 Decision on appeal with reg. No. PPN-01-197/14.03.2022 DECISION no. PPN- 01-197/2022, Sofia, 02/09/2023. The Commission for the Protection of Personal Data, composed of: Chairman Ventsislav Karadzhov and members Tsanko Tsolov and Veselin Tselkov at a regular meeting held on November 16, 2022, objectified in protocol No. 42, based on Art. 10, para. 1 of the Personal Data Protection Act (PDPA) and Art. 57, § 1, b. "f" of Regulation (EU) 2016/679 (GDPR), considering a complaint with Reg. No. PPN-01-197/14.03.2022, in order to rule, took into account the following: The administrative proceedings are in accordance with Art. 38 of the Labor Code and Art. 77, § 1 of Regulation (EU) 2016/679. The Commission for the Protection of Personal Data (PCPD) was referred to a complaint PPN-01-197/14.03.2022 filed by Mr. I.R. The complaint contains allegations of unlawful processing of personal data by the company "D." JSC with EIK-********. The complainant points out that he received an act in his name for an administrative offense committed in the Federal Republic of Germany. The act claims that on 15.09.2020 Mr. I.R. was driving a vehicle with registration number ****, owned by the company "D." AD, with address: ****, which, according to him, does not correspond to the truth. The complainant indicates that at the same time he was on sick leave (temporary incapacity for work), which was also confirmed by an inspection carried out by the Executive Agency "Main Labor Inspectorate". Mr. I.R. adds that probably a person from "D." AD used his data because the German authorities have no way of knowing who the person was driving the same vehicle. In this regard, the complainant expresses his strong concern about the situation that has arisen because he does not know what he can expect and whether this will not happen again, in view of which he wishes the CPLD assistance for his violated rights. Attached to the complaint: 1. Answer of the IA "Main Labor Inspectorate" with ex. No. ****; 2. Medical protocol LCC No. ***; 3. Order to terminate an employment relationship; 4. Invitation to hand over the employment record; 5. Application for termination of employment contract; 6. Invoice *****. — for used copper. services; 7. Payment order dated 13.01.2022 in the amount of EUR 83.50 /the amount of the fine/; 8. Act issued by the German authorities. Pursuant to Art. 26 of the APC, the company "D" was notified. AD with EIK-********, for the administrative proceedings instituted before the CPLD on the complaint of Mr. I.R. According to the base Art. 34, para. 3 of the APC, the administrator is given the opportunity to express an opinion on the complaint. On behalf of the company, through their legal representative - Adv. N.N. - SAC, provide an opinion in which they point out the following: In essence, they do not dispute the circumstances presented in the complaint - the complainant is indeed a former employee of "D." AD, which on the date of the violation committed on the territory of the Federal Republic of Germany - 15.09.2020, was on leave due to

temporary incapacity. Moreover, on the same date, the process truck with registration number ****, which until 23.07.2020 was in the possession of "D." AD under a lease agreement, was already used by another lessee — "V. " EOOD, with EIK ****. That is, on the date of the violation - 15.09.2020, the truck was not used by "D" at all. AD, and already by another person, as at the same time I.R. was in hospital. Nevertheless, in the office of "D." JSC has received the electronic slip from the competent authorities of the Federal Republic of Germany for the violation from 15.09.2020. Since the offender is a legal entity, the slip provides an opportunity to indicate the specific individual who was driving the vehicle on the date of the violation. As can be seen from the appendices to this statement, the slip, together with the appendices to it, on 29.06.2021, the employee of "D." JSC P.H., instead of objecting that on the date of the violation 15.09.2020 the truck was no longer used by the company, but by a third party and to present the available evidence for this, mistakenly accepted the slip and indicated as responsible for the violation person I.R. It concerns an inadvertent technical error, confusion of the relevant dates, he as according to the explanations of the employee, I.R. drove the truck on 15.07.2020, and she confused this date with the date of the violation 15.09.2020. The fact that it is an unintentional error in the dates is also confirmed by the fact that, as of 15.09.2020, the truck undoubtedly was not in possession of "D" at all. AD, but the employee did not object even in this regard - apparently she was mistaken about the dates. At the same time, she disclosed to the competent authorities of the Federal Republic of Germany (an EU member state) the applicant's personal data in fulfillment of a legal obligation that applies to the administrator "D." AD (Art. 6, item 1, b. "c" of Regulation EU 2016/679 of the European Parliament and of the Council), as well as due to the need to protect the legitimate interests of the administrator (Art. 6, item 1, b . "e" of the Regulation). In addition, the applicant has given consent to the processing of his personal data by the employer (Article 6, item 1, b. "a" of the Regulation) for specific purposes described in a written declaration. The fine imposed on the subject of the personal data by the competent authorities of the Federal Republic of Germany has been reimbursed to him in full and he has expressed his willingness to reach an agreement in this regard with his former employer. Given the above considerations from "D." JSC considers that it has not committed a violation under the CPDP and EU Regulation 2016/679 of the European Parliament and of the Council and asks the CPDP to reject the complaint as unfounded. Attached to the opinion: 1. Form for establishing the violation, including the form, in which the data of the I.R. ; 2. Declaration of voluntary provision of personal data and their processing; 3. Declaration for provision of information under Art. 6 of Regulation EU 2016/679 of the European Parliament and of the Council; 4. Tripartite agreement dated 23.07.2020 on assignment of rights under a lease agreement; 5. Power of attorney. In connection with what was stated

