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OPINION OF THE COMMISSION FOR PERSONAL DATA PROTECTION

REG.№ PNMD -01-64 / 2021 Sofia, 21.07.2021 SUBJECT: Provision of data from the Population Register - National Population Database of the municipal administrations in connection with the admission of children to nurseries, kindergartens / preparatory group and first class

The Commission for Personal Data Protection (CPDP) composed of - Chairman: Ventsislav Karadzhov and members: Tsanko Tsolov and Veselin Tselkov, at a meeting held on 14.07.2021, considered a request for opinions will with ent. № PNMD-01-64 / 28.06.2021 by the Director General of the General Directorate "Civil Registration and Administrative Services" (DG "GRAO") at the Ministry of Regional Development and Public Works (MRDPW), on the occasion of requests received from the municipal administrations for access and provision of data from the Population Register - National Population Database in connection with the admission of children to nurseries, kindergartens / preparatory group or first grade.

DG GRAO states that the purpose for which the data is requested is both to verify the information provided by parents in connection with the admission of children to nurseries, kindergartens / preparatory group or first grade, and to determine the adjacent areas of schools for the coverage of first grade students, in view of the leading criterion - proximity of the school to the permanent / current address of the child or preparation of lists of children to be enrolled in preschool and first grade groups for provision in schools and kindergartens on the territory of the municipality (Art. 47, para. 1 of Ordinance № 10 of 1 September 2016). Depending on the purpose for which the data are requested and in order to comply with the principles of data processing (Article 5 of Regulation (EU) 2016/679), in some cases the volume of data provided should only cover data about persons whose data are already are contained in the electronic system of the municipality for admission, and in other cases the processing should refer only to data of persons subject to admission to nurseries, kindergarten / preparatory group or first grade in schools in the municipality. Usually the amount of data is limited to name, PIN and address registration, and the latter can be requested as of a certain date. The possibility of requests from municipal administrations to cover the need to provide data on parents, such as name, PIN and address registration or number of children in the family, if the criterion of preference for a child living in a family with three or more children or children with one parent. The request states that the Law

on Preschool and School Education (ZPUO) imposes powers on local governments to ensure and control the conditions and organization of activities in preschool education in municipal kindergartens and the scope of those subject to compulsory preschool and school education children and students (Art. 256, para. 1, items 1 and 2 of the WUA). According to the same, the conditions and the order for enrollment, deregistration and transfer to the municipal kindergartens are determined by an ordinance of the municipal council (art. 59, para. 1 of the WUA). The provision of Art. 7, para. 1 of Ordinance № 5 for pre-school education, by which the enrollment, deregistration and transfer to the municipal kindergartens is also carried out by an ordinance of the municipal council. According to Art. 43, para. al. 1 and 3 of Ordinance № 10 of September 1, 2016 on the organization of activities in school education for the implementation of admission in the first grade for each settlement with more than one school, municipalities develop a system of admission in which the leading criterion is the proximity of the school to the child's permanent / current address and determine the adjacent areas of the schools for the scope of students, and in compliance with the leading criterion, the children for whom an application for admission to the school is submitted are divided into appropriate groups according to their address registration and period it has not been changed. For the distribution in the groups, the address indicated in the application is taken, which is more favorable for the student. DG GRAO considers that in all cases of actions for the provision of personal data (including through access), they constitute actions for the processing of personal data within the meaning of Regulation (EU) 2016/679 and undoubtedly the processing should be done in compliance with the conditions for legality and the principles of processing in Art. 5 and Art. 6 of the Regulation. As in the specific cases it is a question of providing data regarding the civil registration, their provision should be done taking into account the requirements of art. 106 of the Civil Registration Act (CRA), as special in relation to the provision of data by ESGRAON. Since the provision of access to personal data, according to the legal definition introduced by Art. 4, item 2 of Regulation (EU) 2016/679, is the processing of personal data, the provision of data, regardless of the manner in which it may be carried out - by providing data in a structured form, by direct access to specific data from the electronic register with a program interface or through the Environment for inter-register exchange, as standardized requests / references) is carried out only in the presence of one of the hypotheses referred to in Art. 6, para. 1 of the Regulation and in strict compliance with the principles set out in Art. 5, para. 1 of the same, so that the volume of data is exhaustively determined, sufficient and not exceeding the purpose for which it is necessary. The letter of DG GRAO also expresses the following arguments: the provision of Art. 106 of the Civil Procedure Act indicates the conditions under which data from ESGRAON may be provided, as in para. 1, item 2 of the cited

