OFFICE FOR PERSONAL DATA PROTECTION

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* UOOUX00DJGNS *

Ref. UOOU-10201 / 18-22

DECISION

Chairwoman of the Office for Personal Data Protection as an appellate body competent pursuant to § 2, § 29 and Section 32 of Act No. 101/2000 Coll., on the Protection of Personal Data and on the Amendment of Certain Acts, and pursuant to § 10 and § 152 para. 2 of Act No. 500/2004 Coll., the Administrative Procedure Code has decided in accordance with the provisions

§ 152 par. 6 let. a), § 152 par. 5 and § 90 par. 1 let. b) of Act No. 500/2004 Coll., Administrative order, as follows:

Decision of the Office for Personal Data Protection ref. UOOU-10201 / 18-9 of 28 January 2019 is annulled on the basis of the dissolution of the party to the proceedings, the company XXXXXX, and the case is returned administrative authority of the first instance for a new hearing.

Justification

AND.

Administrative proceedings for suspected infringements pursuant to Article 6 (1) of Regulation (EC) No (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals in connection with the processing of personal data and on the free movement of such data and on cancellation Directive 95/46 / EC (hereinafter "Regulation (EU) 2016/679") in relation to the processing of personal data data of natural persons engaged in business, which occurred as a result of the termination of the trade license authorization to remove them from the public part of the trade register, through website XXXXXX was launched by an order of the Office for Personal Data Protection ref. UOOU-10201 / 18-3 of 14 December 2018 ('the order'), which was granted to the party,

XXXXXX, delivered on 17 December 2018. The order was issued to the party for

Violation of the above obligation imposed a fine of CZK 50,000.

The basis for issuing the order was the material collected within the control of the Office for Protection

personal data (hereinafter referred to as the "Office"), kept under file no. stamp UOOU-07543/18, executed

at the party to the proceedings from 18 July 2018 to 26 October 2018. The inspection was initiated

on the basis of the Office's Inspection Plan for 2018, in which it was defined as an inspection

publication of personal data on the Internet in the so-called clones of public registers, focused on

in particular to establish the legal title for such personal data processing in connection with

to the legal regulation according to Regulation (EU) 2016/679 and taking into account § 60 par. b) of the Act

No. 455/1991 Coll., on Trade Licensing (hereinafter referred to as the “Trade Licensing Act”). Following

on the intention stated in the Control Plan of the Office, the inspectors chose to control the processing

personal data via the XXXXXX website operated by the party to the proceedings.

The file then showed that the party to the proceedings operated the XXXXXX website,

where it allows users to search for information on legal entities and individuals

entrepreneurs, which collects from public registers (commercial register, trade license

register, list of data boxes, register of VAT payers, RÚIAN - list of address places).

The primary source of this information is the ARES information system operated by the Ministry

finance. The participant in the proceedings allows the users with regard to the thematic focus of their

websites (XXXXXX) use this supplementary service for the purposes of their business.

At the same time, the portal operates for the purpose of its business, resp. economic interests.

According to the party to the proceedings, it had to update the register via the ARES database

occur daily (in the range of 60,000 records), with updated records having

also contain

information about the outdated record and should have been projected

to the register operated by the party to the proceedings.

On July 13, 2018, examining a randomly selected sample of individuals whose personal information were not accessible in the public part of the trade register as of that date (previous act control), it was found that the data of all these persons remain accessible in the register led by a party to proceedings its website (official record of the act prior inspection, ref. UOOU-07543 / 18-2). In all cases, all were found personal data (in the range name, surname, place of business, number of trades, type of trade, type trades, type of registration, bank account, validity of registration, registering office, state of trade and entrepreneur evaluation).