by the defendant, regarding the existence of an agreement reached, on the basis of Art. 43 of the PCPDPA, the complainant is given the opportunity to familiarize himself with the opinion of the administrator and to express his attitude on it, notifying the CPPD whether he maintains his complaint under these circumstances. By letter No. PPN-01-197#6/18.08.2022, Mr. I.R. informs the CPDP that there is no agreement and upholds the appeal filed by him. After getting acquainted with the opinion of "D." AD indicates concern and anxiety due to the lack of guarantees that this will not happen again. Another employee to make an "unintentional technical error" again. He adds that if on the day in question - 15.09.2020, there was an accident with the truck, it is not clear who will be responsible. Considers it more correct, before providing information to third parties containing personal data, a check by the administrator is carried out. Regarding the declarations signed by him for the voluntary presentation and processing of personal data, his opinion is that they should be used lawfully and lawfully. Clarifies that the amount of the fine was actually refunded on August 2, 2022, by bank transfer from "D." AD, but his concern is related to the processing of his personal data. He has not declared that he has no other claims, as claimed by his former employer. In conclusion, he points out that the so-called "unintentional technical error" of the administrator caused him a lot of moral and non-pecuniary damage. As a full law-abiding citizen of the Republic of Bulgaria, he believes that everyone's personal data should be protected and hopes that those responsible for this "unintentional technical error" will bear their responsibility objectively. Additional clarifying information has been requested from the company in order to clarify the case from a legal and factual point of view. In response with the entry No. PPN-01-197#7/26.08.2022 by the administrator through his legal representative - Adv. N.N., indicate the following: 1. In cases where in "D." JSC receive notifications from a European road traffic control authority, such as the Federal Service for Freight Transport - Germany, the company's officials follow the rules outlined in the Instructions for processing received fines in "D." AD. 2. Violations of the rules have sometimes been found in connection with the work of employees of "D." AD, carrying out excesses on the territory of the European Union. Given the nature of the work, these violations are most often established on the basis of received reports of fines imposed by European control authorities. In these cases, the company pays the fines, and if culpable and illegal behavior on the part of the employee is established, property liability is realized against him under the conditions of Art. 203 et seq. of the CT. If it turns out that the fine is not due to a reason for which the employee is responsible, it remains at the expense of the employer. In principle, compliance with road traffic rules is also considered as a work obligation for drivers by virtue of their job characteristics. Therefore, their violation in some cases is grounds for realization of disciplinary liability under CT. 3. Submit an Instruction for

