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Opinion of CPDP on publishing in the Internet space of publicly available information with ARTEX client base

OPINION OF THE PERSONAL DATA PROTECTION COMMISSION Reg. personal data (CPDP) composed of: Chairman Ventsislav Karadzhov and members Tsvetelin Sofroniev, Maria Mateva and Veselin Tselkov, at a meeting held on 24.04.2019, considered a request for an opinion with ent. № NDMSPO-01-161 / 01.04.2019 by ARTEX ENGINEERING AD in connection with the publication on the website bivol.bg of publicly available information with a client base of ARTEX with a large amount of personal information and publicly available materials, containing sensitive information about non-public figures. In addition, the site bivol.bg has created a database with structured information that can be searched according to certain criteria. In this regard, ARTEX ENGINEERING AD, represented by arch. Vessela Miryanova, asks for an inspection and an opinion on the following issues: 1. Is it legal to publish and provide free access to information with the address of the home of a data subject without his prior consent? 2. Is it legal to publish information on age, date of birth, full names of individuals? 3. Is it legal to disseminate information about the financial and property status of individuals who are not public figures without their prior consent? 4. Is it legal to use data from public registers on the website <https://pep.bivol.bg/imoti>, by arranging them in a separate public database "Clients Artex", with a large amount of personal information - three full names, financial, property status, year of birth, funds received / paid, exact addresses for the place where it is possible for the company's clients to live together with their families? Excerpts from the materials published by the media are also attached to the request for an opinion. Legal analysis: The General Regulation on Data Protection (Regulation (EU) 2016/679), together with the Personal Data Protection Act (PDPA), lays down rules for the protection of the fundamental rights, freedoms and interests of individuals, and in particular the law protection of their personal data. It should be borne in mind that the General Regulation deals with the protection of the rights of individuals and does not cover the processing of personal data concerning legal persons (recital 14 of the Regulation). Therefore, issues related to the protection of interests, reputation, etc. of the company ARTEX are outside the competence of the supervisory body. The right to protection of personal data is not an absolute right. It should be seen in relation to its function in society and applied on an equal footing with other fundamental rights, in accordance with the principle of proportionality (recital 4 of Regulation (EU) 2016/679). In continuation of this general principle, Art. Article 85 of the General Regulation obliges EU Member States to harmonize in their national legislation the right to the protection of personal data with the right to freedom of expression and information, including the processing of personal

data for journalistic purposes. For the same purpose, a legal possibility is provided for the introduction of exceptions and derogations from the requirements of the Regulation, related to the legal grounds for personal data processing, the rights of data subjects, etc. The notion of “journalistic objectives” is not explicitly defined by the legislator, but recital 153 of Regulation (EU) 2016/679 states that “[t]he consideration of the importance of the right to freedom of expression in any democratic society is concepts related to this freedom, such as journalism, need to be interpreted broadly.” The essential thing for the journalistic activity is the collection, analysis, interpretation and dissemination through the mass media of up-to-date and socially significant information. Every journalistic activity is a manifestation of freedom of speech in the rule of law. Restriction of freedom of expression and information is permissible only within the limits necessary in a democratic society, according to Art. 52 (1) of the EU Charter of Fundamental Rights and Art. 10 (2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms. In essence, journalism requires the dissemination of information on issues of public interest. The publication of information on the media's website constitutes its public disclosure. The public dissemination of information for these purposes is a journalistic activity, as the very fact of dissemination is an expression of opinion, opinion, view, assessment of public information and its importance for the interests of society. In order to process information for the purposes of journalism, the information must address issues of values that, in view of the relationships involved, are genuinely socially important. With the amendments and supplements to the Personal Data Protection Act (PDPA) promulgated on 26.02.2019, in force since 02.03.2019, a national legal framework is provided, aimed at achieving a balance between the fundamental rights referred to above in the processing of personal data for journalistic purposes. In particular, in 25h, para. 3 of the LPPD stipulates that the controller or processor of personal data (eg the relevant media or journalist) may not apply the provisions of Art. 6, 9, 10, 30, 34 and Chapter Five of Regulation (EU) 2016/679, as well as to refuse full or partial exercise of the rights of data subjects under Art. 12 - 21 of the Regulation. The assessment of whether to apply the derogation in question should be made on a case-by-case basis on the basis of objective criteria. The provision of Art. 25h, para. 2 of the LPPD offers a non-exhaustive list of such criteria. They are formulated on the basis of the settled case law of the Court of Justice of the EU, the Court of Human Rights and the Constitutional Court of the Republic of Bulgaria, as well as the Guidelines for the Protection of Privacy in the Media of the Council of Europe from June 2018. These criteria apply in so far as they are relevant to the specific case of the exercise of freedom of expression and the right to information and, accordingly, may have different weightings in different situations. Analyzing the circumstances under which personal data have become known to the site

