

PRESCRIPTION-WARNING FOR THE PROTECTION OF PRIVACY AND TRANSPARENCY OF THE STATE in personal data protection case no. 2.1.-1/20/4478 Injunction maker Data Protection Inspectorate lawyer Virve Lans Time and place of injunction 19.10.2021 in Tallinn Recipient of injunction - personal data processor 1Maaler Ehitus OÜ (14578286) XXXX address: XXXX, Tallinn 13915 e-mail address: XXXXX Personal data processor responsible person Board member XXXX

RESOLUTION: § 56 subsection 1, subsection 2 point 8 of the Personal Data Protection Act (ICS), § 58 subsection 1, article 5 subsection 1 point a and subsection 2 of the Personal Data Protection Act and article 58 subsection 1 point a of the General Regulation on Personal Data Protection and considering the same subsection On the basis of point e, I make a mandatory injunction for compliance: 1. 1Maaler Ehitus OÜ board member XXXX to respond to the inquiry sent by the Data Protection Inspectorate on 21.09.2021 in case No. 2.1.-1/20/4478. The questions that were in the inquiry are also stated in this order. I set the deadline for the execution of the order to be 29.10.2021. Report compliance with the order to the e-mail address of the Data Protection Inspectorate at info@aki.ee by this deadline at the latest. REFERENCE FOR DISPUTES: This order can be challenged within 30 days by submitting either: - an appeal under the Administrative Procedure Act to the Data Protection Inspectorate or - an appeal under the Administrative Court Procedure Code to the administrative court (in this case, the appeal in the same matter cannot be reviewed). Challenging a precept does not stop the obligation to fulfill it or the implementation of measures necessary for fulfillment. WARNING: If the injunction is not complied with by the set deadline, the Data Protection Inspectorate will impose a fine of 3,000 euros on the addressee of the injunction based on § 60 of the Personal Data Protection Act. Tatari tn 39 / 10134 Tallinn / 627 4135 / info@aki.ee / www.aki.ee Registration code 70004235 A penalty may be imposed repeatedly - until the injunction is fulfilled. If the recipient does not pay the penalty, it will be forwarded to the bailiff to start enforcement proceedings. In this case, the bailiff's fee and other enforcement costs are added to the enforcement money. MISCONDUCT PUNISHMENT WARNING: Failure to comply with the prescription under Article 58(2) of the Personal Data Protection General Regulation may result in a misdemeanor proceeding based on § 69 of the Personal Data Protection Act. For this act, a natural person may be fined up to EUR 20,000,000, and a legal person may be fined up to EUR 20,000,000 or up to 4 percent of its global annual turnover of the previous financial year, whichever is greater. The out-of-court procedure for a misdemeanor is the Data Protection Inspectorate. FACTUAL CIRCUMSTANCES: The Data Protection Inspectorate received a complaint from XXXX, according to which XXXX recorded XXXX's phone call with the complainant. XXXX did not inform XXXX about the fact that the call was recorded. XXXX forwarded the recorded call to third parties. Based on the above,

we initiated a monitoring procedure on the basis of § 56 (3) point 8 of the Personal Data Protection Act. In order to find out whether the recording of the call meets the requirements of the General Regulation on the Protection of Personal Data, the inspectorate sent an inquiry on XXXX 21.09.2021 in case No. 2.1.-1/20/4478 during the supervision procedure, the deadline for answering which was 30.09.2021. The Data Protection Inspectorate contacted XXXX by phone on 01.10.2021 and reminded him of the obligation to respond to the inquiry. During the call, it became clear that XXXX expects to be represented by his lawyer in this procedure. XXXX's lawyer has submitted an authorization to represent XXXX at the beginning of the supervision procedure, but according to the inspection, the submitted authorization does not include representation of XXXX in this supervision procedure. We have accepted the answers to the inquiries sent earlier during the supervision procedure of XXXX, which have been forwarded to us by his representative, but we will only forward the documents of the procedure to XXXX. The inspectorate also explained this fact to XXXX. For the time being, XXXX has not responded to the inquiry sent on 21.09.2021, nor has it asked for an extension of time to respond. In the inquiry, we wanted answers to the following questions:

