Tatari 39, Tallinn 10134/627 4135 / info@aki.ee / www.aki.ee / Registry code 70004235 CHALLENGE DECISION and PRESENTATION WARNING in public information matter no. 2.1.-6/20/12 time and place 06.04.2020, Tallinn Addressee Ministry of the Environment address: Narva maantee 7a, Tallinn 15172 e-mail address: environmentalaministeerium@envir.ee Person in charge of the information holder Chancellor XXX of the Public Information Act (AVTS) § 45 (1) 1, on the basis of § 51 (1) 1) and 4) of the PSA and § 85 (2) of the Administrative Procedure Act (HMS) and § 751 (3) of the Government of the Republic Act, I issue a mandatory precept: 1) to reconsider the the necessity and reason for the restrictions on access to each protocol. This means, among other things, assessing whether restrictions on trade secrets are appropriate and, if necessary, asking third parties for explanations regarding possible damage to their trade secrets. 2) I set the deadline for compliance with the precept as 20 April 2020. Pursuant to § 52 of the PSA, the holder of information must take measures to comply with the precept within five working days and notify the Data Protection Inspectorate thereof. DISPUTE REFERENCE: The appellant may apply to the Tallinn Administrative Court within 30 days only in the unsatisfied part of the appeal decision or if the Data Protection Inspectorate violated the appellant's rights in any other way during the proceedings. In this case, the annulment of the decision on the challenge can be demanded only together with the claim submitted to the holder of the information, which was not satisfied by the decision on the challenge. A state agency may contest this administrative act with a challenge to the Director General of the Data Protection Inspectorate or pursuant to the procedure specified in § 101 of the Government of the Republic Act. Contestation of a precept does not suspend the obligation to comply with the precept or the application of the measures necessary for compliance. WARNING: If the information holder fails to comply with the precept of the Data Protection Inspectorate, the Data Protection Inspectorate may apply to a higher authority, person or the entire party of the information holder for official supervision or to initiate disciplinary proceedings against the official. (§ 10 (1) and (4), § 53 (1) of the PSA). FACTUAL FACTS:. The requester submitted a request for information to the Ministry of the Environment in 2006, requesting to receive all the minutes of the Packaging Commission. 2/21/2020 a the holder of the information refused to comply with the request for information. 2/25/2020 a the claimant submitted a challenge to the Inspectorate. 04.03.2020. The Inspectorate made an inquiry to the holder of the information. 3/20/2020 The holder of the information continued to refuse to comply with the request for information and provided his answers to the inquiry. CLAIMER'S REQUEST AND GROUNDS: Due to the refusal to publish the secret protocols of the Packaging Committee of the Ministry of the Environment in 2007-2010, the Estonian waste management market was hit by a significant “market failure” - by 2015 “ .postimees.ee / 3086693 /

country-wants-to-market-greater-competition). Namely, in a situation where the state had implemented producer responsibility for packaging waste, packaging recycling organizations authorized by the Minister of the Environment (with special and exclusive rights) refused to fulfill the obligations of the Packaging Act beyond the targets of §36 of the Packaging Act. In essence, the organizations began to revive the dispute as to whether the person who caused the "pollution" had to pay the costs of implementing the "polluter pays" principle, arguing that the liability of the "polluter" for packaging was limited by targets. In connection with the market failure - in essence, in the dominant position given by the Minister of the Environment, recovery organizations misappropriated the environmental performance fees of waste collectors and handlers, committing so-called “service theft”. Due to the theft of service fees, about a dozen waste collectors were pushed out of the market. According to the annual reports of the recovery organizations, their sales revenue in the market for the service exempting them from the obligations of the Packaging Act is 50 million euros per year based on 2018 data. According to Eurostat Waste, comparing the quantities of packaging placed on the market with the quantities of recycled packaging, it appears that, with the authorization of the Minister of the Environment, recovery organizations in the dominant position have and have apparently misappropriated the funds. The minutes of the Packaging Commission would make it possible to assess the activities of the licensor in granting a dominant position through the authorization and in supervising the organizations with exclusive or special rights. The minutes would also indicate whether the representatives of the competent authorities in the Commission have provided high-quality advice and whether the Minister of the Environment has received high-quality advice. As the minutes of the Packaging Commission are obviously information that is required by § 36 (1) 5), § 36 (2) 1 and §36 (2) 2) of the AVTS, which may not be recognized for internal use, please initiate supervision proceedings - issue a precept to the information holder : - to restore the legal situation, to properly disclose the information to be disclosed; to oblige the holder of the information to comply with the request for information,. to remove any unlawful restriction on access to the information. STATEMENT BY THE HOLDER: 20.03.2020. a The information holder sent the following answer: We will forward the answers to the questions submitted in the inquiry on 04.03.2020 in connection with XXX's challenge to the activities of the Ministry of the Environment in responding to the request for information. 