fundamental rights and freedoms of the data subject that require the protection of personal data, in particular if the data subject is a child. Item f) of the first paragraph does not apply to the processing carried out by public authorities in the exercise of their duties. 2. Member States may maintain or adopt more specific provisions to adapt the application of the rules of this regulation regarding processing to comply with paragraph 1 items c) and e), specifying more precisely specific requirements for processing and other measures to ensure legal and legitimate processing, including for other special cases of

processing as provided for in chapter IX. 3. The basis for the processing referred to in paragraph 1 items c) and e) is defined in accordance with: a) Union law , or b) the law of the Member State to which the controller is subject. The purpose of the processing is determined on the said legal basis or, with regard to the processing referred to in paragraph 1 point e), is the necessity of the processing for the fulfillment of a task carried out in the public interest or in the exercise of a public authority delegated to the controller. This legal basis may include specific provisions to adapt the application of the rules of this regulation, among others: the general conditions governing the lawful processing by the data controller; the types of data processed; the relevant subjects of of data; the entities to which the personal data may be communicated and the purposes of such communication; the limitation of the purpose; the storage periods; and the processing operations and processing procedures, including measures to ensure lawful and legitimate processing, such as those for other special cases of processing as provided for in chapter IX. Union law or Member State law responds to a public interest purpose and is proportionate to the intended legal purpose. 4. When the processing for a purpose other than that for which the personal data have been collected is not based on the consent of the data subject or on Union law or the law of a Member State which is a necessary and proportionate measure in a democratic society for the ensuring the purposes referred to in Article 23 paragraph 1, the controller, in order to ascertain whether the processing for another purpose is compatible with the purpose for which the personal data is initially collected, takes into account, among others: 9 the existence of appropriate guarantees, which may include encryption or a) any relationship between the purposes for which the personal data have been collected and the purposes of the intended further processing, b) the context in which the personal data was collected, in particular with regard to the relationship between the data subjects and the controller, c) the nature h of personal data, in particular for the special categories of personal data processed, in accordance with Article 9, or whether personal data related to criminal convictions and offenses are processed, in accordance with Article 10, d) the possible consequences of the intended further processing for the data subjects, e) pseudonymization.". 3.2.2. Recital 47 of the Regulation states the following in relation to Article 6(1)(f) of the Regulation: "The legitimate interests of the data controller, including those of a data controller to whom personal or third-party data may be disclosed, may provide the legal basis for the processing, provided that they do not override the interests or fundamental rights and freedoms of the data subject, taking into account the legitimate expectations of the data subjects based on their relationship with the controller. Such a legitimate interest could, for example, exist where there is a relevant and appropriate relationship between the data subject and the controller, such as if the data subject is a customer of

the controller or is in its service. In any case, the existence of a legitimate interest would need a careful assessment, including whether the data subject, at the time and in the context of the collection of the personal data, can reasonably expect that for this purpose it can be carried out processing. In particular, the interests and fundamental rights of the data subject could override the interests of the controller when personal data are processed in cases where the data subject does not reasonably expect further processing of his data. Since it is for the legislator to provide by law the legal basis for the processing of personal data by public authorities, that legal basis should not apply to processing by public authorities in the performance of their duties. The processing of personal data, to the extent that it is strictly necessary for the purposes of fraud prevention, also constitutes a legitimate interest of the controller concerned. The processing of personal data for direct marketing purposes can be considered to be carried out for the sake of a legitimate interest. 3.2.3. With reference to Article 6(4) of the Regulation, recital 50 of the Regulation adds that: "50) The processing of personal data for purposes other than those for which the personal data were originally collected should only be allowed if the processing is compatible with the purposes for which the personal data was originally collected. In this case, a legal basis separate from that which allowed character is not required. …….. The legal basis provided for by Union law or of a Member State for the processing of personal data may also constitute the legal basis for further processing. In order to ascertain whether the purpose of the further processing is compatible with the purpose of the initial collection of the personal data, the controller, if it meets all the requirements for the lawfulness of the initial processing, should take into account, among others: any links between of these purposes and the purposes of the intended further processing; the context in which the personal data have been collected, in particular the reasonable expectations of the personal data subject on the 10th collection of the data based on his relationship with the controller in terms of their further use · the nature of the personal data; the consequences of the intended further processing for the data subjects; and the existence of appropriate safeguards for both the initial and the intended acts of further processing. Where the data subject has provided his consent or the processing is based on Union or Member State law which constitutes a necessary and proportionate measure in a democratic society to ensure, in particular, important purposes in the general public interest, the controller should be allowed processing to proceed with the further processing of the personal data, regardless of the compatibility of the purposes. In any case, it should be ensured that the principles laid down in this Regulation are applied and, in particular, that the data subject is informed about these other purposes and about his rights, including the right to object." 3.2.4. A useful reference can also be made from

Opinion 2/2017 of the Article 29 Working Party, which was adopted by the European Data Protection Board, regarding the processing of data at work, which also examines the obligations of data controllers in the context of Regulation. The following excerpts are given:"if the employer invokes a legitimate interest [...], the purpose of the processing should be lawful; the chosen method or special technology should be necessary, proportionate and applied in the least intrusive way possible, together with providing to the employer the opportunity to demonstrate that appropriate measures are being implemented to ensure a balance with the fundamental rights and freedoms of employees." "… it is necessary to have specific mitigating measures to ensure a fair balance between the employer's legitimate interest and the fundamental rights and freedoms of employees." 3.2.5. The Article 29 Working Group on data protection issued on April 9, 2014, Opinion no. 06/2014 on the concept of the legal interests of the data controller. The following excerpts are useful: “The indicative list below presents some of the more common contexts in which they may be of interest.

…….. legal issue raised to mass media and arts campaigns for the collection of money laundering procedures from illegal activities of the abusive exercise of powers during the provision of services or the ai networks 11 commercial promotion). Therefore, an interest can be considered legitimate if the controller can pursue its fulfillment in a manner consistent with data protection and other legislation. In other words, a legitimate interest must be ``acceptable under the law." "'Interest' means the wider stake which may dictate to the controller the processing, or the benefit the controller derives from the processing, as well as the associated potential benefit to society. The interest may be compelling, clear or controversial." "To be considered 'legitimate' ... an interest must be legitimate, that is, consistent with applicable EU and national law. It must also be identified with due clarity and be sufficiently specific to enable it to be weighed against the interests and fundamental rights of the data subject. In addition, it must be a real and existing interest, i.e. it must not be hypothetical." "Even people who engage in illegal activities should not be subject to disproportionate interference with their rights and interests. For example, the interests of a person accused of having committed theft in a supermarket outweigh the interest in requiring the publication of his photograph and address details on the walls of the supermarket and/or on the Internet by the shop owner." "At this point it should be emphasized the important role that safeguards1 can play in mitigating the undue impact on data subjects, thus changing the outcome of the balance between rights and interests in such degree, so that the legitimate interests of the data controller are not undermined. The use of safeguards in itself is certainly not sufficient to justify any type of processing in any type of context. Furthermore, such

safeguards must be suitable and adequate and mitigate beyond all doubt and to a significant extent the impact on the data subjects." "…….. the fact that a controller is acting not only in the same legitimate interest (e.g. its own business interest), but also in the interest of the wider community, may give greater 'gravity' to the said interest. The more compelling the public interest or the interest of the wider community and the clearer its recognition and the expectation of the community and data subjects that the controller can take action and process data in pursuit of it, the more weight it has when weighing the legitimate interests." 'Example 14: Electronic monitoring of internet use The employer monitors the internet use of employees during their working hours to check whether they are overusing the company's IT systems for personal reasons. The collected data includes temporary files and "cookies" created on employees' computers, which record the websites they visited and the downloads they made during their working hours. The data is processed without prior consultation with the persons referred to and the trade union representatives/employees' committee of the company. Also, the persons concerned are not sufficiently informed about these practices. 1 Safeguards include, but are not limited to, strict limitations on the volume of data collected, the immediate deletion of data after use, technical and organizational measures that will ensure the functional separation of data, the appropriate use of anonymization techniques, the grouping of data , the use of privacy-enhancing technologies, transparency and accountability, and the possibility of opting out of processing. 12 The volume and nature of the data collected constitutes a significant intrusion into the privacy of employees. In addition to issues of proportionality, the transparency of practices, which is closely linked to the reasonable expectations of data subjects, is also an important factor to consider. Even if the employer has a legitimate interest in limiting the time spent by employees visiting websites not directly related to their work, the methods used do not meet the weighting criterion ……. The employer should use less intrusive methods (e.g. restricting access to certain websites) which, as a best practice, should be discussed and agreed with employee representatives, but also communicated to employees in a transparent manner .». 3.2.6. The Information Commissioner's Office of England has issued a Guide to Organizations regarding the invocation of legitimate interest, which includes, among other things, the following passage: "Whilst a three-part test is not explicitly set out as such in the GDPR, the legitimate interests provision does incorporate three key elements. Article 6(1)(f) breaks down into three parts: “processing is necessary for… …the purposes of the legitimate interests pursued by the controller or by a third party, … …except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.” It makes most sense to apply this as a test in the following order: Purpose