the processing of personal data in "D." AD and to create technical and organizational measures for their protection. 4. The applicant I.R. stated to representatives of "D." DAMN he felt affected because he had to pay a fine for something he didn't do. Therefore, he has undertaken to immediately withdraw the complaint before the CPLD if the amount he paid is reimbursed. After it was established that the complainant was indeed not at fault for the situation, he was apologized on behalf of the company and his amount was refunded. However, after receiving the amount, the applicant stated that he had actually only promised to consider withdrawing the complaint, but having done so decided not to withdraw it. Attached to the additional opinion: 1. Instructions for processing received fines in "D." AD; 2. Instruction for processing personal data in "D." AD and to create technical and organizational measures for their protection; 3. Payment document for payment of the fine from I.R. ; 4. Payment document for reimbursement of the fine paid by the driver; 5. Submissions to the written answer sheet, together with a translation into Bulgarian. The complaint was considered at a meeting of the CPLD, objectified in Minutes No. 34 of 14.09.2022, at which a decision was made to accept it as admissible and to schedule it for consideration at an open meeting. The following are constituted as parties in the administrative proceedings: applicant - Mr. I.R. and respondent - the administrator "D." JSC with EIK-********. At the meeting held on 16.11.2022 open meeting of the Commission, objectified in Protocol No. 42, the complainant regularly notified, does not appear and is not represented. The defendant, regularly notified, is represented by Adv. N.N. with a power of attorney on file. A complaint considered on its merits is well-founded. The complaint of Mr. I.R. is fully compliant with the requirements for regularity, namely: there are data on the applicant, the nature of the request, date and signature. The norm of Art. 38, paragraph 1 of the Labor Code provides for a deadline for referral to the Commission - a six-month period from the knowledge of the violation, but no later than two years from its commission. The complainant indicates that he became aware of the illegal processing of his personal data after receiving an act of violation of traffic on the roads of the Federal Republic of Germany on 13.01.2022, which he pays. The complaint was submitted to the Commission for the Protection of Personal Data on 14.03.2022. The persons referred to in Art. 38, paragraph 1 of the Labor Code, deadlines have been met. In Art. 27, para. 2 of the APC, the legislator binds the assessment of the admissibility of the request to the presence of the requirements specified in the text. The competence of the Commission when considering complaints is related to the protection of natural persons, in connection with the processing of their personal data by persons having the status of "personal data administrators". This requirement is an absolute procedural prerequisite, in view of which the admissibility of the appeal is assessed. The complaint is directed against "D." AD with EIK-********, which company is

undoubtedly a controller of personal data within the meaning of Art. 4, item 7 of Regulation (EU) 2016/679. The complaint was filed by an individual with a legitimate legal interest. The same claims that his personal data in volume: three names and exact address, date and place of birth were unlawfully processed by the employer "D." AD by providing them to a third party "Federal Service for the Transport of Goods" FRG, for drawing up an act for an offense committed on 15.09.2020 at 01:08 a.m., representing the use of road A3 Zinzing, direction Nittendorf - FRG from a motor vehicle with registration number ****, with a total weight of 18.00 tons, for which a toll in the amount of €55 is due, without being paid, in violation of the conditions for processing in the sense of art. . 5, § 1, letters "a" and "b" of Regulation (EU) 2016/679, in connection with Art. 6, § 1 of the same. According to Art. 57, § 1, item "f" of Regulation (EU) 2016/679, upon its referral, the CPLD examines complaints against acts and actions of personal data controllers that violate the rights of data subjects. Therefore, the complaint is within the competence of the CPLD. It is not in dispute between the parties, Mr. I.R. was an employee of the company "D." AD. It is not disputed that the employment contract of Mr. I.R. was terminated on 01.11.2020 with the employer "D." AD. According to the file, it is not in dispute that by virtue of Medical Protocol No. **** issued by DCC **** with Reg. No. ***, Mr. I.R. was temporarily unable to work for a period of 30 days, from 09/01/2020 to 09/30/2020, reflected in sick sheet No. ***. According to the file, it is not in dispute that a letter was sent by the Federal Service for the Transport of Goods to "D" for the violation found by the German transport authorities, carried out on 15.09.2020. JSC notifying them of the violation found by them and the need to pay a fine of €55. A form is attached to the letter, which is to be filled in if the person who owns the vehicle did not commit the violation and should indicate the names and address of the person who committed the violation. Accordingly, an employee of "D." JSC, on 29.06.2021, sent to the "Federal Service for the Transport of Goods" FRG the personal data of Mr. I.R. in volume: three names, exact address, date and place of birth, in his capacity as the physical violator of the Federal Law on Mandatory Tolls for Highways and Main Roads (BFStrMG), on 15.09.2020 with a motor vehicle ****. It is clear from the evidence and information collected in the case file that until 23.07.2020 a truck with registration number **** was managed by "D." AD, as after this date, by virtue of a tripartite agreement between "L." Ltd., "D." AD and "B." EOOD, the same passes under the management of the lessor and "V." Ltd. That is, as of September 15, 2020, the truck was no longer used by administrator "D." AD, while at the same time Mr. I.R. was on sick leave. Indeed, Mr. I.R. on 16.04.2020 he signed the "Declaration for Voluntary Provision of Personal Data and Their Processing", with which he declares the provision of personal data to the employer "D." AD for the occurrence, implementation or termination of his employment and insurance obligations (Article 1.1 of the