1. Please explain why you consider this to be internally addressed information. To whom do you send the minutes yourself (eg meeting participants, someone else)? XXX ESTONIAN SECONDARY RAW MATERIALS NON-PROFIT ASSOCIATION (registry code 80251226, according to the data of the commercial register the non-profit association was deleted from the register on 18.01.2016) submitted a request for information

to the Ministry of the Environment on 14.02.2020 to publish all minutes of the Packaging Commission. In a reply letter to XXX dated 21.02.2020, we explained that pursuant to § 18 of the Packaging Act, the Packaging Committee is an advisory body to the Minister of the Environment in formulating packaging and packaging waste policy and in granting and revoking activity licenses to recovery organizations. The minutes of the Packaging Commission as advisory working documents have been recognized for internal use pursuant to § 35 (2) 3) of the Public Information Act (hereinafter AVTS) and XXX does not have the right to access these data. The minutes of the Packaging Committee were forwarded to the members of the Packaging Committee who attended the meetings. 2. Please provide a substantiated explanation of the case that is a prerequisite for choosing the appropriate access restriction and why the requested information could not be made available to the public. The Packaging Act (§ 18 (1)) provides for the task of the packaging committee and it is advisory. The meetings and minutes of the Packaging Commission shall not be public for the purpose of allowing the members of the Commission to discuss in a free form various issues related to the development of packaging and packaging waste policy and to express their opinions and views on various issues. The minutes of the Packaging Commission may not formulate a specific legal decision, as it is not obligatory for the Minister to take these views into account. No decision with legal effect is made at the meeting of the Packaging Committee, only advisory decisions. This internal protocol is not an official position of the Ministry of the Environment, but only an internal discussion to assess various circumstances. The views and opinions expressed in this Protocol are not final and are subject to change. Therefore, the establishment of a restriction on protocols is justified in order to prevent the issuance of misleading information and the restriction imposed on protocols pursuant to § 35 (2) 3) of the PSA. Although § 35 (2) 3) of the PSA deals with documents that are not registered in the document register (opinions, notices, advice, etc.), the minutes of the Packaging Commission are registered in the document management system of the Ministry of the Environment. These minutes are registered in the document management system so that the respective minutes can be easily found and used at future meetings, if necessary. If a specific protocol contained, for example, a business secret of companies, a separate restriction on access to the document has also been added to the document pursuant to § 35 (1) 17) of the PSA. 3. How many protocols have there been since the Commission was set up? Please provide the inspectorate with a sample of the latest protocol to assess the choice of basis for access restrictions. The Ministry of the Environment has used three document management systems in the period 2004–2020. A total of 6 minutes of the packaging committee in the period 2013–2017 have been registered in the document management systems. Prior to 2013, the minutes of the Packaging

Commission have not been registered in the document register. The latest protocol of the Packaging Commission is attached to the letter, the access restriction of which is based on § 35 (1) 17) of the PSA, insofar as the protocol describes information about recovery organizations that is classified as a business secret. GROUNDS FOR THE DATA PROTECTION INSPECTORATE: Subject matter § 3 (1) of the Public Procurement Act provides that public information is information recorded and documented in any manner and on any medium which has been created or received in the performance of public functions. Pursuant to clause 5 (1) 1) of the PSA, the holder of information is a state or local government agency. The Ministry of the Environment is a government agency, thus a holder of information in the sense of AvTS. The person requesting the information has expressed a wish to inspect all the minutes of the Packaging Commission. Based on the response of the information holder, a total of 6 minutes of the packaging committee have been registered in the document management systems in the period 2013–2017. Unfortunately, it was not clear whether the minutes of the meeting held at a later period existed but were not registered or not, and the Inspectorate has not been able to find out during the processing of this complaint. However, we are of the opinion that this is not a large