test – is there a legitimate interest behind the processing? □ Necessity test – is the processing necessary for that purpose? □ Balancing test – is the legitimate interest overridden by the individual's interests, rights or freedoms? This concept of a three-part test for legitimate interests is not new. In fact the Court of Justice of the European Union confirmed this approach to legitimate interests in the Rigas case (C-13/16, 4 May 2017) in the context of the Data Protection Directive 95/46/EC, which contained a very similar provision. Free translation: "While the three-part control is not explicitly defined in the Regulation, the provision concerning legitimate interests includes three main elements. Article 6(1)(f) includes three parts: Processing is necessary for… … the purposes of the legitimate interests pursued by the controller or a third party… … unless these interests are overridden by the interest or fundamental rights and freedoms of the of the data subject that imposes the protection of personal data, even if the data subject is a child. It makes sense to apply this provision as a check in the following order: Purpose check - is there a legitimate interest behind the processing? Necessity check - is the processing necessary for this purpose? Balancing test – does the legal interest outweigh the interests, rights or freedoms of the individual? 13 The three-party test regarding legitimate interest is not new. In fact, the Court of Justice of the European Union confirmed this approach regarding legitimate interest in the Rigas case (C-13/16 of 4 May 2017) in the context of the Directive 95/46/EC on data protection, which contained a very similar provision.'In the same Guide, among others, the following passages are mentioned: "It may be the most appropriate basis when: □ □ □ the processing is not required by law but is of a clear benefit to y or others? there's a limited privacy impact on the individual? the individual should reasonably expect you to use their data in that way" "There may also be occasions when you have a compelling justification for the processing which may mean that a more intrusive impact on the individual can be warranted. However in such cases you need to ensure that you can demonstrate that any impact is justified." "The legitimate interests basis is likely to be most useful where there is either a minimal impact on the individual, or else a compelling justification for the processing.". "You should not look to rely on it simply because it may initially seem easier to apply than other lawful bases. It is not always the easiest option, and in fact places more responsibility on you to justify your processing and any impact on individuals. In effect, it requires a risk assessment based on the specific context and circumstances to demonstrate that processing is appropriate." Free translation: “It may be the most appropriate basis when: □ the processing is not required by law but has a clear benefit to you or others, □ there is a limited impact on the individual's privacy, □ the individual reasonably expects you to use the his data in this way". “There may also be cases where a more intrusive impact on the individual is warranted. However, in such cases, you should ensure that

you can demonstrate that any impact is justified." "The legal basis of legitimate interest is likely to be most useful where there is minimal impact on the individual or other compelling reason for the processing." “It should not be invoked merely because it may initially appear easier to implement than other legal bases. It's not always the easiest option and actually puts more onus on you to justify processing and any impact on individuals. In fact, it requires a risk assessment based on the specific context and circumstances to demonstrate that the processing is appropriate.' 3.3. Article 9 - Processing of special categories of personal data 3.3.1. The processing of special categories of personal data is governed by Article 9 of the Regulation and expressly provides that: "1. The processing of personal data that reveals racial or ethnic origin, political opinions, religious or philosophical beliefs or membership in a trade union is prohibited, as well as the processing of genetic data, biometric data for the purpose of indisputable identification of a person, data concerning the health or data concerning a natural person's sex life or sexual orientation. 2. Paragraph 1 shall not apply in the following cases: 14 a) the data subject has provided express consent to the processing of such personal data for one or more specific purposes, unless Union or Member State law provides that the prohibition referred to in paragraph 1 cannot be removed by the data subject, b) the processing is necessary for the performance of the obligations and the exercise of specific rights of the controller or the data subject in the field of labor law and social security law and social protection, if permitted by Union or Member State law or by a collective agreement in accordance with national law providing appropriate guarantees for the fundamental rights and interests of the data subject, c) the processing is necessary to protect the vital interests of subject of the data or another phy natural person, if the data subject is physically or legally unable to consent, d) the processing is carried out, with appropriate guarantees, in the context of the legitimate activities of an institution, organization or other non-profit body with a political, philosophical, religious or trade union objective and under the condition that the processing concerns exclusively the members or former members of the organization or persons who have regular communication with it in relation to its purposes and that the personal data are not shared outside the specific organization without the consent of the data subjects, e) the processing concerns personal data that has been manifestly made public by the data subject, f) the processing is necessary for the establishment, exercise or support of legal claims or when the courts act in their jurisdictional capacity, g) the processing is necessary for reasons of substantial public interest, based on the law of the Union or a Member State, which is proportionate to the intended objective, respects the essence of the right to data protection and provides for appropriate and specific measures to safeguard the fundamental rights and interests of the data subject, h) the processing is necessary for the purposes of preventive or

occupational medicine, assessment of the employee's ability to work, medical diagnosis, provision of health or social care or treatment or management of health and social systems and services based on Union law or the law of a Member State or pursuant to a contract with a professional in the field health and subject to the conditions and guarantees referred to in paragraph 3, i) the processing is necessary for reasons of public interest in the field of public health, such as protection against serious cross-border threats to health or ensuring high standards of quality and safety her healthcare and medicines or medical devices, based on Union law or the law of a Member State, which provides for appropriate and specific measures to protect the rights and freedoms of the data subject, in particular professional confidentiality, or j) the processing is necessary for archiving purposes in the public interest, for the purposes of scientific or historical research or for statistical purposes in accordance with Article 89(1) based on Union or Member State law, which are proportionate to the objective pursued, respect the essence of right to data protection and provide for appropriate and specific measures to safeguard the fundamental rights and interests of the data subject. 3. The personal data referred to in paragraph 1 may be processed for the purposes provided for in paragraph 2, point h), when such data is processed by or under the responsibility of a professional who is subject to the obligation to maintain professional secrecy based on of Union or Member State law or based on rules established by competent national bodies or by another person who is also subject to an obligation of confidentiality under Union or Member State law or based on rules established by competent national bodies. 4. Member States may maintain or establish further conditions, including restrictions, regarding the processing of genetic data, biometric data or health-related data." 3.3.2. Regarding the processing of special categories of personal data, recital 51 of the Regulation states that: "51) Personal data which are by nature particularly sensitive in relation to fundamental rights and freedoms need special protection, as the context of their processing could create significant risks to fundamental rights and freedoms. Such personal data should include personal data revealing racial or ethnic origin, where the use of the term "racial origin" in this Regulation does not imply that the Union accepts theories supporting the existence of separate human races.

