

Athens, 06-09-2022 Prot. No.: C/EX/2194 DECISION 47/2022 The Personal Data Protection Authority met at the invitation of its President in a meeting on Tuesday 31.5.2022 at 10.00 a.m., in order to examine the case referred to in the present history.

The President of the Authority Konstantinos Menudakos and the regular members of the Authority Charalambos Anthopoulos, Aikaterini Iliadou, Christos Kalloniatis, Konstantinos Lambrinoudakis, and Grigorios Tsolias were present. Also present were the alternate members of the Authority, Georgios Kontis, as rapporteur, and Christos Papatheodorou, in place of regular member Spyridonos Vlachopoulos, who, although legally summoned, did not attend due to disability. Present without the right to vote were Kalliopi Karveli, expert scientist, as assistant rapporteur, and Irini Papageorgopoulou, employee of the Authority's Administrative Affairs Department, as secretary. The Authority took into account the following: On January 21, 2022, the Unified Journalistic Organization for Supplementary Insurance and Care (hereinafter "EDOEAP"), in its capacity as data controller, submitted to the Authority no. prot. C/EIS/831/21.01.22 notification of an incident of violation by the processor EDYTE S.A. In particular, as mentioned, EDOEAP (processing manager) carried out searches through the ZEUS platform of EDYTE S.A. (executor). Three candidates requested from EDYTE S.A. personal data of voters (who voted and how) based on a relevant prosecutorial order. EDYTE SA (as executor) informed the person in charge (EDOEAP) on 10-12-2021. Three days later, the person in charge expressed opposition to the transmission, informing EDYTE that he too had received a prosecutor's order, which had, however, been "revoked". Despite this, the executor proceeded to transfer (invoking his obligation under the law) and informed the person in charge on 12-01-2022. EDOEAP submitted the above notification because it considered that there was a breach of confidentiality and therefore an incident of art. 33 of the GDPR. In this case, there is no question of a lack of security/breach, but the question arises, examined ex officio, whether EDYTE S.A., as the processor, legally provided the relevant data. In the context of examining the case, the Authority sent to EDYTE S.A. and to EDOEAP the no. 499/22-02-2022 letter on the subject of "Transmission of personal data to third parties" with the following questions: 1) On what legal basis was the specific transfer made and more specifically if the said transfer was made based on Article 29 of the GDPR or based on a legal obligation from another provision of law, and 2) If the data subjects were previously informed of this transmission. A) EDYTE S.A. at no. prot. C/EIS/3791/09.03.22 its memorandum stated the following: On Monday, October 11, 2021, the EDOEAP sent a message via electronic mail to the User Assistance Office of the "ZEUS Digital Ballot" requesting to use the service to carry out the Archaresion of, which would be held between November 19 and 24. On October 15, 2021, a Personal Data Processing Agreement was signed between EDOEAP and EDYTE S.A. which defines the relations between the

two parties. After the elections on Saturday, November 27, 2021, EDYTE S.A. received by e-mail "Official request for investigation and provision of data on the electronic voting carried out in EDOEAP through the ZEUS electronic ballot box" from A (who signs as former ... EDOEAP and ...), who requested the granting of the following data: a) a complete copy of the body of electors, as it was formed at the end of the voting, b) printout of the 2 electoral result, as it was formed by entering the "keys" held by the members of the Electoral Committee, as well as the exact time of entering the " keys" and extracting the result, c) IP addresses, through which more than one vote may have been submitted (including mass voting from a computer) and the time when these votes were submitted, d) any changes to the electoral roll by the Administrator or changes to e-mails that were initially declared by the electors, in order to send them the voting links, e) number of electors – voters who changed their vote (ie, voted and voted again) during electronic voting and f) copies of all e-mails sent to voters after their vote was finally submitted. That is, a list of voters and next to it the e-mail to which the confirmation that they voted was sent. EDYTE SA responded to the above request, with the no. first ... her letter, that: "both the legal and contractual obligations of EDYTE S.A. they do not allow it to share the information in question". Then on 9.12.21, EDYTE S.A. received, by mail, the no. first ... prosecutor's order (following the relevant application of Messrs. A, B and C) by which EDYTE S.A. was ordered the provision of the following information ("except for VAT number and social security number"): "A) Full copy of the body of electors, as it was formed at the end of the voting, B) Any changes in the electoral roll by the Administrator or changes in e-mails that were declared by the electors from the beginning, in order to send them the voting links, C) The number of electors - voters who changed their vote during the electronic voting, D) Copies of all e-mails sent to the electors after the final submitting their vote. E) The number of voters through the electronic ballot beyond the time period from 9 am. to 7 a.m. F) A complete copy of the result of the electronic ballot box and the exact time of entering the "keys" and extracting the result G) The existing pdf file at EDYTE that contains a printout in anonymized form of all the electronic ballots, as they came from the automatic counting in the ZEYS system, as well as the accompanying CSV and JSON files containing the anonymized ballots and H) The IP addresses, 3 through which more than one vote may have been submitted and the time at which these votes were submitted, as well as the number of votes cast were transmitted from each IP as long as more than one vote was transmitted from it."