provision stipulates that data are provided to state bodies and institutions in accordance with their statutory powers. This text implies a specific link between the powers established by law and the provision of data or access to personal data. In order to be able to provide or access personal data to individuals, this possibility must be explicitly regulated by law, so that the law establishes a link between the exercise of certain powers of the state body or institution and the need to provide in order to these powers shall be exercised. The Ministry of Regional Development and Public Works strictly interprets the provision of Art. 106, para. 1, item 2 of the Civil Procedure Act, requiring the existence of a "statutory power" of a state body or institution - ie. explicitly regulated right of access to the electronic register, which derives from a "legal" provision within the meaning of Art. 3, para. 1 and Art. 4 of the Law on Normative Acts (LNA). The letter of DG "GRAO" claims that the kindergarten and the school are institutions in the system of preschool and school education, according to Art. 24, para. 1 and Art. 25, para. 1 of the Preschool and School Education Act (PSAA). In this regard, the hypothesis of Art. 106, para. 1, item 2 of the Law on Education, insofar as these are institutions in the education system. However, the WUA does not explicitly provide a legal possibility to indicate the provision of personal data to individuals from the maintained electronic registers of the Ministry of Regional Development and Public Works through DG GRAO, for the purposes and operation of municipal reception systems and in this sense is not available. explicitly provided for the legal possibility to provide or access data. In addition, it is pointed out that a requirement for the existence of a normative basis for access to registers / references / fields is laid down in Art. 10 of the General Terms and Conditions for access to data from the registers of the state administration in the Inter-Registry Exchange Center (RegiX), administered by the State Agency for Electronic Government (DAEU). According to DG GRAO, the above provisions do not indicate the possibility of providing access to personal data, but the need for their provision is evident. The enrollment of children in kindergarten and the enrollment of children for preschool education is carried out throughout the year (Article 57, paragraph 4 of the Law on Preschool and School Education and Article 6 of Ordinance № 5 of 3 June 2016 on preschool education), which determines the need for up-to-date information repeatedly. In view of the above and in view of the specifics of personal data and the special protection that the legislation provides for them, DG GRAO asks the CPDP to express an opinion on the legal possibility to provide data and access to those contained in the register of population - National database "Population" of municipal administrations in connection with the admission of children in nurseries, kindergartens / preschool groups and first grade students in municipal kindergartens and schools. Legal analysis: It is an indisputable fact that the specific case related to the provision of data by ESGRAON to municipal administrations in connection with the admission

of children in nurseries, kindergartens / preschool groups and first graders in municipal kindergartens and schools should be considered and interpreted in connection with the provision of Art. 106, para. 1, item 2 of the Civil Registration Act (CRA). The bodies of local self-government are defined as governing bodies within the meaning of Chapter Thirteen of the Preschool and School Education Act (PSAA). According to Art. 256, para. 1 of the WUA, they provide and control exhaustively listed activities on a certain territory, according to their territorial competence. This provision outlines the powers of local self-government bodies, such as governing bodies in relation to pre-school and school education. In their essence, these are sovereign powers assigned to them by virtue of the WUA, which outline their competence in the area under consideration. It should be borne in mind that the ZPUO regulates public relations related to ensuring the right to preschool and school education, as well as the structure, functions, organization, management and financing of the system of preschool and school education. ZPUO does not aim to regulate rules and to create additional grounds for processing personal data, as they are exhaustively listed in Art. 6, para. 1 and Art. 9, para. 2 of Regulation (EU) 2016/679 (General Data Protection Regulation, DPO). For its part, the Civil Registration Act (CRA) is the normative act regulating the terms and conditions for the civil registration of individuals in the Republic of Bulgaria. It includes the set of data about a person that distinguishes him from other persons in society and in his family as a holder of subjective rights such as name, citizenship, marital status, kinship, permanent address and others. (Article 1, paragraphs 1 and 3 of the Civil Procedure Code). As far as personal data related to civil registration are concerned in the specific case, the provisions of the Civil Protection Act are special in terms of their provision to third parties. The Unified System for Civil Registration and Administrative Services of the Population (ESGRAON) is a national system for civil registration of individuals in the Republic of Bulgaria and a source of personal data for them. One of the key functions of ESGRAON is to provide information and administrative services to the legislative, executive and judicial branches in the country (Article 101, item 6 of the Civil Procedure Act). Such is the current case, consisting in the provision of data by ESGRAON for the purposes of exercising sovereign powers<sup>1</sup>, assigned to municipal administrations under Art. 256, para. 1 of the WUA. Given the arguments set out in this way, the basis for obtaining personal data from local governments for the above purposes is Art. 6, para. 1, p. "E", item 2 of Regulation (EU) 2016/679 - the exercise of official powers granted to the administrator under Art. 256, para. 1 of the WUA, which is the prerequisite to apply the hypothesis of Art. 106, para. 1, item 2 of the Civil Procedure Code. For the sake of clarity, some basic clarifications are needed. The competence of the governing bodies is outlined by the range of powers assigned to them to perform certain state functions. The authoritarian nature of these