…….. Such personal data should not be processed , unless the processing is permitted in specific cases provided for in this Regulation, taking into account that the law of the Member States may provide for specific data protection provisions in order to adapt the application of the rules of this Regulation due to compliance with a legal obligation or due to the fulfillment of a duty performed in the public interest or in the exercise of a public authority delegated to the controller. In addition to the specific requirements to which the processing in

question is subject, the general principles and other rules of this regulation should be applied, especially with regard to the conditions of legal processing. Derogations from the general ban on the processing of personal data falling under these special categories should be expressly provided for, inter alia, in the case of the express consent of the data subject or when special needs are involved, in particular when the processing is carried out in the context of the legitimate activities of certain associations or institutions, the purpose of which is to allow the exercise of fundamental freedoms." 3.4. Article 21 - Right to object and profiling 3.4.1. Based on article 21 (1) of the Regulation, which concerns the right to object, the data subject has the right to object, at any time and for reasons related to his particular situation, to the processing of personal data concerning him, which is based on Article 6 (1)(f), including profiling. In such a case, the controller shall no longer process the personal data, unless it demonstrates compelling and legitimate reasons for the processing which override the interests, rights and freedoms of the data subject or for the establishment, exercise or support of legal claims claims. 3.4.2. The Article 29 Data Protection Working Party (formerly the Article 29 Working Party) issued, on 6 February 2018, Guidelines on automated decision-making and profiling for the purposes of the Regulation, which set out, inter alia, the following excerpts: "Profiling consists of three elements: it must be an automated form of processing, it must concern personal data, and the aim of the profiling must be assess personal aspects of a natural person.". "Profiling must involve some form of automated processing, although human involvement does not necessarily exclude the activity from the definition." 16 "GDPR (General Data Protection Regulation) states that profiling is the automated processing of personal data to evaluate personal aspects, in particular to analyze or make predictions about natural persons. The use of the word 'assessment' suggests that profiling involves some form of assessment or judgment about a person." “There are potentially three ways in which profiling can be used: i) general profiling, ii) decision-making based on profiling, and iii) purely automated decision-making, including profiling, which produces legal effects or significantly affects the data subject in a similar way (Article 22(1)).' "Profiling can be unfair and discriminatory." "Profiling may involve the use of personal data that was originally collected for another purpose." "The controller must carry out a balancing of interests to assess whether the interests or fundamental rights and freedoms of the data subject prevail over his own interests. Particularly relevant to the above are the following:

…… the consequences of profiling (the effects on the data subject), and safeguards aimed at ensuring objectivity, non-discrimination and accuracy in the profiling process." "Controllers may process special categories of personal data only if they can satisfy the conditions set out in Article 9(2), as

well as a condition of Article 6. The above includes special categories of data extracted or derived from a training activity Profile.". "Under Article 21(1), the data subject may object to processing (including profiling), for reasons related to his/her particular situation. Controllers must specifically grant this right in any case where the processing is based on Article 6(1)(e) or (f). After the data subject has exercised this right, the controller must stop2 (or refrain from starting) the profiling process, unless he can demonstrate the existence of compelling and legitimate reasons that override the interests, rights and of the freedoms of the data subject. The controller may also need to delete the relevant personal data3." 3.5. Article 35 – Data Protection Impact Assessment 3.5.1. Article 35(1) and (3) of the Regulation, regarding the Impact Assessment regarding data protection, provides that: "1. When a type of processing, in particular using new technologies and taking into account the nature, scope, context and purposes of the processing, may entail a high risk for 2 GDPR - Article 18 paragraph 1 letter d) 3 GDPR - Article 17 paragraph 1 point c) 17 rights and freedoms of natural persons, the data controller carries out, before the processing, an assessment of the effects of the planned processing operations on the protection of personal data. An assessment may consider a set of similar processing operations which involve similar high risks. 3. The data protection impact assessment referred to in paragraph 1 is required in particular in the case of: a) a systematic and extensive assessment of personal aspects concerning natural persons, which is based on automated processing, including profiling, and on which decisions based produce legal results concerning the natural person or similarly significantly affect the natural person, b) large-scale processing of the special categories of data referred to in Article 9 paragraph 1 or personal data relating to criminal convictions and offenses referred to in Article 10 or c) systematic monitoring of publicly accessible space on a large scale." 3.5.2. As a key accountability tool, as required under Article 5(2) of the Regulation, the data protection impact assessment allows the data controller to assess the risks posed by automated decision-making, including profiling. It is a way to demonstrate that appropriate measures are in place to address the risks in question and, therefore, to demonstrate compliance with the Regulation. 3.6. Article 61 – Mutual assistance 3.6.1. My Office conducted an investigation, in the form of a questionnaire, which was sent to the Respective Authorities for the Protection of Personal Data, through the mutual assistance of Article 61 of the Regulation, regarding the legality of the grading of sick leaves, using the "Bradford Factor". 3.6.2. It is noteworthy that the Italian Authority, with its Decision issued in February 2018, deemed illegal the operation of an automated system called "SAVIO", which was used by the Social Insurance Department to schedule the medical examinations that had to be the employees do, after checking the sick leave certificates by the doctors. By using special algorithms, the system was

able to predict potential unjustified sick leaves. The system analyzed data regarding employees, such as frequency and duration of sick leave, position held by the employee in the organization and size of the organization. The Italian Authority considered that, through the specific automated system, automated decisions were taken, including profiling, based on statistical models. The result was a prediction of employee behavior. 3.7. Article 88 – Processing in the context of employment 3.7.1. Article 88 regarding processing in the context of employment provides that: "1. Member States, through legislation or through collective agreements, may establish special rules in order to ensure the protection of the rights and freedoms against the processing of the personal data of employees in the context of employment, the employment contract, including the execution of obligations provided for by law or by collective agreements, management, planning and organization of work, equality and diversity in the workplace, health and safety at work, protection of employers' property and for the purposes of recruiting, performing in particular 18 clients and for purposes of exercise and enjoyment, on an individual or collective basis, rights and benefits related to employment and for purposes of termination of the employment relationship. 2. These rules include appropriate and specific measures to safeguard the human dignity, legal interests and fundamental rights of the person to whom the data refer, with particular emphasis on the transparency of the processing, the transmission of personal data within a group of companies, or group of companies carrying out a common economic activity and the monitoring systems in the workplace.". 3.7.2. Opinion 2/2017 of the Article 29 Working Party on data processing at work states that: "Processing in the context of employment" Article 88 of the GDPR states that Member States, through legislation or through collective agreements, may establish special rules in order to ensure the protection of rights and freedoms against the processing of personal data of employees in the context of employment. In particular, these rules can be established for the purposes of: recruitment; performance of the employment contract (including the performance of obligations provided for by law or collective agreements); equality and diversity in the workplace; management, planning and organization of work · occupational health and safety; protecting the property of employers and clients; exercising and enjoying (on an individual basis) employment-related rights and benefits; and terminating the employment relationship. According to Article 88 paragraph 2, these rules should include appropriate and specific measures to safeguard the human dignity, legal interests and fundamental rights of the person to whom the data refer, with particular emphasis on the following: transparency of the processing; the transmission of personal data within a group of companies, or a group of companies carrying out a common economic activity; and monitoring systems in the workplace.". 3.8. Decisions 3.8.1. The European Court of Human Rights

(Grand Chamber) during the trial of the case Bărbulescu v. Romania (application no. 61496/08) ruled that, in order to assess whether a particular measure is proportionate to the intended purpose, Member State authorities must consider: (a) whether the employee has been informed of the possibility that the employer may take measures to monitor his mail and the existence of such measures, (b) the extent of the monitoring and the degree of interference with the employee's privacy, (c) whether the employer has reasonable grounds to justify such monitoring, 19 (d) whether the employer could implement a monitoring system based on milder means of direct access to the content of the employee's mail, (e) the consequences of the monitoring for the employee and the employer's use of the results of the monitoring, and (f) whether there are sufficient safeguards for the employee to ensure that the employer will not be able to access the content of the email unless the employee has previously been informed of this possibility. 3.8.2. An important decision on the interpretation of "legitimate interest" was issued on 4 May 2017 by the Court of Justice of the European Union (CJEU) in case C-13/16 "Rīgas satiksme". Specifically, the preliminary question concerned the interpretation of the concept of the controller's legitimate interest as a reason that legitimizes the legality of data processing (Article 6(1)(f) of the Regulation). The request was made in the context of a legal dispute between the competent office for the certification of traffic violations, which was under the national security police directorate of the Riga region, Latvia, and the Riga city trolleybus company (Rīgas satiksme), with a request to disclose the data identifying the cause of the accident. In particular, a traffic accident took place and Rīgas satiksme submitted a request to the Police, requesting information about the person who had been administratively sanctioned after the accident, as well as copies of the statements of the taxi driver and the passenger regarding the conditions of the of the accident, as well as the name, ID card number and residential address of the taxi passenger. The Police partially accepted Rīgas satiksme's request and shared the name of the passenger, but refused to share his ID card number and home address. Rīgas satiksme filed an appeal before the first-instance administrative court against the decision of the Police, for refusing to disclose the identity card number and address of the passenger involved in the accident. The court accepted Rīgas satiksme's appeal and the Police appealed. The Court considered that the interpretation of the term "necessary" is not clear for several reasons, among which, there are three cumulative conditions for the lawful processing of personal data: first, the pursuit of a legitimate interest on the part of the controller or of the third party or third parties to whom the data is communicated, secondly, the necessity of the processing to achieve the intended legitimate interest and, thirdly, the condition that the fundamental rights and freedoms of the person concerned by data protection do not prevail. 3.8.3. A useful reference can also be made to the excerpt below from Decision