During the inspection, the inspectors then performed again on 5-7 September 2018 random check (with the help of a reference sample of 60 entrepreneurs, selected from personal data of entrepreneurs contained in the annex to the official record ref. UOOU-07543 / 18-2) for the purpose of verification of the update of the source database of the web portal XXXXXX operated party to the proceedings (official record of the inspection act UOOU-07543 / 18-8). Of 60 people records were found in full for 52 persons, only 8 records were not found / deleted.

Although the party to the proceedings in its response to the letter of formal notice addressed to the Office on 17 September 2018, he announced that on September 6, 2018, the update of the database of data on entrepreneurs had been completed available on the XXXXXX web portal, drawn from the Ministry's ARES system database of the Czech Republic, after re-checking the reference sample on 25 September 2018, it was assured that this contains about 70% of records from the non - public part of the register (specifically, there were 20 records from 28 test subjects). Following that finding, the party at the hearing on. September 2018 stated that the update performed through the ARES database allows update only a limited number of records per day and there are also frequent technical outages. In its observations of 29 October 2018, the party then stated that it had done so re-checking the data update. In relation to data reclassified to the non-public part

mentioned that these should already be completely removed from his register.

Following the claims of the party to the proceedings, the inspection took place again on 14 November 2018 of the reference sample, where a persistent discrepancy was found in 8% of the records, namely from 25

entrepreneurs whose personal data have been transferred to the non-public part of the Trade Register, personal data in the XXXXXX web portal database was still listed in 2 of these business people.

The administrative body of the first instance then stated in the reasoning of the order that in the case of the party as a personal data controller within the meaning of Article 7 (7) of Regulation (EU) 2016/679, only the possible application of the legal title of personal data processing according to Article 1 (a) f) Regulation (EU) 2016/679, according to which personal data may be processed, where necessary for the legitimate interests of the administrator or a third party, except where those interests take precedence over the interests or fundamental rights and freedoms of data subjects requiring the protection of personal data. The administrative body of the first instance also stated that for for the purpose of assessing the overriding interests, ie whether the interests of the administrator or a third party prevail over the interests of the data subject, it is necessary to carry out a balance test in which all are assessed the circumstances of the intended processing and taking into account the reasonably expected interests of the parties concerned.

The conclusion of the assessment of the participant in the proceedings performed within the balance test according to Art. F) Regulation (EU) 2016/679, then the first instance administrative body declared it acceptable, however not applicable in the case of the processing of personal data of persons whose personal data have been removed from the public part of the trade register, due to the fact that these persons have terminated their business activities and 4 have expired since the expiry of the last trade license years. The administrative body of the first instance stated that “in the case of such personal data, it is not possible consider the application of Article 6 (1) (a) above. (f) Regulation (EU) 2016/679, as here no legitimate interest of the administrator or third parties declared in the balance sheet can be seen

test for the disclosure of personal data of these persons. It is quite obvious here absolutely prevalent
interest in the protection of personal data of such persons, it being clear that the party to the proceedings
nor does it have any other legal title to such processing '.
In determining the amount of the sanction, the administrative body of the first instance then took into account as increasing
circumstances
the gravity of the conduct, in particular the fact that the party lacked adequate legality
title to the processing of personal data of persons whose personal data were from the public part
of the Trade Register have been removed and that the VAT number, which is for natural persons, has been processed
business consists of a birth number, ie a unique identifier. As a matter of circumstance
reducing the gravity of the conduct, it then took into account, inter alia, the fact that the party had taken action
to remedy the shortcomings identified, albeit
his efforts did not lead to the flawlessness of the whole
processing.
The conduct of the party to the proceedings was then evaluated by the administrative body of the first instance as systemic
mistake. In this case, it is not possible to determine the specific number of data subjects concerned,
since the number of persons removed from the public part of the register is a rapidly variable variable over time,
nevertheless, it can be stated that the number of data subjects concerned was high, as the number of physical
of persons doing business in the Czech Republic, according to information from the Trade Register, exceeds 2
millions.
After a comprehensive assessment of all the circumstances, the administrative authority of the first instance imposed a fine on
the very lower limit of the rate that Regulation (EU) 2016/679 allows and imposes
20,000,000 euros.
The party to the proceedings filed an objection against the issued order in time, on the basis of which the order was canceled
and the administrative proceedings continued. The party then supplemented the opposition by its statement of
January 22, 2019