relations gives rights and obligations to the administrative body in relation to its own activities, namely government. An example of this in this case is the assigned authoritative function of local governments to exercise control over the conditions and organization of activities in preschool education in municipal kindergartens and in relation to the scope of children and students subject to compulsory preschool and school education ( argument Article 256, paragraph 1, items 1 and 2 of the WUA). The regulation of the powers of the administrative body envisages the performance of a number of specific actions, through which its competence is continuously and collectively realized. The position for the strict interpretation of the provision of Art. 106, para. 1, item 2 of the Civil Procedure Act, to require the existence of a “statutory power” of a state body or institution - ie. explicitly regulated right of access to ESGRAON data. There is an internal contradiction in the statement in question. Public bodies, as subjects of administrative law, have sovereign powers that are related to their competence in the relevant field of public relations. In a significant part of the cases, the exercise of powers, respectively the exercise of competence, is related to the processing of personal data. Moreover, the processing of personal data is in certain cases necessary for the exercise of official powers. This means that the exercise of powers is conditioned by the need to process a certain amount of personal data, while otherwise it may be hindered or impossible to exercise the powers conferred by law (argument Art. 6, para. 3 of Regulation (EU) 2016/679). In this sense, the processing of personal data may not in itself be an end in itself, but it may also be a necessary and essential element of the complex factual composition of the exercise of sovereign powers. Such a restrictive interpretation of the meaning of the term power is contrary to Regulation (EU) 2016/679, as it leads to the inapplicability of the legal basis for the processing of personal data within the meaning of Art. 6, para. 1, p. "E", item 2 of the same. By analogy with the above, the restrictive interpretation would lead to a practical impossibility for public authorities to receive data from ESGRAON, necessary for the exercise of their powers, as they can only fall within the scope of the hypothesis under item 2 of Art. 106, para. 1 of the Civil Procedure Code. It is inadmissible to require public authorities to have an explicit obligation / right of access to data from ESGRAON, as such an approach would expand both the grounds for processing personal data under the ORD and would be contrary to the special status. of public bodies, provided by the clear distinction of legal entities within the meaning of Art. 106, para. 1 of the Civil Procedure Code. Last but not least, in the current legal analysis it is worth emphasizing the scope of the Electronic Government Act (EEA), which regulates public relations between administrative bodies related to the work with electronic documents and the provision of administrative services electronically, as well as and the exchange of electronic documents between administrative bodies. According to the provisions

of the WEU, administrative bodies cannot require citizens and organizations to present or prove already collected or created data, but are obliged to collect them ex officio from the primary data controller. The primary data controller is an administrative body that by law collects or creates data for a citizen or organization for the first time and amends or deletes these data (in this case it is DG "GRAO" in the Ministry of Regional Development and Public Works). Moreover, the WEU imposes an obligation on the primary administrator to send the data ex officio and free of charge to all administrative bodies, which on the basis of law also process this data and have expressed a desire to receive it. This obligation in the sense of WEU fully corresponds to those assigned by Art. 101 of the Civil Procedure Act functions of ESGRAON, inter alia, providing information and administrative services to the legislative, executive and judicial branches. The provision of Art. 36, para. 6 of the Code of Administrative Procedure (APC), according to which the body conducting the proceedings on its own initiative or at the request of a party requires the relevant administrative bodies, the judiciary, persons performing public functions and organizations providing public services within their competence to issue and send certificates, to send documents, other evidence or information relevant to the proceedings. In conclusion, it should be noted that the processing of personal data should be intended to serve the public. The right to the protection of personal data is not an absolute right, but must be considered in relation to its function in society and be in balance with other fundamental rights in accordance with the principle of proportionality. The processing of personal data is a horizontal policy designed to protect the rights of individuals in the processing of their personal data. These general rules are applicable in all spheres of socio-economic life, including administrative activities. The correct understanding and correct application of the legislation in the field of personal data protection is the basis of e-government and digitalization in the most general sense of the term. Strategically, e-government and the digitalisation of the economy are one of the main pillars of the EU's development and sustainability policy, the main aim of which is to reduce the administrative burden on citizens and organizations and increase the efficiency of the administration. For these reasons and on the grounds of Art. 58, para. 3, p. "B" of Regulation (EU) 2016/679 in conjunction with Art. 10a, para. 1 of the Personal Data Protection Act, the Personal Data Protection Commission expresses the following OPINION: Pursuant to Art. 106, para. 1, item 2 in connection with Art. 101, item 6 of the Civil Registration Act and Art. 6, para. 1, p. E, para 2 and para. 3 of Regulation (EU) 2016/679 General Directorate "Civil Registration and Administrative Services" at the Ministry of Regional Development and Public Works is obliged to provide the legislature, executive and judiciary with the data they need to perform their official powers . In the specific case this is also applicable to the bodies of local

self-government, entrusted with powers under Art. 256, para. 1 of the Law on Preschool and School Education (ZPUO), for the exercise of which it is necessary to obtain data from ESGRAON, in the form of personalized inquiries for specific persons, in order to provide them with administrative services. 1 With decision № 21 of 14.11.1996, under k. d. № 19 of 1996 (promulgated, SG No. 102 of 29.11.1996) The Constitutional Court of the Republic of Bulgaria accepts that "the main, essential feature of the state body is the existence of sovereign powers, which in their content include autonomous directive activity of the body (as an element of its general competence), its right to issue mandatory prescriptions in the form of general or individual binding acts'. CHAIRMAN: MEMBERS: Ventsislav Karadzhov / n / Tsanko Tsolov / n / Veselin Tselkov / n / Files for download crèches, kindergartens / preparatory group and first class print