amount of information that could give rise to a refusal to comply with it. Business secret The holder of the information submitted the last packaging committee to the Inspectorate for illustration on 12.01.2017. a protocol, the access restriction of which is based on § 35 (1) 17) of the PSA, insofar as the protocol describes information about recovery organizations that is classified as a business secret. We explain that the Inspectorate has not assessed the right of the basis for the restriction of access chosen in this case, as it has not been the subject of the present dispute. However, we have some observations to make. OÜ Eesti Pakendiringlus also participated in the meeting as one recycling organization. In the present case, it is not clear how the data relating to other recovery organizations could have been protected by business secrets if they had come to their knowledge as a competitor. At a specific meeting, information on the activities of recovery organizations in 2015 was discussed under item 1 of the agenda. The Supervision Authority doubts whether this may have been a trade secret of a recovery organization, as the Packaging Act stipulates that each recycling organization must publish the same overview on its website.1 We draw attention to the conditions that trade secrets must meet (§ 5 (2) 1) it is not in the collection or in the precise arrangement of the parts and the total contribution is generally known or readily available to persons in the circles who normally deal with this type of information; 2) it has commercial value due to its secrecy, and 3) the person who has legal control over it has taken the necessary measures based on the circumstances, 1 § 174 (1) 12) of the Packaging Act: written review. Paragraph 2 provides a more detailed overview of

the content. to keep it a secret. Thus, not all business information is to be regarded as a business secret, but a business secret must satisfy the three conditions set out above. In order for specific information to be considered a business secret, the information classified as a business secret must have an economic value for the undertaking, which is also the fact that the business secret is not known to competitors. A trade secret is information which guarantees the success of a given undertaking's business and for the development or collection of which the undertaking has made investments which justifiably require protection. In addition, the disclosure of such information must be prejudicial to the interests of the undertaking. If the trade secret contains only part of the document, the document must be issued for the rest. Failure to comply with a request for information on the grounds of business secrecy must be substantiated. As the Ministry of the Environment, as the holder of information, imposes restrictions on access to documents, it must also be able to assess and, if necessary, justify how the disclosure of such information harms the business interests of the persons covered by the minutes (if necessary, asking them for explanations). The court has noted in case no. 3-08-1980 that § 63 (2) of the Competition Act also speaks against the argument that only an undertaking can decide on the justification of a trade secret - the undertaking must substantiate its definition of a trade secret to the Competition Authority definition. The court has also stated in clause 5.3 of the judgment 1-15-8831 / 40 of 16.05.2016: “In itself, the position of the defense counsel is correct that it is within the competence of an undertaking to determine what information it considers to be a business secret. However, it cannot be overlooked that once an undertaking has classified information as a business secret, it cannot yet be inferred that it is a business secret, since the latter must be defined on the basis of an objective situation and not merely on the basis of the undertaking's subjective will. Subjectively, the information must be defined as a business secret and protected as such by the holder. However, it must be established objectively that the content of the information is not known to the public and that there is a certain objective value in keeping the information as such. “Consequently, not all information can be considered a business secret, but the holder of the information must assess whether the information marked as a business secret meets the characteristics of a business secret and, if the request for information is refused, justify it to the person requesting the information. Responding to a request for information First of all, it is important to point out that the holder of the information has erroneously taken the view that he or she has the right and need to find out the possibility of assisting the person requesting information in implementing the law before complying with the request. Unfortunately, the obligation to provide assistance is imposed only on the holder of the information.2 The holder of the information cannot base the decision to release the information on, for example, his or her