EDYTE SA informed the data controller about the transfer in question, so that he, for his part, could inform the data subjects, and at the same time, on the same day, he was informed by the Director ... of EDOEAP, that a prosecutorial order had also been issued to EDOEAP, which had been revoked , because their body is not bound by the provisions of Law 1756/1988 and

as N.P.I.D. does not fall within the scope of the provision of article 25 par. 4 of Law 1756/1988, on the basis of which the prosecutor's order in question was granted. Then, on December 16, 2021, and in accordance with the provisions of article 29 of the GDPR, EDYTE S.A. provided the applicants with the relevant documents, having as it states in its memorandum, as a Public Sector company, by law (article 25 par. 4b L. 1756/1988 and article 5 of the Code of Administrative Procedure) an obligation to comply with the said prosecutor's order . B) EDOEAP in its memorandum of 8.3.22 stated the following: EDOEAP expressed its objections to the transmission in question because a) the requested data concerned personal data of a large number of subjects (about 4500 natural persons), of particular importance, b) there was no justification of the necessity and proportionality for the provision of the data, c) there was a contractual commitment between EDOEAP-EDYTE which made the latter the processor, d) the prosecutor's order referred to a set of information possessed by EDYOTE as the processor and for the whose transmission or not should have been decided exclusively by the HR, e) the corresponding request of the applicants to the EDOEAP was answered and only aggregated data was granted, f) the corresponding prosecutorial order to the EDOEAP was revoked and should have been with the same legal documentation and basis to revoke the corresponding one to EDYTE, g) that the disputed data are at the disposal of EDYTE, as executed processing, does not automatically make them 4 public documents, h) the prosecutor's order is binding on the administration, only in the context of pending criminal proceedings (preliminary examination, preliminary investigation, interrogation), i) the requested information is included in the category of private and not purely public documents, and finally j) with regard to the information of the subjects, EDOEAP explicitly expressed its objection to the transmission of the data, so the obligation to inform was on EDYTE, which acted voluntarily as an independent data controller. Following these, the Authority with the no. prot. C/EX/861/05.04.22 and C/EX/860/05.04.22 calls respectively called EDOEAP and EDYTE SA. to attend the meeting of the Authority on 12.04.22, in order to discuss the above case. During the hearing on 12.04.2022, a) on behalf of EDOEAP, Stavros Kapakos, Chairman of the Board of Directors of the Organization, D, ...Director of EDOEAP, E, Director ..., Antonis Kainourgios and Angeliki Skouteri, lawyers, F, Head of ... and Z, DPO of the Organization, b) on behalf of EDYTE S.A. H, Director ..., Th, ..., I, ..., Zoi Panagiotara, Head of the Legal Service, Eugenia Thodoris Konstantakopoulos, Lawyers, K, ..., and L, Deputy DPO of EDYTE SA. Haniotaki, Arvanitis, Katerina Doubi, Nikos EDYTE S.A. through its representatives during the above hearing of 12.04.22, but also with the supplementary memorandum from 13.05.22 of the managing director of Aristidis Sotiropoulos, stated the following: a) the data in question were granted exclusively and only to members of EDOEAP in the context of agreed