No. 46/2011 of the Hellenic Personal Data Protection Authority: "As is consistently accepted by the national and European supreme courts, ……. The measure is appropriate (appropriate) when it enables the effective achievement of the intended purpose. The measure is deemed necessary when the intended purpose cannot be achieved by milder means, or, in other words, among several appropriate measures that equally achieve the intended purpose, the one that induces the least burdensome consequences is chosen." 4. Rationale 4.1. The date of sick leave and the frequency of taking sick leave concerning a living natural person, to the extent that his identity is immediately or indirectly revealed, constitute "special 20 categories of personal data", according to the definition given in Article 9(1) of the Regulation. The automated system used constitutes a "filing system" under the definition in Article 4(6) of the Regulation. Feeding an automated system with the above personal data, grading them using the "Bradford Coefficient" and subsequently compiling a profile of natural persons, based on the results produced/extracted, constitutes processing of personal data, within the meaning of Article 4(2) of Regulation. Louis Companies is responsible for processing (Article 4(7) of the Regulation). Data subjects are the employees of the Louis Companies (Article 4(1) of the Regulation). 4.2. Louis Companies, as employers, have the right to exercise supervision over the frequency of sick leave and/or the validity of sick leave certificates. However, such a right should not be exercised abusively and should also be exercised within the limits set by the relevant legislative framework. A processing to be lawful should be limited to what is necessary for the organization, control and processing of the company's turnover. The employer cannot exercise unlimited control and supervision over the employees, violating their personality. Scoring statutory sick leave is beyond the employer's remit, as in doing so they make themselves a doctor or health professional and "punish" employees who take sick leave on certain days of the week/month and/or frequently and/or systematically. 4.3. Where the objective identified by the employer can be achieved in a less intrusive and burdensome manner, the employer should consider this option. In the case under consideration, the Louis Companies could invite to oral interviews/meetings the employees who are absent on certain days of the week/month and/or frequently and/or systematically due to illness and/or the employees who are suspected and/or complaint that they present false sick leave certificates. 4.4.1. When considering the question of grading sick leave, the employer should always bear in mind that, although employees have a right to a certain degree of personal protection in the workplace, this right must be balanced against the right to control the operation of his business and to be protected from actions of employees that may harm his legal interests, such as for example the legal responsibility of the employer for the actions of his employees. 4.4.2. In this context, the employer must carry out a Legitimate Interest

Assessment. Based on Opinion 06/2014 of the Working Group of Article 29 on data protection, dated 9 April 2014, regarding the concept of legitimate interests of the data controller, this Assessment includes three decisive stages: 1st stage: Determination of the legitimate interest. That is, what is the purpose of processing personal data and why is it important to the controller. However, even if the controller's interest for a specific purpose is obvious and legitimate based on its objectives, it should nevertheless be clearly formulated and communicated to the affected persons so that they are aware of the legal basis of the processing to which the data are to be subjected. their personal data. 2nd stage: Carry out Necessity Check. That is, the controller should consider whether the processing of personal data is absolutely necessary to satisfy his interests (such as, for example, commercial and business 21 interests). In the event that the specific processing is deemed necessary in combination with the purpose, it can proceed to the third stage, which is also the most important. 3rd stage: Proportionality Check. The controller can rely on a genuine legitimate interest only when the rights and freedoms of the person whose personal data will be processed have been assessed and do not override his own legitimate interests. The control should include: □ □ □ □ □ the type/nature of the personal data being processed (for example whether the processing concerns special categories of personal data) the way the personal data is processed (for example, whether the data is submitted to processing for profiling) the potential impact of the intended processing on data subjects (for example, emotional impact such as fear and distress), their reasonable (basic) expectations (i.e. whether they could expect such processing), and status of the controller and the status of data subjects, emphasizing a possible unbalanced relationship between controller and subjects. The controller should then make a provisional weighing of the interests and rights at stake, as described in the three stages of the Legitimate Interest Assessment. In this weighing, the measures taken by the data controller to comply with, among other things, the minimization principle, contribute significantly to its compliance with the requirements of Article 6(1)(f) of the Regulation. Full compliance means that the impact on persons is reduced, that the interests of data subjects are less likely to be undermined or the fundamental rights or freedoms of data subjects are infringed. Subsequently, the controller should obtain additional guarantees, in order to arrive at an overall and final assessment. Such guarantees include, extensive use of anonymization techniques, grouping of data, increased transparency and the right to object (Article 21 of the Regulation). With regard to these guarantees and the overall, final weighting, the Working Group emphasizes three issues of increased importance in the context of Article 6(1)(f): □ the possible need for additional measures that will increase transparency and accountability □ the rig of the data subject to object to processing and strengthening the rights of data subjects: data portability and availability of

flexible mechanisms for data subjects to access, modify, delete, transmit or further process in other ways (or allow third parties to further process) the data concerning them. 4.4.3. Regarding the three stages of the Legitimate Interest Assessment, the temporary weighting and the overall, final weighting, Opinion 06/2014 explains that: - The more sensitive the information, the greater the possible consequences for the persons to whom the data refer . However, this does not mean that it is permitted, based on Article 6(1)(f) of the Regulation, to process data which appear harmless in themselves. Even this data can, depending on how it is processed, have a significant impact on the data subjects. - In general, the more negative or uncertain the impact of the processing, the lower the chances that the processing will ultimately be considered lawful. Consequently, it is appropriate to investigate the availability of alternative methods to achieve the objectives pursued by the controller, which have less negative consequences for the data subjects. 22 - An important role in the assessment of legal interest is played by the status of the data controller. For example, a large multinational company may have more resources and greater bargaining power than data subjects and therefore may more easily enforce its "legitimate interest" at the expense of data subjects, especially if has a dominant position in the market. If the company is left to act unchecked, data subjects may be harmed. In fact, the Opinion states that the legislative framework on personal data protection could play an important role in preventing any unjustified infringement of the rights and interests of data subjects. - Article 6(1)(f) is based on the principle of accountability. The controller is required to carry out a careful and effective weighing in advance, taking into account the particular circumstances of the case, and not vague parameters, as well as the reasonable expectations of the persons to whom the data refer. For reasons of good practice, it is recommended, depending on the case, that this weighting be documented in a sufficiently detailed and transparent manner, so that it is possible to verify its completeness and accuracy - if required - by the interested parties, including the persons to which the data refers, by data protection authorities and, ultimately, by the courts. - The concept of accountability is closely related to the concept of transparency. In order for data subjects to be able to exercise their rights, controllers should explain in a clear, simple and comprehensible way to data subjects the reasons why they consider that their interests override interests or fundamental rights and freedoms of data subjects. They should also explain the guarantees they have provided for the protection of their personal data, including the right to object to processing (Article 21 of the Regulation). 4.5. In accordance with Opinion 06/2014 on the concept of the legal interests of the data controller, dated 9 April 2014, as well as the Guidelines for automated decision-making and profiling for the purposes of the Regulation, dated 6 February 2018, the Companies Louis in order to be able to process data related to

health, they must be able to satisfy the conditions set out in article 9(2) as well as a condition of article 6 of the Regulation. The application of Article 9 cumulatively with Article 6 aims to provide a higher level of protection for special categories of personal data. The above includes special category data extracted or inferred from profiling activity. 5. Conclusions Taking into account the above, I am of the opinion that: 5.1. Assessment of Legitimate Interest Article 6(1)(f) of the Regulation allows processing SUBJECT to the application of the weighing of the legitimate interests of the controller against the interests or fundamental rights and freedoms of the data subjects. (i) The Assessment of Legitimate Interest, carried out by the Complainant Defendants, which I have thoroughly studied, is not correct as it does not document / prove that: THE GRADING OF SICK LEAVES, using the Bradford Coefficient, which raises to square (multiply by itself) the number of times sick leave is taken (FREQUENCY OF SICK LEAVE TAKEN) and by extension the possible measures taken against employees based on the numerical result produced, for the purposes of satisfying their legal interests, such as these are set out in said Estimate, EXCEEDS/OVERCOME the interests or fundamental rights and freedoms of employees (Article 6(1)(f) of the Regulation) and therefore, the processing in question (scoring of sick leave using the Bradford Coefficient) CANNOT be based on provisions of article 6(1)(f) of the Regulation, whichconcerns the defense of their legal interests. (ii) The said grading of legal sick leaves is beyond the employer's competence, because in this way he makes himself a doctor or health professional and "punishes" employees who take sick leave on certain days of the week/ month and/or frequently and/or systematically. This measure is considered disproportionate, punitive and vindictive. (iii) The Assessment of Legal Interest carried out by the Defendants in the complaint could be correct/applicable in the event that the automated System simply counted the absences of the employees, due to sick leave, without however the number of absences , that is, of the frequency, to be multiplied by itself. Based on the numerical result that would be produced, the right of the Louis Companies, as the employers, would still exist to take action against the employees, in accordance with the applicable labor law and therefore would be able to satisfy their legal interests as these are recorded in the Estimate. (iv) Considering the excessive nature of the profiling of employees of the Louis Companies, based on the score they receive through an automated system, using the Bradford Coefficient, and the possibly "inaccurate"/misleading information/results produced, since: they are scored "strictly" employees who take sick leave on certain days of the week/month, and/or frequently and/or systematically and there is no existing legal framework and/or contract that allows grading the frequency of taking sick leave and will not there could be any legal framework and/or contract that prohibits taking sick leave on certain days of the week/month and/or frequently and/or systematically, contributes to the