Subsequently, on the basis of the evidence provided and the collected file material, he issued

on 28 January 2019 the administrative body of the first instance in the matter of decision no. UOOU-10201 / 18-9

('the contested decision'), by which the party was again found guilty of the infringement

obligations under Article 6 (1) of Regulation (EU) 2016/679, ie obligations to process personal

data on the basis of one of the legal titles referred to in a) to f) of this provision,

as he processed personal data from an unspecified period at least until September 6, 2018

an unspecified number of persons who have suffered as a result of the expiry of their trade license

removal from the public part of the trade register, in the range of name, surname, ID number,

place of business, VAT number, data box number, bank account number,

information

on the trades operated, on the history of business and on the validity of the registration. She was for this act

a fine of CZK 50,000 was imposed on the party to the proceedings.

The party to the proceedings filed a proper appeal against the contested decision, which was delivered to the Office

via the data box on 11 February 2019. On 22 February 2019, the Office

the justification of the filed appeal was received.

In the appeal, the party largely reiterates its arguments put forward

against the order. Specifically, the party objected to being denied the right to acquaint himself

with the whole file, claiming that the administrative authority of first instance, despite an express request

did not provide a reference sample (list of natural persons doing business under

inspections were randomly selected from a non-public part of the trade register) and was therefore not

able to express and exercise their rights in administrative proceedings. Further in this context

the party criticizes the administrative body of the first instance for the "economical" way of conducting the proceedings.

The administrative body shall enable the parties to take an active part in the taking of evidence and to express their views

on the subject-matter of the proceedings, also taking into account the considerations pursued by the administrative body,

and the evidence he took.

In the appeal, the party reiterated its arguments already stated in the opposition

against the order and recalled the fact that he had fully cooperated and done so in the inspection
immediate remedial action. He also commented on the amount of sanctions imposed, considering that for his
the breach of duty should be subject to a maximum of reprimands.
Finally, the party claims that the President of the Office should annul the contested decision
and stay the proceedings or, if necessary, amend the contested decision so that the party to the proceedings
only a reprimand was imposed instead of a financial sanction.
II.
On the basis of the appeal lodged, the appellate body examined the contested decision in its entirety
scope, including the process that preceded its release, and reached the following conclusions.
As regards the inability of the party to object to the file, the appellate body
notes that the party to the proceedings could, throughout the proceedings, ie from the issuance of the order (which may be
the first act of administrative proceedings) on 14 December 2018 until the issue of the contested
decision of 28 January 2019, to exercise and enforce its rights, which it duly considered
instructed. The party to the proceedings thus had the opportunity to comment on all the time
facts which are his fault (and which have been clearly and unambiguously described together
with the documents for issuing the contested decision already in the delivered order). He was at the same time

already were
January 2019
entitled to inspect the file, exercising his right on 18
(note on access to the file of administrative proceedings, a record was made no. UOOU-10201 / 18-7), when
appeared at the file of his representative - XXXXXX, the party 's agent (request
of the party to the proceedings of 15 January 2018 on inspection of the file through the trustee, ref.
UOOU-10201 / 18-5). He took photos of sheet no. 1, 3 and the inspection plan that was
part of the inspection file. Copies of all records are part of the file documentation
on natural persons doing business, which were inspected within the inspection, resp. was

verified whether

their personal data have been removed from the public domain

trade register. Given the above, it is evident that the argument

of the inability to acquaint himself with the entire file during the administrative proceedings

is not based on truth.