procedure, b) EDYTE S.A. is bound by the constitutional imperatives and public law obligations that govern the Administration, including the right of access to public documents, consequently, the failure to provide the necessary data to the applicant members of the EDOEAP to verify the correctness of the election results and elections process would constitute a violation of the constitutional principles, and the partial satisfaction of the right of access to the administrative 5 documents of the attorney-at-law would be incomplete, c) the EDOEAP's reference to the distinction between administrative and private documents is irrelevant, given that the documents granted are administrative, according to with the provisions of Article 5 of the Criminal Code, d) the prosecutor's order confirms the necessity and correctness of the provision of the data, without being able to place a legal limitation on the functional satisfaction of the right of access to administrative documents, and e) the TIN of the participants in the antiquities was necessary for the full satisfaction of the governed's right of access to administrative documents, it does not fall under any exception to its disclosure and EDYTE proceeded to grant it exclusively to those who requested it and had a special legal interest. EDOEAP through its representatives during the above hearing of 12.04.22, but also with the one from 13.05.22 and with no. prot. C/EIS/6970 filed with the Authority a supplementary memorandum of Antonios Kainourgios stated the following: a) EDYTE SA. transferred a large volume of data (about 4,515 natural persons) to unauthorized third parties, without relevant justification, weighing of interests, assessment of necessity and proportionality, taking measures to minimize data and in any case without the consent of EDOEAP as data controller, b) the data requested and transmitted also included personal data: name data, e-mail addresses (email, number of voters per IP), voting details such as voting time, how many times the user voted, when the user was last connected, if he received confirmation of vote, but also the unique voter id of each voter (which was his tax identification number, requested by EDYTE S.A. for the identification of each user, which are data of particular importance, as they include data related to voting and they concern the secrecy of the process and the relative rights of the voters, but also electronic data communication related to its privacy and need special evaluation in relation to any requests for access to them, c) the applicants invoked for their request only their interest as candidates to have access to said data without further specialization, nor justification of necessity and proportionality in order to take place the necessary 6 weightings and minimization of the data that will be given, nor invoking any legal actions that have taken place and in the context of which the relevant grant would be necessary, d) the prosecutor's order concerned a set of information, the which were held by EDYTE S.A. in the context of its cooperation and relationship as the processor and for which the controller should and was entitled to decide whether or not to transfer, e) the specific prosecutorial order is not

binding on the Administration, but even in the event that EDYTE S.A. considered that he should have delivered the information requested in the prosecutor's order, he should, in compliance with GDPR requirements, have anonymized or minimized the provided data, i.e. the removal of any element that could lead to the identification of the users of the platform and in particular the VAT number of these, given that they were a way of connecting the users to the platform in question, f) by their nature and content, the provided data constitute EDOEAP records and the fact that they were at the disposal of EDYTE SA, as the processor on behalf of of EDOEAP, does not make them public documents and g) EDYTE S.A. acted despite the contrary opinion of the controller, i.e. independently as controller for the specific processing, and bears the same obligation to inform the data subjects of this transmission. The Authority, after examining the elements of the file and the hearing process and after hearing the rapporteur and the assistant rapporteur, after a thorough discussion, THINKS IN ACCORDANCE WITH THE LAW

1. In accordance with the provisions of article 4 para. 7 and 8 of GDPR, "controller" is defined as the natural or legal person, public authority, agency or other entity that, alone or jointly with others, determines the purposes and manner of processing personal data, while "processor" natural or legal person, public authority, agency or other 7 body that processes personal data on behalf of the data controller. In the event that two or more controllers jointly determine the purposes and means of processing, they are jointly controllers. They determine their respective responsibilities for compliance with the obligations arising from the GDPR, in particular with regard to the exercise of the rights of the data subject and their respective duties by agreement between them, unless and to the extent that the respective responsibilities of the controllers are determined by Union law or the law of the Member State to which the controllers are subject. This agreement should properly reflect the respective roles and relationships of the joint controllers vis-à-vis the data subjects, and the substance of the agreement is made available to the data subject (Article 26 GDPR). The processing by the processor must, in accordance with the provisions of article 28 paragraph 3 of the GDPR, be governed by a contract or other legal act subject to the law of the Union or the Member State, which binds the processor in relation to the controller processing and determines the object and duration of the processing, the nature and purpose of the processing, the type of personal data and the categories of data subjects as well as the obligations and rights of the controller and the processor, while in in the event that the processor determines the purposes and means of the processing in violation of the GDPR, then he is considered the controller for the specific processing and is burdened with all the obligations arising from the Regulation as an independent processor (Article 28 par. 10 GDPR). Furthermore, in accordance with the provisions of Article 29 of the GDPR, the processor should process the data only