interests or fundamental rights and freedoms of employees. 5.2. Legal basis of the processing, i.e. the grading of sick leaves Given that, the processing carried out through the automated system using the Bradford Coefficient concerns special categories of personal data (data related to health - article 9 of the Regulation) and therefore article 9 must be applied cumulatively with article 6, it implies that: The considered processing lacks a legal basis, since, on the one hand, it has not been documented that the legal interest of the Louis Companies outweighs the interests, rights and freedoms of the employees, so that the processing in question can rely on Article 6(1)(f) of the Regulation, on the other hand, none of the exceptions in Article 9(2) allowing such processing apply. 24 5.3. The claims of the lawyer of the Plaintiffs, as stated in his letter No. Ref. E/MM/Company-89/6 and dated 02.09.2019 are answered as follows: Paragraph 1 of the Defendants - grading of absences due to sick leave 1. The Bradford Coefficient does not only lead to a numerical performance of data (points) which is a function solely of the number of sick days and absenteeism, as you mention in para 1 of your letter. In other words, it is not just a tool for counting, recording and monitoring employees' sick leaves. 1.1. From a thorough study of the System on numerous websites on the internet as well as from the written information I had from the Companies, through the Sick Leave Policy Scope & Purpose, a copy of which was sent to me on 04.03.2019, the Bradford Contributor is a diagnostic tool that detects frequent short term sick leaves. The higher the Bradford score, the greater the number of short-term sickness absences. 1.2. The "trigger points" are set/regulated by the Companies and when the scores of the employees reach these points, personal interviews follow, the questions of which may also concern health data. 1.3. The word "grading" does not have the interpretation found in dictionaries4 but means the Bradford Coefficient, i.e. the numerical result produced on the basis of the mathematical formula used in the processing of sick leave absences: Bradford Coefficient = total number of days absent from work due to leave of disease x (number of cases)², and therefore does not "lead or is likely to lead to misinterpretations, as to the purpose, the actual function and the results given by its application", as related in paragraph 1 of your letter . 1.4. Your statement that "the system is not affected, does not score and score or assign a different number or derive a different result based on any other characteristic of the absence (eg weekends, before or after holidays etc)" is accurate and confirms our position that, since the result of the Bradford Coefficient is influenced/determined by the number of separate absences, it follows that an employee who is absent for one week in a row has a lower score than an employer who is absent for seven single days, which may be Weekends or preceding or following holidays/holidays. Besides, as was reported to me during the meeting held in my Office on 19.07.2018, by Mr. XXXXXXX, Managing Director of the LGS Handling and LOUIS TRAVEL

companies and Mr. XXXXXXXXXX, Human Resources Director of the LGS Handling and LOUIS TRAVEL companies, there is a particular problem at Larnaca airport, where due to the nature of the work (shift work), several employees are systematically absent from work and present sick leave, especially on weekends. 4 In the Dictionary of the Modern Greek Language by G. Babiniotis, the word "grading" comes from the word "grading". "Grade" means "to grade (someone/something), place on a relative scale according to the grades I award". "Grade" means "the numerical or other symbol (eg letter) by which performance on a rating scale is indicated". 25 Therefore, taking into account the mathematical formula used by the Bradford Coefficient, if for example an employee is absent on sick leave on two separate Saturdays in a 12 month period he will receive 8 points [2 x (2)²], as opposed to an employer who if absent any two consecutive days within 12 months, will receive 2 points [2 x (1)²]. 1.5. Bearing in mind the definition of the term "profiling" attributed to Article 4 of the Regulation and the Guidelines of the Working Group on Data Protection of Article 29, dated 06.02.2018, for automated decision-making and profiling for the purposes of the Regulation, it is clear that: The processing performed using the Bradford Coefficient leads to profiling (scoring the days and frequency of sick leave based on a specific mathematical type), in order to evaluate personal aspects (employees' health and in some cases their personal and/or private life, since when their score reaches the "trigger points", personal interviews are conducted, from which it is possible to obtain information related to their personal and/or private life, including data related to health). Therefore, "the system does not evaluate personal aspects", as you correctly state in the last paragraph and for this reason, in the case under consideration, Article 22 of the Regulation regarding automated decision-making, including profiling, WITHOUT human intervention, does not apply . In the present case, the system produces a result, based on a standardized mathematical formula, which the Louis Companies use to profile and assess personal aspects of employees (i.e. THERE IS HUMAN INTERFERENCE IN THE DECISION MAKING) and for this Article 21 of Regulation (right to object). Additionally, I note that, although my decision is without any influence, my views on the processing carried out through the System and by extension on the legality of the System are completely identical to the views of the other Supervisory Authorities. Paragraph 2 of the Laws - result produced by the journal System The same applies above. Additionally, I note the following about the phrase "objective mechanical form" that you refer to in your letter: "This is a singular deficiency, because how it was created, what rationale lay behind the squaring of number of spells of absence, and if it was ever peer reviewed in any academic journal, is not available. In fact, as far as I can ascertain, it has never been subject to academic scrutiny in any peer reviewed statistics.

…… …… …… Penalising genuinely ill employees, immediately following absence or later through an appraisal system, can create a range of negative repercussions for the employee and employer alike.” 5 Free translation: “The Coefficient is insufficient as to how it was created, what logic is behind multiplying the number of absence periods by itself, and whether it was ever evaluated by any scientific journal. In fact, it is found that featured books any on or in 5 http://tonymusings.blogspot.com/2015/05/where-bradford-factor-goes-bad.html 26 have never been subjected to detailed academic scrutiny in any scientific magazine or has been presented in any statistical books." "Punishing genuinely ill employees, either immediately after the absence or later through an appraisal system, can create a number of negative effects for both the employee and the employer." Therefore, the phrase "objective mechanical form" is inaccurate and does not correspond to reality. Par. 3-4 of the Defendants - receiving a measure or sanction from the employer 1.1. The taking of any measure or sanction against an employee for a possible violation of the employment contract, violation of duties, etc. (including unjustified absence and/or misuse of sick leave), falls within the labor laws, collective agreements or other labor agreements, as you indicate, the however, the legality of the processing of personal data carried out BEFORE taking a measure or sanctioning an employee falls within my competences based on the Regulation. 1.2. Privacy and privacy are protected by the European Convention on Human Rights, the International Covenant on Civil and Political Rights and the Charter of Fundamental Rights of the European Union. 1.3. The sphere of privacy also includes personal data. The European Court of Human Rights ("ECtHR") played an important role in formulating the privacy term. In particular, the ECtHR clearly formulated the opinion that the protection provided by Article 8 of the European Convention on Human Rights is not limited to the narrowly defined environment of a person's home, but many times, activities of a private nature may take place in publicly accessible places. A seminal decision for this expanded understanding was the Niemietz v. Germany decision, which concerned an investigation conducted at the applicant's law office. In this case, the ECtHR ruled that the respect for private life remains active during the development of human social relations with third parties, even in public places. Even if it is a business property, as was the applicant's law office, the protection of privacy should not be disabled a priori, because the separation between professional and personal activity is often indiscernible or even impossible. The approach of the ECtHR is similar in the cases of Amann v. Switzerland, date of issue of the decision 16.02.2000 and Rotaru v. Romania, date of issue of the decision 04.05.2000, in which the collection of data related to the private life of the individual is included in the protective