Declaration). Also, Mr. I.R. has given his consent to the processing of his personal data by "D." JSC, in its capacity as an employer, objectified in the "Declaration for provision of information under Art. 13 of Regulation (EU) 2016/679 of the EC and the Council of 27.04.2016". Pursuant to Art. 6 § 1 of the GDPR, the processing of personal data is lawful, only and to the extent that at least one of the conditions specified from letter "a" to letter "f" of the same paragraph is applicable. It is clear from the evidence and information collected in the file that, in the capacity of an employer under an employment contract, the administrator processes the personal data of Mr. I.R. pursuant to Art. 6, § 1, b. "b" of the GDPR - "the processing is necessary for the performance of a contract to which the data subject is a party, or for taking steps at the request of the data subject prior to the conclusion of a contract". On the next place. Pursuant to the declarations submitted by Mr. I.R., the administrator processes personal data on the basis of Art. 6, § 1, b. "a" of the GDPR - "the data subject has given consent to the processing of his personal data for one or more specific purposes". However, it should be noted that the provision of the personal data of Mr. I.R. of the administrator Federal Service for the Transport of Goods - FRG, for violation of the Federal Law on Mandatory Tolls for Highways and Main Roads (BFStrMG), on 15.09.2020 carried out with a motor vehicle ****, does not fall under the hypotheses of Art. 6, § 1 b. "a" and "b" of the GDPR, for legality of the processing. This is because the employer has no obligation, under the employment relationship, to provide the personal data of its employees to third parties for whom there is no legal basis for providing this data related to employment law. Next, the consent expressed in the two declarations of 16.04.2020 also does not objectify the fact that the same was given for these purposes, since Art. 6, § 1 b. "a" points to one or more specific goals. It is necessary to note that even if there is consent to provide personal data for these purposes, there should be additional objective prerequisites for this. i.e. the subject has exercised his work activity with the means of transport provided to him, as a result of which he committed a violation of the traffic rules on the day and place in question. In the specific case, the person was on sick leave on the specified date. With regard to the claims that the administrator has the grounds specified in Art. 6, § 1, b. "f" of the GDPR - "the processing is necessary for the purposes of the legitimate interests of the controller or a third party, except when such interests are overridden by the interests or fundamental rights and freedoms of the data subject that require the protection of personal data, in particular when the data subject is a child". Referring to the existence of a legitimate interest of the administrator in the processing by providing it to a third party, it should be pointed out that, as the administrator himself notes, on 15.09.2020 the motor vehicle with registration No. **** was in the possession of new lessee "In ." EOOD, which is not the employer of Mr. I.R. and there are no records of other contractual relations with him.