Given the thematic focus of their website (XXXXXX), it allows the participant

managing users' use of the additional information retrieval service

and natural persons doing business, which it collects from public registers for their purposes

business. At the same time, the portal operates for the purpose of its business, resp. economic

interests. For individuals doing business, it occurs through the subject web

pages of the participant in the proceedings for the processing of personal data in the range of name, surname, ID number, place

business, VAT number, data box number, bank account number, information about operated

trade history and the validity of the registration, and may

users also attach a person's rating.

The party to the proceedings is in the position of controller of personal data and as such must during processing

personal data have one of the legitimate legal titles referred to in Article 6 (1)

letter (a) to (f) of Regulation (EU) 2016/679. However, this Regulation no longer contains a specific legal title

for further processing of personal data, which he regulated in § 5 par. 2 let. d) the law

No. 101/2000 Coll., on the protection of personal data and the last mentioned provision after its effectiveness

Regulation (EU) 2016/679 could no longer be applied after the entry into force of this Regulation.

It was further found that the party did not have the consent of the data subjects, and given

to the circumstances of personal data processing, only the application of the legal title came into consideration

pursuant to Article 6 (1) (a) (f) Regulation (EU) 2016/679, according to which personal data may be processed

data where this is necessary for the legitimate interests of the controller or of a third party, except

cases where those interests take precedence over the interests or fundamental rights and freedoms of entities

data requiring the protection of personal data. The party to the proceedings therefore did so

so-called balance test and compatibility test. All of these tests were to be considered

the circumstances of the intended processing and taking into account the reasonably expected interests of the parties

concerned.

The party then came to the conclusion that in relation to the processing of personal data mentioned

in a public register, the data subject must be aware that these data are based on

relevant legislation and must therefore expect to have access to them

the general public. The use of data from public registers in the form of their further publication then

should have a positive economic impact on the party as it visits the website

more users. At the same time, according to the party to the proceedings, the public's interest in updating should be given

information about business entities, as through the web portal XXXXXX

it is possible to detect obsolete information and, as a result, request a correction in the source

public register. In relation to the evaluation of entrepreneurs, the party concluded that

This service is intended to benefit both customer and business users

they may perceive the presentation on the XXXXXX web portal as an advertisement.

The administrative body of the first instance stated the conclusions of the balance tests performed by the participant

proceedings have been rejected in relation to the processing of personal data concerning data subjects whose

personal data were removed from the publicly accessible part of the trade register, namely

reason that these persons have ceased their business. According to the administrative body of the first

degree could therefore not be established in relation to that personal data

legitimate interest of the administrator or third parties in

their publication declared

party to the proceedings in the framework of the above tests. (Regarding published evaluation

individual entrepreneurs, which was also part of the processing in question, the administrative body

The first instance beyond the scope of the proceedings stated that its usefulness in the relationship

to the data subjects concerned must be considered disputed.)

According to the legal opinion of the Appellate Body, the administrative body of the first instance in the assessment facts based on the file collected during the inspection Office sp. UOOU-07543/18 there was an incorrect legal opinion according to which an administrative offense of a party consisting in the absence of a legal title pursuant to Article 6 (1) letter (a) to (f) of Regulation (EU) 2016/679 applied only to personal data of natural persons, in which, as a result of the expiry of the trade license, they were removed from the public part of the trade register.

The appellate body is of the opinion that the processing of personal data of natural persons doing business under the Trade Licensing Act collected from public registers, which carried out by a party to the proceedings, the legal title referred to in Article 6 (1) (a) (f) Regulation (EU) 2016/679 to the personal data in question against all the In this case, the condition of the necessity of such processing is not fulfilled, and it can also be stated that that the legitimate interests of the administrator or third parties do not outweigh the interests of the balance test or the fundamental rights and freedoms of data subjects requiring the protection of personal data.