framework of article 8 of the European Convention on Human Rights. I refer to a passage of Decision No. 46/2011 of the Hellenic Authority for the Protection of Personal Data: "As is firmly accepted by the national and European supreme courts, the limitations imposed by law on individual rights or the acts issued by the public authorities unfavorable to the governed must respect the principle of proportionality (now "principle of minimization"), in the sense that they must be appropriate and necessary to achieve the intended purpose and not be manifestly disproportionate in relation to it. The measure is appropriate (appropriate) when it enables the effective achievement of the intended purpose. The measure is deemed necessary when the intended purpose cannot be achieved by milder means, or, in other words, among several appropriate measures that equally achieve the intended purpose, the one that induces the least burdensome consequences is chosen." 27 1.4. In addition, I refer you to the following recitals of the Regulation: "4) The processing of personal data should be intended to serve humans. ……. This regulation respects all fundamental rights and observes the freedoms and principles recognized in the Charter as enshrined in the Treaties, in particular respect for private and family life, residence and communications, protection of personal data, freedom of thought, conscience and religion, freedom of expression and information, freedom of enterprise, the right to an effective remedy and an impartial tribunal, and cultural, religious and linguistic diversity." “(6) ……. Technology allows both private businesses and public authorities to use personal data on an unprecedented scale to pursue their activities. …….». "(15) In order to prevent a serious risk of circumvention, the protection of natural persons should be technologically neutral and not dependent on the techniques used. The protection of natural persons should apply both to the processing of personal data by automated means and to manual processing if the personal data is or is intended to be included in a filing system. ……...'. "(51) Personal data which are by nature particularly sensitive in relation to fundamental rights and freedoms need special protection, since the context of their processing could create significant risks for fundamental rights and freedoms. …… Such personal data should not be processed, unless processing is permitted in specific cases provided for in this Regulation, taking into account that the law of the Member States may provide for specific data protection provisions in order to adapt the application of the rules of this regulation due to compliance with a legal obligation or due to the fulfillment of a duty performed in the public interest or in the

exercise of public authority assigned to the controller. In addition to the specific requirements to which the processing in question is subject, the general principles and other rules of this regulation should be applied, in particular as regards the conditions of lawful processing. Derogations from the general ban on the processing of personal data falling under these special categories should be expressly provided for, inter alia, in the case of the express consent of the data subject or when special needs are involved, in particular when the processing is carried out in the context of the legitimate activities of certain associations or institutions, the purpose of which is to allow the exercise of fundamental freedoms." "(75) Risks to the rights and freedoms of natural persons, of varying probability and severity, may arise from the processing of personal data which could lead to physical, material or non-material damage, in particular when the processing can lead to discrimination, …… and data concerning health …… is processed. when 28 personal aspects are evaluated, in particular when an analysis or prediction of aspects related to work performance, financial situation, health, personal preferences or interests, reliability or behavior, location or movements is attempted, in order to create or use personal profiles; …… or when the processing involves a large amount of personal data and affects a large number of data subjects.". Paragraph 5 of the Defendants - Communication with the employees from the entry into force of the Regulation Your reference that, since the entry into force of the Regulation, no letter of invitation has been sent to an employer to discuss the issue of absence or otherwise, is unrelated to the fact that the System is fed with personal data of employees (including data related to health) , produces a numerical result based on a standardized mathematical formula, compiles a profile on the basis of which personal aspects of the employees are evaluated and most importantly THE JUDGED PROCESSING HAS NO LEGAL BASIS. Par. 6 of the Defendants - Incorrect suggestions of the trade union The data, related to the absence of illness of the employee, that are entered into the System are "elements that are fundamentally necessary and submitted to the Employer", as you mention in this regard, on the other hand, the due to data receiving further processing incompatible with the original purpose. Regarding para. 6(i): My positions as stated in response to para. 1 of the Complainant's letter are valid. With reference to par. 6(ii): The employer has the right to challenge the sick leave certificate. However, the use of the employee's personal data and their further processing through the said System, using a standardized mathematical formula, creating a profile for the purpose of evaluating personal aspects and taking decisions and/or measures based on the results produced, is only allowed if: is expressly provided for by the national labor legislation or at least one exception of article 9(2) of the Regulation applies that allows such processing IN COMBINATION with a condition

of article 6 of the Regulation (the said processing concerns special categories of personal data - data relating to the health, article 9 of the Regulation and therefore article 9 must be applied cumulatively with article 6). With reference to par. 6(iii): My positions as stated in response to par. 1 of the Complainant's letter are valid. Par. 8 of the Defendants - Misleading complaint In the case under consideration I examine the legality of using the Bradford System and by extension the processing that is carried out. 29 Par. 10 of the Defendants - Suspension of the checks that arise after the grading of absences due to sick leave The claim that the checks were suspended from 25.05.2018, the effective date of the Regulation, cannot be confirmed, since until the date of issue of my prima facie Decision, I have not received any information about the alleged suspension that would confirm the allegations of the Complainant. Besides, any partial suspension of the system and/or suspension of controls with the entry into force of the Regulation cannot be substantiated beyond any doubt. In any case, a possible suspension of the controls does not negate the illegality of the processing, since the System in question operates normally except for the interviews. Defendants' Paras 13-14 - Lawfulness of processing under the employment contract and applicable labor legislation My positions as stated in response to para 6(ii) of the Defendants' letter of complaint apply. Additionally, in Bărbulescu v. Romania (application no. 61496/08), the European Court of Human Rights, while recognizing the employer's power of control, ruled that, in order to assess whether a specific measure is proportionate to the intended purpose, the authorities of the Member States must examine : (a) whether the employee has been informed of the possibility that the employer may take measures to monitor his correspondence and of the existence of such measures, (b) the extent of the monitoring and the degree of interference with the employee's privacy, (c) whether the employer has reasonable grounds to justify such monitoring, (d) whether the employer could implement a monitoring system based on more benign means of directly accessing the content of the employee's mail, (e) the consequences of the monitoring for the employee, and the use of the results of the monitoring by the employer and (f) whether there are sufficient guarantees for the employee, the which ensure that the employer will not be able to access the content of the correspondence unless the employee has been previously informed of this possibility. Par. 15 of the Defendants - Labor law As I mentioned above, I am examining the legality of using the Bradford System and by extension the processing that is carried out. Defendants' Para 16 - Information Commissioner's Office (ICO) Implementation of Sick Leave Handling Policy In March 2008, the Information Commissioner's Office (ICO) issued a Policy document and Procedure for managing sickness absence-policy and procedure 30 (Managing sickness absence-policy and procedure)6, which, among other things, concerns the process of handling frequent, short-term

absences due to illness. In your letter you refer to this document. On 9 October 2019 at 12:00pm, an employee of my Office telephoned the Information Commissioner's Office in England and requested information about the Document in question. Ms. Rebecca Cook, Office Officer stated the following: (a) The document in question is anachronistic (from 2008), (b) after the implementation of the Regulation it has not been updated and therefore includes references that are contrary and/or contradictory with the provisions of the Regulation and that (c) in any case, the data controllers who consult it should prove the existence of a legal basis for such processing, which is articles 6(1)(f) and 9 of the Regulation. Par. 17 of the Defendants - Labor law I REPEAT that: In the case under consideration, I examine the legality of the use of the Bradford System and, by extension, the processing carried out. I agree that Louis Companies, as employers, have the right to exercise supervision over the frequency of sick leave and/or the validity of sick leave certificates and/or to take necessary measures against employees based on labor law. However, such a right should not be exercised abusively and should also be exercised within the limits set by the relevant legislative framework (legislation, collective agreements or other labor agreements). Specifically: (a) Processing to be legal should be limited to what is necessary for the organization, control and handling of the company's turnover. The employer cannot exercise unlimited control and supervision over the employees, violating their personality. (b) Scoring statutory sick leave is beyond the employer's remit, because in doing so it makes itself a doctor or health professional and "punishes" employees who take sick leave frequently and/or systematically and/ or the employees for whom there is a suspicion and/or complaint that they present false sick leave certificates. (c) The use of the employee's personal data and their further processing through the said System, using a standardized mathematical formula, establishing profiles for the purpose of evaluating personal aspects and taking decisions and/or measures based on the results produced, is only allowed if: 6 https://ico.org.uk/media/about-the-ico/policies-and-procedures/1889/managing_sickness_absence_policy.pdf 31 is expressly provided for by national labor law or at least one exception of Article 9(2) of the Regulation that allows such processing IN COMBINATION with a condition of article 6 of the Regulation (the processing in question concerns special categories of personal data - health-related data, article 9 of the Regulation and therefore article 9 must be applied cumulatively with article 6). (d) Where the objective identified by the employer can be achieved in a less intrusive and burdensome manner, the employer should consider this option. Par. 19 of the Defendants - Categories of employees' personal data processed through the System 1.1. I DO NOT EXAMINATE whether the categories of employees' personal data that are processed through the System (e.g. name, illness, duration of absence, etc.) are absolutely necessary and necessary in the context of the application