According to the administrative file, no evidence was provided for the fact that Mr. I.R. was aware of the information received from his former employer about a violation committed on 15.09.2020, for which "D." JSC considered that he was the physical perpetrator of the violation. No evidence has been submitted by the administrator for an inspection carried out by him to establish the person who drove the service truck with registration number **** on 15.09.2020. The possibility of disciplinary action against the data subject is precluded by termination of employment legal relationship on 01.11.2020. The letter with which the Federal Office for the Transport of Goods, Cologne - Germany informed the company about the violation is dated 11.01.2021, i.e. after termination of the legal relationship with Mr. I.R. The above, as well as the circumstances that the truck, as of 23.07.2020, was at the disposal of "B." Ltd., and Mr. I.R. was in hospital, which circumstances were undisputedly known to the administrator, determine the conclusion of a violation of the principles specified in art. 5, § 1, b. "a" and "b" in connection with Art. 6, § 1 of the GDPR, for the processing of personal data in a lawful, transparent and conscientious manner by the administrator, so that they are not processed in a manner incompatible with these purposes. The personal data of Mr. I.R. were provided to the Federal Service for the Transport of Goods, Cologne - Germany, on 29.06.2021, i.e. more than six months after the termination of the legal relationship with the employer. It should be noted that the administrator did not take any follow-up actions, after establishing the factual situation, to remove the data for Mr. I.R., who continues to be a violator of the Federal Service for the Transport of Goods, Cologne - Federal Republic of Germany, which in the event of a violation in the future, could be perceived as a relapse and the person to be sanctioned more severely than the law. It is necessary to state that no information was provided during the administrative proceedings to establish the actual offender, to emphasize the controller's responsible behavior towards the data subject.The Commission for the Protection of Personal Data is the competent authority within the meaning of Art. 6 of the Labor Code in connection with violations in the processing of the personal data of natural persons. Competence is both a right of the authority and its obligation to exercise its powers arising from the law. The Commission has operational independence, assessing which of its corrective powers under Art. 58, §. 2 of Regulation (EU) 2016/679 is appropriate to implement in each specific case. The assessment is based on considerations of purposefulness, expediency and effectiveness of the decision, and an act should be enacted that protects the public interest to the fullest extent. The powers under Art. 58, §. 2 of Regulation (EU) 2016/679, with the exception of those specified in b. "and", have the character of coercive administrative measures, the purpose of which is to prevent the commission of a violation or, if the commission has begun, to stop it, thereby objectifying the behavior required by law.

The administrative punishment "fine" or "property sanction" in the sense of Art. 58, §. 2 of Regulation (EU) 2016/679, b. "and" has a punitive nature. Regarding the application of the appropriate corrective measure under Art. 58, §. 2 of Regulation (EU) 2016/679, the nature, gravity and consequences of the infringement should be taken into account, assessing all the facts relevant to the case and their causal relationship. The specified powers are relevant to a case in which the administrators have not fulfilled their obligation, which they can remedy by performing the omitted actions within the time limit granted to them and objectifying the behavior required by law. In this case, there is no omission, but more actions have been taken, which necessitates the conclusion of the inapplicability of this authority. The established specific violation was completed with the act of providing the personal data of Mr. I.R. to a third party without reason.

Thus, the illegally provided personal data served to identify the offender of the violation found by the Federal Service, for which a fine of 55.00 € was provided, which, together with the fees, reached the amount of 83.50 €, paid personally by Mr. I.R ., for a violation of the Federal Law on Mandatory Tolls for Motorways and Main Roads (BFStrMG) - FRG, committed on 15.09.2020, with a motor vehicle ****, a period during which the person was on proven sick leave, which the motor vehicle except the above, as of that date, had already been granted to another lessee "B." Ltd.

Accordingly, the personal data thus provided to the applicant constitutes a violation of the principles of lawful, fair and transparent processing, in relation to the subject of the data, which, collected for the purposes of the employment relationship, are further processed in a manner incompatible with these purposes (Art. Art. 5, § 1, b. "a" and "b" of GDPR), in connection with Art. 6, § 1 of the GDPR.

In connection with the above, the granting of a deadline for remedying the violation appears to be inapplicable, and in this connection the illegal processing is irreversible.

On the basis of the above and taking into account the fact that the violation of the rules for the processing of personal data has been completed and its consequences for the applicant are present, only the pecuniary sanction, as a measure of administrative coercion, appears to be the most appropriate, expedient and effective measure, given which the Commission finds that it should impose on personal data controllers "D." AD, administrative penalty – property sanction, as a corrective measure under Art. 58, §. 2, b. "and" of Regulation (EU) 2016/679, for violation of the provisions of Art. Art. 5, § 1, b. "a" and b. "b", in connection with Art. 6, § 1 of the GDPR, in connection with Art. 38, para. 3 of the Labor Code, as the sanction is an expedient and effective measure to protect the public interest. The Commission finds that the pecuniary sanction will have the

necessary corrective effect on the administrator and will contribute to his subsequent compliance with the established legal order.