previous experience in communicating with the person requesting the information or the person's previous activities. Thus, it does not matter at all whether the person was, is or will be a member of the management board of a legal person or whether the person has an environmental interest at all. In this respect, all requesters of information must be treated equally, without exception, and we recommend that the holder of the information closely monitor this practice in the future. Thus, in the present case, the holder of the information did not need to find out how the person requesting the information could contribute to the better implementation of the Packaging Act. Therefore, we disregard the comments of the holder of the information when refusing the request for information in relation to the person requesting the information. § 23 (1) 1) of the PSA permits the refusal to comply with a request for information if the access to the requested information is subject to restrictions and the requester does not have the right to access the requested information. Pursuant to subsection (3) of the same section, the reasons for the refusal must be given. 21.02.2020.a the holder of information has refused to comply with the request for information because a restriction on access to information has been established on the basis of § 35 (2) 3) of the Public Information Act - in justified cases internally addressed documents not registered in the register , certificates, advice, etc.) In the initial refusal, the holder of the information has not specified the grounds for the restriction of access to the requester. Any documented public information can be requested on request, regardless of whether it is registered in the register of documents. The restriction on access cited as a reason for refusing a request for information is set out in the second paragraph of § 35 of the Public Information Act, which, unlike the first subsection, where the holder of information has the obligation to set appropriate restrictions, allows for access-based access restrictions. This means that the holder of the information must always choose to make the documents available to the public, unless there is a real and justified need to restrict access in any way, and even then partial access must be preferred to a full restriction. Accordingly, we asked the holder of the information to provide a substantive explanation of the justified case, which is a prerequisite for choosing the restriction of access, and why the requested information could not be made available to the public. The information holder pointed out that the meetings and minutes of the Packaging Commission are not public, so that the members of the Packaging Committee can discuss various issues of packaging and packaging waste policy and express their opinions and views on various issues. The Inspectorate reviewed the latest protocol and sees no real basis for such a reason. The minutes have been drafted in relatively general terms, including the use of quotations from any person or interlocutory notes. Therefore, the disclosure of the minutes should not affect the freedom of expression of the participants in any way. However, the Inspectorate

has not examined the remaining protocols, which presupposes that the holder of the information should substantially review the remaining protocols in this respect as well. As a second argument, the information holder has pointed out that the minutes of the Packaging Commission may not formulate a specific legal decision, as it is not obligatory for the Minister to take these views into account. No decision with legal effect is made at the meeting of the Packaging Committee, only advisory decisions. This internal protocol is not an official position of the Ministry of the Environment, but only an internal discussion to assess various circumstances. The views and opinions expressed in this Protocol are not final and are subject to change. We explain that when issuing the minutes, the information holder can be given an additional explanation, which should preclude the opinion that the Commission has also made decisions with the minutes. However, this cannot be a sufficient reason why documents cannot be issued. In addition, the person requesting the information in this case is aware that these are advisory recommendations and he wishes to see what the Minister has taken into account the opinion of the Advisory Forum. In some cases, it may be important for the public to have access to the opinions and recommendations that influence the decision, in order to make the work of the state transparent and accountable to its citizens. We also point out that the packaging committee submitted to the Inspectorate for illustration on 12.01.2017. The only restriction on access to the protocol is a business secret (§ 35 (1) 17) of the PSA, and not § 35 (2) 3) of the PSA set out in the Ministry's reply (in justified cases, internally addressed documents that are not registered in the document register). Firstly, according to the information holder himself, the documents have been registered in the register of documents for easier retrieval and secondly, it is not clear whether the information holder had imposed a restriction on access to the requested documents on the basis of § 35 (2) 3) or has not done so. However, this fact has not been clarified in the framework of this procedure, as the Inspectorate has taken the view that the alleged restriction on access to the protocol submitted as an example of § 35 (2) 3) of the PSA is not sufficiently substantiated. the need to establish restrictions on access in substance (both AvTS 35 (2) (3) and AvTS 35 (1) (17)) for each protocol separately and to respond again to the request for information. / digitally signed / on behalf of the Director - General