of the employment contract for justification of absence and other related reasons, such as payment from the employer, payment from the Social Insurance Fund, etc., as you indicate in your letter. I AM EXAMINEING THE LEGALITY OF THE PROCESSING CARRIED OUT THROUGH THE Bradford System, entering these categories of personal data into a standardized mathematical formula, which produces a numerical result, based on which profiles of employees are drawn up in order to assess personal aspects (the health of of employees and in some cases of their personal and/or private life, since when their score reaches the "trigger points", personal interviews are conducted, from which information concerning their personal and/or private life can be obtained, including health data). 1.2. The phrase 'It is therefore observed that the Bradford system does nothing but assist in ascertaining whether such absences have occurred which the employer considers likely to be considered further the issue of frequency of sick leave, duration and conditions surrounding sick leave which may include, perfectly legal as we suggest (but not limited to) and the examination of the possible abuse of such leave or the suitability of the employee to perform the duties", is completely non-existent and has not been quantitatively documented, since the employer may well count and record sick leaves and their frequency, without using any mathematical formula, which rates the number and frequency of sick leaves. Par. 20 of the Defendants - Profile preparation 1.1. My positions as stated in response to paragraph 10 of the letter of the Plaintiffs are valid. 1.2. The clarification given by the company that, because "there was not even a suggestion or allegation and no evidence or instances of profiling actions or generally any action after the so-called scoring" were submitted, no violation of the Regulation arises, on the one hand it is unfounded and on the other hand it is irrelevant to the issue under consideration in this case, i.e. the legality of the processing carried out through the System (feeding the System with personal data of employees and using a standardized numerical formula, deriving a numerical result (scoring the such processing is considered legal if at least one of the conditions of article 6(1) and at least one of the exceptions of article 9 of the Regulation is met. 32 Par. 21 of the Defendants - Transparency of the process In the present case there is no question of transparency of the process is explained through the Sick Leave Policy Scope & Purpose, a copy of which was sent to me by the Complainant on 03/04/2019. Par. 22 of the Defendants - Impact Assessment Conducting an Impact Assessment is unnecessary when the processing to which it refers lacks a legal basis and therefore cannot be carried out. Par. 23-24 of the Defendants - Article 6 of the Regulation 1.1. The provisions of article 6(1)(b) of the Regulation may NOT apply (the processing is necessary for the performance of a contract to which the data subject is a party or to take measures at the request of the data subject before the conclusion of a contract), since such processing to be permissible/legal must be

provided for by labor law and this does not exist in this case. 1.2. The Legitimate Interest Assessment conducted by the Complainant Defendants, which I have thoroughly studied, is not correct as it does not document / prove that: SICK LEAVE RATING, using the Bradford Coefficient, which multiplies the square with himself) the number of cases in which sick leave is taken (FREQUENCY OF LEAVE TAKING) and by extension the possible measures taken against the employees based on the numerical result produced, for the purposes of satisfying their legal interests, as stated in the due to Assessment, EXCEEDS/OVERCOME the interests or fundamental rights and freedoms of the employees (Article 6(1)(f) of the Regulation) and therefore, the processing in question (scoring of sick leave using the Bradford Coefficient) CANNOT to rely on the provisions of article 6(1)(f) of the Regulation, which concerns the defense of legal entities their carriers. 1.3. Given that the processing carried out through the automated system using the Bradford Coefficient concerns special categories of personal data (data relating to health - Article 9 of the Regulation) and therefore Article 9 must be applied cumulatively with Article 6, it follows that : The considered processing lacks a legal basis, since, on the one hand, it has not been documented/proved that the legal interest of the Louis Companies outweighs the interests, rights and freedoms of the employees, so that the processing in question can be based on Article 6(1) (f) of the Regulation, on the other hand, none of the exceptions of article 9(2) that allow such processing apply. Par. 25 of the Defendants – Practice of the employer for discussion and investigation of absences due to illness I REPEAT THAT, taking any measure or sanction against an employee for possible violation of the employment contract, violation of duties, etc. (including 33 unjustified absence and/or abuse of sick leave), falls within labor laws, collective agreements or other labor agreements, but the legality of the processing carried out BEFORE and during the taking of a measure or sanction against an employee falls within my competences under the Regulation. Para. 26 of the Defendants – Simple counting of employee absences The automated System does NOT simply count employee absences, due to sick leave, as you claim since it has become clear/proven beyond all doubt that: i. Louis Companies feed the system with employee information such as first name, last name, type of illness, duration of absence and dates of absence. ii. The Bradford coefficient used by the System is calculated based on the following formula: Bradford coefficient = total number of days absent from work due to sick leave x (number of cases)² That is, the number of cases of absence due to sick leave (frequency) SQUARED (MULTIPLY WITH ITSELF – SQUARED). Para. 27 of the Defendants – Right of the employer to set a limit on absences My positions as stated in response to paras. 17, 25 and 26 of the letter of the Defendants to the complaint apply. Par. 28 of the Defendants – Consent/consent of the employees Due to the employer-employee dependency

relationship, the matter of obtaining consent/consent from the employees is irrelevant, for the reason that any "consent"/"consent" of them for illegal processing of data concerning their health, is not considered a "free, specific, explicit and fully informed indication of will", by which the employee "states that he agrees, by statement or by a clear positive action, for personal data to be processed concerning him." (article 4(11) of the Regulation). Para. 29 of the Defendants – Labor legislation My positions as stated in response to paras. 17, 25 and 26 of the letter of the Defendants to the complaint apply. Par. 30 of the Defendants - Jurisprudence The processing carried out through the System lacks legality since the Louis Companies did not document that their legal interest prevails over the interests, rights and freedoms of the employees, by performing: (a) purpose control - is there a legitimate interest behind the processing? 34 (b) in a necessity test - is the processing necessary for this purpose? And (c) in a balancing test – does the legitimate interest prevail over the interests, rights or freedoms of the employees? The Court of Justice of the European Union confirmed this approach regarding legitimate interest in the Rigas case (C-13/16 of 4 May 2017) in the context of the Data Protection Directive 95/46/EC, which contained a very similar provision. Para. 31 of the Defendants – Legal database related to health My positions as stated in response to paras. 23-24 of the letter of the Defendants' complaint apply. In addition, as I have already mentioned, the use of the employee's personal data and their further processing through the said System, using a standardized mathematical formula, establishing profiles for the purpose of evaluating personal aspects and taking decisions and/or measures based on the results are produced, is allowed only if: it is expressly provided for by national labor legislation or at least one exception of article 9(2) of the Regulation applies that allows such processing IN COMBINATION with a condition of article 6 of the Regulation (the said processing concerns special categories of personal data - health related data, article 9 of the Regulation and therefore article 9 must be applied cumulatively with article 6). Par. 32 of the Defendants - Technical and organizational data security measures I do not examine the technical and organizational data security measures related to the health of employees. Par. 33 of the Defendants – There is no differentiation between manual processing and computerized processing I repeat the following: The automated system does NOT simply count employee absences due to sick leave, as you claim, after it has become clear/ proved beyond reasonable doubt that: i. Louis Companies feed the system with employee information such as first name, last name, type of illness, duration of absence and dates of absence. ii. The Bradford coefficient used by the System is calculated based on the following formula: Bradford coefficient = total number of days absent from work due to sick leave x (number of cases)² That is, the number of cases of absence due to sick leave (frequency) SQUARED (MULTIPLIED