When determining the amount of the penalty, according to Art. 83, § 2 of Regulation (EU) 2016/679 the following elements should be taken into account in relation to what was done by "D." AD:

a) In the specific case, the principles for processing personal data in the sense of the Regulation were violated, that the data were collected for specific purposes in connection with the Labor Code, that they were processed lawfully in good faith and in a transparent manner towards the data subject. Personal data are processed for purposes other than those for which they were provided, by providing them to third parties. Regarding the information provided to the Federal Service for the Transport of Goods, Cologne - FRG, there is no data that it has been deleted or corrected from the service's arrays at the moment. The purpose of processing is the controller's economic interest. One person is affected by the processing, and with regard to the damage it can be stated that, although the amount of the fine paid by him has been refunded, the information that he is the perpetrator of a violation in the electronic file of the Federal Office for the Transport of Goods, Cologne – FRG, will continue to appear, which in the event of a repeated violation will be negatively reflected on the data subject;

b) It was established in the administrative proceedings that the violations were committed intentionally, by an employee of the administrator;

c) There is no evidence that the administrator has taken technical and organizational measures to correct or remove the information erroneously provided to the Federal Service for the Transport of Goods, Cologne - FRG. There is no data on the employee's corresponding disciplinary punishment;

d) The degree of responsibility of the administrator is higher than usual, given the fact that he processes personal data related to persons with whom he no longer has a contractual relationship. Accordingly, the level of introduced technical and organizational measures should be higher and in accordance with the financial and technical capabilities available;

e) The lack of previous violations by the administrator of the Regulation has been reported;

f) The administrator has provided the necessary cooperation with the supervisory authority in order to remedy the violation and mitigate the consequences for the data subject.

g) The affected personal data are not of the category of special, in the sense of Art. 9, § 1 of the Regulation. They are not related to the behavior of the data subject within the meaning of Art. 10 of the Regulation;

h) Violations became known to the supervisory authority from the information in the complaint. The administrator did not notify the violation due to non-acceptance of such violation.

i) The administrator was not imposed the measures under Art. 58, § 2, in relation to the same subject of processing;

j) Circumstances under this letter are irrelevant, insofar as at the time of the violations no codes of conduct have been adopted by the administrators, respectively approved certification mechanisms have not been introduced;

k) As an aggravating circumstance, it should be considered that the violations were completed by the act of their commission and are irreparable, they are consequential, and as such they led to a negative interference in the personal life of the complainant, given their nature.

For completeness, it should be stated that the administrator has 2143 employees, according to information for 09/2022 and has an annual turnover of BGN 259,382,000, according to information for 2021, the enterprise does not fall under Art. 3 of the Law on Small and Medium Enterprises.

Proceeding from the criteria under Art. 83, § 2 of the GDPR, the property status of the administrator (the same does not fall into the category of small and medium-sized enterprises in the sense of the Law on Small and Medium-sized Enterprises), the Commission for the Protection of Personal Data finds that the determination of the amount of the sanction of BGN 10,000.00 (ten thousand BGN), is fair and justified and deterrent.

In the course of the proceedings, no requests were made for the recognition of costs, therefore the Commission for the Protection of Personal Data is not required to rule on this issue.

Motivated by the above and based on Art. 38, para. 3 of the Labor Code, in connection with Art. 58, § 2 of Regulation (EU) 2016/679 Commission for the protection of personal data

RESOLVE:

1. Declares a complaint with reg. No. PPN-01-197/14.03.2022 filed by Mr. I.R. as well-founded.

2. In connection with item 1 and on the basis of Art. 83, § 5, letter "a", in conjunction with Art. 58, § 2, letter "i" of Regulation (EU) 2016/679, for violation of Art. 5, §. 1, letters "a" and "b", in connection with Art. 6, § 1 of Regulation (EU) 2016/679, imposes on the administrator "D." JSC with EIK-********, with registered office and address of management: ****, administrative penalty – property sanction in the amount of BGN 10,000.00 (ten thousand BGN).

This Decision is subject to appeal within 14 days of its notification through the CPLD, before the Administrative Court - Sofia.

After the decision enters into force, the amount of the imposed penalty should be transferred by bank transfer to:

BNB Bank – Central Bank;

IBAN: BG18BNBG96613000158601;

BIC: BNBBGGSD

Commission for the protection of personal data, BULSTAT 130961721.

CHAIRMAN:

MEMBERS:

Vencislav Karadjov /p/

Tsanko Tsolov /p/

Veselin Tselkov /p/

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