on the instructions of the data controller, unless obliged to do so by the law of the Union or the Member State. 8 2. Access to public documents is provided for in article 5 of the Civil Code. In particular, in accordance with the provisions of paragraph 1 of this article, every interested party has the right, after a written request, to take cognizance of administrative documents, and administrative documents are understood to mean those drawn up by public services, such as reports, studies, minutes , statistics, circular instructions, responses from the Administration, opinions and decisions. According to the established jurisprudence of the SC and the NSK, public documents are also considered private documents, which were used or taken into account to determine the administrative action or to form an opinion or judgment of the administrative body and are an element of the reasoning of the issued administrative act . Furthermore, according to paragraph 2 of the above article, anyone who has a special legal interest is entitled, following his written request, to obtain knowledge of the private documents kept in the public services and related to his case which is pending in them or has been processed by them. Finally, according to paragraph 3 of the same article, the right of access to public documents does not exist in cases where the document concerns the private or family life of a third party, or if privacy is violated which is provided for by special provisions. 3. Regarding the binding nature of the prosecutor's order, according to the Authority's Opinion 3/2009, the prosecutor's order is binding on the Administration, only in the context of preliminary investigation, preliminary investigation and main investigation. In other cases, there is an obligation of the Administration, with hermeaning of the imperative order to investigate the request to grant or not document granting.

4. In the case under consideration, both from the information in her file of the case as well as from the hearing, the following emerged:

In the context of the nomination of the Board of Directors and Audit Committee of EDOEAP, EDYTE S.A. I was appointed to perform the processing on behalf of EDOEAP with contract concluded between them for the conducted electronic voting.

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In particular, through this contract, the service that will provided and the means by which it will be provided (electronic platform ZEUS), as well as the role of EDYTE S.A. as you were processing for EDOEAP account. After the completion of the electoral process and the

announcement of the results, EDYTE informed EDOEAP with the

13.1.2021 her letter that she received the from ... prosecution order from three

applicant candidates in the elections (former members of the Board of Directors not elected based on

election results) to transmit to them a set of data that it holds

regarding these antiquities, including personal data

of the voters, and that he intends to proceed with this transmission. EDOEAP

with his document dated 13.12.21 he informed EDYTE that he has received a prosecutor's

order with similar requests from the applicants, which was revoked because of

of a non-public nature, as an NPID not subject to the provisions of article 25

par. 4 of Law 1756/88, and subsequently with his letter of 14.12.21 he expressed

expressly his opposition to this transmission, due to the nature of the documents as

private, not subject to public documents and the role of EDYTE as

you were processing on his behalf. However, EDYTE proceeded

in the transmission on 17.12.21 of the requested details of the voters to the three

applicants, claiming that he had an obligation to perform the prosecution

order and grant the requested data on the basis of the right

access to public documents. The data transmitted by EDYTE

to the applicants were nominal details of the voters (about 4,500 physical

of persons), electronic addresses (email, IP address), as well as the unique

voter id of each voter, which was his tax identification number, because it was requested by the

HERE, for the identification of each user, given that the

login with taxisnet codes.

5. Because the data transmitted are private documents and

they do not fall into the category of public documents, since the EDOEAP constitutes

NPID, not subject to the provision of article 25 par. 4 of Law 1756/88, against

consequently, its provisions are not applicable in this case

of article 5 of the Road Traffic Act, as the Authority has also issued an opinion with the Gnmd. 3/2009, n

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prosecutor's order is binding on the administration only in the cases given in the context of criminal proceedings. In the rest of the cases it has the sense of a peremptory order to management to investigate the request granting of the public document.

Because EDYTE SA in violation of Article 29 of the GDPR, as executor the processing forwarded, despite the objections of the controller EDOEAP, voters' personal data to the third parties they had submitted relevant application, without being expressly obligated by law according to what is stated above. With these data, EDYTE became independent data controller.

Because further, EDYTE, since, according to the aforementioned, acted as independent data controller, owed according to its provisions of article 28 paragraph 10 of the GDPR, before transmitting the data to third parties, to inform the data subjects of this transmission, but n this update never took place.

Because the Authority, considering that EDYTE granted the disputed evidence following a relevant prosecutorial order assuming that he had relative obligation based on this prosecutorial act, judges that at specific case, based on the circumstances established, should pursuant to the provision of article 58 par. 2 sec. GDPR to be enforced according to article 83 GDPR the effective, proportionate and dissuasive administrative money fine mentioned in the ordinance for the above violation article 28 paragraph 10 of the GDPR.

FOR THOSE REASONS

THE BEGINNING

It imposes on EDYTE S.A. the effective, proportional and deterrent administrative fine that is appropriate in the specific case according to special circumstances thereof, amounting to five thousand (5,000.00) euros.

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The President The Secretary

Kon/nos Menudakos

Irini Papageorgopoulou

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