BY ITSELF – SQUARED). In addition, I clarify that, if the processing in question carried out through the automated system was carried out manually, as you state in your letter, it would not change my positions on the lack of legality (legal basis) of the processing, since, according to the provisions of 35 of Article 2(1) of the Regulation, the Regulation applies to the fully or partially automated processing as well as to the non-automated processing of data included or to be included in a filing system. 6. Sanctions 6.1. As defined in the provisions of article 83(5) of the Regulation, a violation of the provisions of articles 6 and 9, "in accordance with paragraph 2, administrative fines up to EUR 20 000 000 or, in the case of businesses, up to 4 % of the total of worldwide annual turnover of the previous financial year, whichever is higher'. 6.2. Paragraph 2 of article 83 of the Regulation is quoted in its entirety: "2. Administrative fines, depending on the circumstances of each individual case, are imposed in addition to or instead of the measures referred to in Article 58(2)(a) to (h) and Article 58(2)(j). When deciding on the imposition of an administrative fine, as well as on the amount of the administrative fine for each individual case, the following shall be duly taken into account: a) the nature, gravity and duration of the infringement, taking into account the nature, extent or purpose of the relevant processing, as well as the number of data subjects affected by the breach and the degree of damage they suffered, b) the fraud or negligence that caused the breach, c) any actions taken by the controller or the processor to mitigate the damage suffered by the data subjects, d) the degree of responsibility of the controller or the processor, taking into account the technical and organizational measures they apply pursuant to articles 25 and 32, e) any relevant previous violations of the controller or processor, f) the degree of cooperation with the control authority to remedy the violation as well as the limitation of its possible adverse effects, g) the categories of personal data affected by the breach, h) the way in which the supervisory authority was informed of the breach, in particular if and to what extent the controller or processor notified the violation, i) in the event that the measures referred to in Article 58 paragraph 2 were previously ordered to be taken against the controller involved or the processor in relation to the same object, the compliance with said measures, j) the observance of approved codes of conduct in accordance with article 40 or approved certification mechanisms in accordance with article 42 and k) any other aggravating or mitigating factor resulting from the circumstances of the specific case, such as the financial benefits obtained or losses avoided, directly or indirectly, from the violation." 7. Penalty measurement Taking into account the provisions of article 83 of the Regulation, which refers to the General Conditions for the imposition of administrative fines, when measuring the administrative fine I took into account the following factors: 36 (a) The nature of the violation: it concerns the professional life of complaints in the context of the employment relationship and the

European Court of Human Rights has ruled in relation to the provision of Article 8 of the ECHR that the protection of "private life" based on this article does not exclude the professional life of employees and is not limited to life within the place of residence. (b) The duration of the violation: From the data in the file and according to what is mentioned in paragraph 10 of the letter of the lawyer of the Plaintiffs, Mr. Ioannidis, with No. Ref.: E/MM/Company-89/6 and dated 02.09.2019, it appears that personal data of the data subjects (employees) are processed in violation of article 6(1) and 9(2) of the Regulation, at least by on 06.06.2018, the date of the relevant complaint to my Office, until today. In paragraph 10 of the letter in question it is clearly stated that: "It should be noted that, with the entry into force of the Regulation and given the representations of the trade union mentioned above, the Companies had not activated and suspended any control application of employee leave of absence for invitation employee for discussion in relation to any of the three stages of numbering the absence data that is done with the Bradford Factor System or for any other related act." It is therefore clear and documented that, to this day, the operation of the automated system, using the Bradford Coefficient, is still in place, regardless of whether checks to invite employees to discuss the matter of their absence and/or leave grading have been suspended. illness. At this point, I CLARIFY that: (a) The claim that, from 25.05.2018, the effective date of the Regulation, the checks carried out after the grading of absences due to sick leave were suspended, cannot be confirmed, since until the date of issue of my prima facie Decision, I have not received any information about the alleged suspension that would confirm the allegations of the Complainant. Besides, any suspension of controls with the entry into force of the Regulation cannot be documented beyond any doubt. (b) In any case, any suspension of controls does not negate the illegality of the processing. (c) The number of data subjects affected by the breach: 780 persons employed by LGS Handling Ltd, 34 persons employed by Louis Travel Ltd and 4 persons employed by Louis Aviation Ltd are affected. According to the content of paragraph 10 of the letter of the lawyer of the Complainant, Mr. Ioannidis, with No. Ref.: E/MM/Company-89/6 and dated 02.09.2019, the number of employees of the Louis Companies amounts to: - 508 permanent employees and 272 seasonal employees, a total of 780, who are employed by the company LGS Handling Ltd . - 34 employees, who are employed by the company Louis Travel Ltd. - 4 employees, who are employed by Louis Aviation Ltd. (d) The fact that the Complainants did not take any action to mitigate the damage suffered by the data subjects. I repeat that any suspension of checks made after the grading of absences due to sick leave does not negate the illegality of the processing. (e) The fact that the Complainants did not sufficiently cooperate with my Office in remedying the violation, since after my Prima facie Decision, the same allegations were repeated, in addition to the weighting attempt which was the only

new element in substance for examination, which was accepted despite the original issue. 37 (f) The categories of personal data affected by the violation: name, surname, type of illness, duration of absence and dates of absence. (g) The fact that I was informed of the unlawful processing following a complaint to my Office. (h) The fact that the violation of Articles 6(1) and 9(2) of the Regulation took place during the processing of personal data of data subjects in the field of labor relations, where it is characterized by an imbalance of power between employer and employees. The importance attributed by the Regulation to the processing of personal data in employment relations is demonstrated by the fact that, according to article 88 thereof, the national legislator is given the possibility of establishing special rules, in order to ensure the protection of the rights and freedoms of employees, including appropriate and specific measures to safeguard the human dignity, legitimate interests and fundamental rights of data subjects, with particular emphasis on workplace monitoring systems. (i) The fact that the violation of articles 6(1) and 9(2) of the Regulation concerns the entire staff and it is not about an individual or opportunistic violation against some of the employees, but about a violation that has a systemic (structural) character, as it concerns the controller's policy (Each complaint) in relation to the legal basis of the processing. (j) The fact of causing damage to the right to protect the personal data of the employees from the violation of the aforementioned articles and in particular the misleadingimpression created by the Defendants the complaint to the employees that, the processing of
of personal data concerning them, takes place with the legal basis of the execution of a contract
(Article 6(2)(b) of the Regulation) and the defense of their legal interests which prevail
of the interests or fundamental rights and freedoms of employees (Article 6(2)(b) of
Regulation).

8. Conclusion

In the light of the above, I decided that, the grading of the employees' sick leaves
in the Louis Companies, specifically in the companies LGS Handling Ltd, Louis Travel Ltd and Louis Aviation Ltd,
using the Bradford Coefficient, lacks legitimacy, since none of the
provisions of articles 6(1) and 9(2) of the Regulation.

Therefore, by virtue of the powers conferred on me by the provisions of sub-section (d) of paragraph (2)
of article 58 of the Regulation, I DECIDED as follows:

(a) Order the Plaintiff, LGS Handling Ltd, in its capacity as

data controller of filing systems, such as to terminate its operation immediately

Bradford factor that uses the automated System and immediately destroys the file

which has been created and informed me

(b) order the Plaintiff, Louis Travel Ltd, in its capacity as responsible

processing filing systems, such as terminating the Bradford Coefficient immediately

which uses the automated System and immediately destroys the created file

and

(c) instruct the Plaintiff, Louis Aviation Ltd, in its capacity as

data controller of filing systems, such as to terminate its operation immediately

Bradford factor that uses the automated System and immediately destroys the file

that has been created.

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You are invited to inform me of the actions you are going to take to implement the above

above, within two months of receipt of this decision.

Additionally, based on the powers conferred on me by the provisions of subsection (i) of paragraph (2)

of article 58 of the Regulation I DECIDED as:

(a) I impose the complaint on the defendant, LGS Handling Ltd, in its capacity as responsible

processing filing systems, the fine of €70,000 (seventy thousand euros)

for committing a violation of its obligation under Articles 6(1) and 9(2) of the Regulation,

(b) impose on Kat'is the complaint, company Louis Travel Ltd, in her capacity as responsible

processing filing systems, the fine of €10,000 (ten thousand euros) for

committing a violation of the obligation from articles 6(1) and 9(2) of the Regulation and

(c) impose on Kat'is the complaint, company Louis Aviation Ltd, in her capacity as responsible

processing filing systems, the fine of €2,000 (two thousand euros) for the

committing a violation of its obligation from articles 6(1) and 9(2) of the Regulation.

Irini Loizidou Nikolaidou

Data Protection Commissioner

Personal Character

October 25, 2019

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