administrator (Article 25h, paragraph 2, item 3 of the LPPD), it is noteworthy that databases and search engines on the site contain information, including personal data, from public sources, such as the Commercial Register, the Property Register, public procurement registers, EU operational programs, declarations under the Law on Public Procurement, etc. Provided that the legislator has provided for the data in question to be publicly available, it can be assumed that he has also made an assessment that their disclosure or public disclosure would not adversely affect the data subject's privacy and reputation. (Article 25h, paragraph 2, item 2 of the LPPD). The General Regulation leaves it to the national legislator to decide what information should be included in a public register which is intended to provide information to the public and is available for reference in principle or by any person who can prove that he has a legitimate interest. For example, the Commercial Register and the Register of Non-Profit Legal Entities Act provides for the possibility of acquiring the entire database of the register in question for a fee. The only formal restriction in Regulation (EU) 2016/679 in such cases is the prohibition under Art. 49 (2), *supra* Para. 1, b. "G" of the Regulation, the data in such public registers should be transferred in full to a third country. In this situation, in view of the legally defined competence of the CPDP, any checks for possible violations of the established specific rules for access and use of the public registers in question should be carried out by the institutions entrusted with their maintenance and management. Next, the importance of the disclosure of personal data or their public disclosure for the clarification of an issue of public interest should be discussed (Article 25h, paragraph 2, item 5 of the LPPD). This is one of the main criteria on the basis of which the Council of Europe distinguishes between the so-called "Responsible journalism" and "tabloid journalism". Undoubtedly, the processing of data aimed at detecting and disclosing cases of possible corruption, abuse of office or funds from the state budget or the EU budget is an action in the public interest, which corresponds to the increased public attention and sensitivity to these topics. In this sense, account should be taken of the fact that information such as the age and / or date of birth of a person in the context of a journalistic investigation may serve as an indicator for further investigation, for example if there is a visible discrepancy between the entity and the financial capabilities normally available to a person of similar age, on the one hand, and the size of the transaction, on the other. Another important aspect of the assessment of the balance between freedom of expression and the right to information and the right to protection of personal data is the consideration of the circumstance whether the data subject is a person holding a position under Art. 6 of the Anti-Corruption and Confiscation of Illegally Acquired Property Act, or is a person who due to the nature of his activity or his role in public life has an impact on society (Article 25h, paragraph 2, item 6 of the LPPD). The basic understanding is that

public figures enjoy less protection of their privacy than ordinary citizens. Respectively, private individuals who have not entered the public sphere should enjoy greater protection of their right to privacy. However, as noted in the Council of Europe's Guidelines on Privacy, journalists are not strictly prohibited from writing about them, even without their consent, if this would help clarify a matter of public interest. In this context, if the data subjects are not the subject of journalistic interest and are not directly involved in a debate on a matter of public importance (eg they have no connection with a public figure, have not committed illegal or other reprehensible acts, etc.), then the possible publication of their personal data should be in accordance with the principle of minimizing the data, including their complete anonymization, if applicable in the specific case. This principle does not in any way limit the right of the media or journalist concerned to otherwise process personal data, in particular for the purposes of investigative journalism, as well as to publish data of those persons who, in the course of the investigation in question, are found to be relevant to the public debate. In view of the above and on the grounds of Art. 58, paragraph 3, b. "B" of Regulation (EU) 2016/679, the Commission for Personal Data Protection states the following

OPINION:

1. The processing of personal data for journalistic purposes, including information on names, age and / or date of birth, financial and property status, is lawful when exercising the exercise of freedom of expression and the right to information, while respecting privacy. In these cases, by virtue of Art. 25h, para. 3 of the Personal Data Protection Act, the relevant media or journalist have no obligation to require prior consent from the data subject.
2. The subsequent processing of personal data obtained from a public register intended to provide information to the public shall comply with the provisions of Regulation (EU) 2016/679 and the Personal Data Protection Act.
3. As a general rule, the data of persons who are not public figures, are not subject to journalistic investigation and are not directly related to a debate of public interest, should be published by the relevant media or journalist in an anonymised form. If this is not applicable from the point of view of the exercise of freedom of expression and the exercise of the right to information, then publication should be carried out in compliance with the principle of data minimization.

THE CHAIRMAN:

MEMBERS:

Ventsislav Karadzhov

Tsvetelin Sofroniev / p /

Maria Mateva / p /

Veselin Tselkov / p /

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Opinion of the CPDP regarding the publication on the Internet of publicly available information with the client base of ARTEX
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