1. Who is the responsible processor of the personal data of XXXX during the processing of personal data through call recording? Is it 1Maaler Ehitus OÜ or XXXX?
2. Submit an analysis of the need to store personal data (call recording), which shows that it is necessary to store XXXX's personal data for the preparation, submission or defense of legal claims.
3. On the basis of which claim and which legal provision do you plan to file a claim or may a claim be filed against you?
4. What specifically do you prove when preparing or defending the mentioned legal claim with a voice recording? How much weight does the disputed speech recording have as evidence in preparing, presenting or defending a legal claim?
5. Is it possible to prove this fact with other relevant documents (contracts, invoices, acts or other documents)?
6. Please submit all the documents on which the claim is based to the inspection for evaluation.
7. Presumably, it is a claim that expires within 3 years, so please explain what is the probability of a lawsuit during the limitation period and what does it depend on?
8. When exactly do you plan to file a lawsuit against Tycoon OÜ? How realistic is your desire to file a lawsuit against Tycoon OÜ? In the mentioned inquiry, the inspectorate also drew attention to the setting of an injunction and a fine in the event that the inspectorate's inquiry is not answered on time. The inspection sent the inquiry to the e-mail address XXXX used by 1Maaler Ehitus OÜ (board member XXXX). Regarding the inquiry sent by e-mail, we note that in accordance with § 27 (2) point 3 of the Administrative Procedure Act, a document made available or transmitted electronically is considered delivered if the document or message has been transmitted to the e-mail address entered in the company's business register. The inspectorate has

given XXXX a reasonable deadline to respond to the inquiry, and has also reminded of the arrival of the response deadline by phone. Thus, the inspectorate has fulfilled the obligation of § 40 (1) of the Administrative Procedure Act to give the party to the procedure the opportunity to present their opinion and objections on the matter before issuing the administrative act.

GROUNDS FOR THE DATA PROTECTION INSPECTION: When recording a telephone call, it is personal data processed on the basis of the General Regulation on the Protection of Personal Data. When recording a telephone call, it must be taken into account that in addition to the personal data mentioned during the conversation, the voices of the interlocutors are also personal data, as it is possible to identify a person by their voice. At the same time, it does not matter that it was a telephone conversation related to the company's activities, since the recording of the voice and the transmission of the recording are in any case the processing of the personal data of a natural person (interlocutor). Storing and transmitting a recording containing personal data is processing personal data within the meaning of Article 4, Clause 2 of the General Regulation on the Protection of Personal Data. Article 6 of the General Regulation on Personal Data Protection defines the legality of personal data processing. The processing of personal data is legal only if at least one of the grounds stated in Article 6, Paragraph 1 of the General Regulation is met. The Data Protection Inspectorate is of the opinion that in this case only legitimate interest can be the legal basis (Article 6 paragraph 1 p f). In the current state of the proceedings, XXXX has not been able to prove that he had a legitimate interest in recording the call and that he would have prepared an assessment of the legitimate interest or that he had the complainant's consent to record the call. Based on the above, the inspectorate is still of the opinion that the collection of personal data through the recording of the call took place illegally and has also proposed XXXX to delete the recording of the call in question. XXXX (through his representative) has not agreed with the views of the inspection. The only basis deriving from the General Regulation on the Protection of Personal Data, which in this case XXXX could rely on to prevent the deletion of the call recording, is Article 17 paragraph 3 point e of the General Regulation on the Protection of Personal Data, according to which the data controller has the opportunity to further process personal data for the preparation, submission and defense of legal claims. According to Article 5(2) of the General Regulation on Personal Data Protection, the data processor must prove the legality of data processing. This means that the board member of 1Maaler Ehitus OÜ, XXXX, must prove to the Data Protection Inspectorate that he processed XXXX's personal data in accordance with the general regulation on personal data protection. In order to find out the legal basis for the storage and transmission of the call recording, which may occur in XXXX, we sent an inquiry, but we have not received an answer. In accordance with § 58 (1) of the

Personal Data Protection Act and Article 58 (1) point a of the General Regulation on Personal Data Protection and taking into account point (e) of the same paragraph, the inspectorate has the right to demand explanations and other information, including the submission of documents necessary for conducting the supervision procedure. Taking into account that it is mandatory to respond to the inquiry made as part of the supervisory procedure of the administrative body, but XXXX has not responded to the inspection's inquiry, the inspection considers that issuing a mandatory injunction is necessary in the supervisory procedure in order to find out the compliance of the recording and storage of telephone calls by XXXX, a member of the board of 1Maaler Ehitus OÜ, with the General Regulation on Personal Data Protection . If there are problems in responding to the inspection by the specified deadline, it is possible to explain to the supervisory authority which circumstances were an obstacle to responding and to request an additional deadline for responding. In addition, we explain that if XXXX wants to be represented by a lawyer in this matter, a power of attorney proving representation in the matter in question must be submitted to the inspectorate. As long as the corresponding power of attorney is not submitted, the Data Protection Inspectorate will only send documents to 1Maaler Ehitus OÜ board member XXXX as part of the supervision procedure. /signed digitally/ Virve Lans lawyer under the authority of the director general