In that regard, the appellate body states in more detail: First of all, it must be emphasized that, as follows from the wording of the provisions of Article 6, paragraph 1, letter f) of Regulation (EU) 2016/679, the administrator is obliged to document a legitimate interest in the processing of personal data in question. In this case the party to the proceedings indicates economic interests. The Opinion can be recalled in this context No 6/2014 of the Working Party on Data Protection set up under Article 29 of Directive 95/46 / EC ('WP 29') on the concept of legitimate interests of the data controller under Article 7 of the Directive 95/46 / EC, which may apply mutatis mutandis to the provisions of Article 6 (1) (a) f) Regulation (EU) 2016/679. According to this opinion, the legitimate interest must be "legally acceptable regulations "," if the interests of the administrator are not serious, the interests are more likely to and the rights of the data subject outweigh the legitimate - but less significant - interests of the controller ".

The party to the proceedings then sees the legitimate interests of third parties in the interest of the public for the update information about business entities, as he is of the opinion that through it operated web portal XXXXXX can reveal already outdated information and as a result request a correction in the source public register.

In that regard, the appellate body states that the legitimate interest must be assessed in the light of compliance conditions of necessity, it considers, considers that the condition of necessity of the above processing for the purposes of the legitimate interests of the party to the proceedings as the relevant administrator or third party parties is not fulfilled, because the personal data of the natural persons engaged in business are for

natural persons doing business needs of the public available in public registers (on a legal basis) where they can search for both the party to the proceedings and the visitors to its website. It is therefore not necessary multiply further processing of personal data for the purpose of realization of (same) economic interests of the administrator or for the purpose of their availability and information to the public, as both of these purposes are already fully ensured through the disclosure of the personal data in question in public registers.

Application of the legal title according to Art. (f) Regulation (EU) 2016/679 is already excluded failure to meet the condition of necessity. The appellate body also disagrees with other outputs balance test as performed by the first instance authority. There must be a legitimate interest sufficiently specific, not hypothetical or speculative. In particular, the appellate body notes the need for increased sensitivity to a legitimate interest structure which: represents a certain loop and builds practically on the self - purpose of data processing when this processing does not serve to promote independently existing economic interests, but serves generating business profit in itself. These all the facts claimed justified interest weakens significantly. In this context, he concluded that priority was given to the legitimate

interests of data subjects for the reasons set out below.

Although the party states that the primary source of information is the ARES information system

operated by the Ministry of Finance, this is the information provided by this web application

takes over from source registers. When

acts

o trade register. Provisions of Section 60, Paragraph 6 of Act No. 455/1991 Coll., On Trade Licensing

Entrepreneurship (Trade Licensing Act) states that: “Upon request, the Trade Licensing Office shall issue from the public part

trade register a set in paper or electronic form, the content of which they may

Be the only basic identifying information about an entrepreneur, namely first name, last name, or business name

company, or name, registered office address and identification number of the person, and, if applicable, the applicant

requires the subject of the business and the location of the establishment. The report contains data valid as of

report processing. The applicant may not publish this report or provide it to a third party. "

In the opinion of the Appellate Body, it is therefore evident that further mass disclosure of personal

data from the trade register on the Internet (so-called "flipping") completely denies the meaning of this

statutory provision, the purpose of which is clearly to strengthen the protection of personal data

business entities. The appellate body also points out in this connection that in the case of

In the strict sense, the Trade Register is not - in the legal sense - open data

(so-called "open data"), which their users would be entitled to further disseminate, as this data

are not included in the annex to Government Decree No. 425/2016 Coll., on the list of information published

as open data. The overall meaning of the legal construction can be deduced from what is mentioned

prohibition to further make available to the public reports from the public part of the register in the sense cited

provisions of Section 60, Paragraph 6 of Act No. 455/1991 Coll., on Trade Licensing. To such an end,

which is a balanced protection of personal data of persons in the trade register, while maintaining

remote access to the public part of the register (cf. § 60 para. 10), the amendment was directed

Act No. 289/2017 Coll. read in the context of amendments adopted on the ground

Chamber of Deputies. The task of the first instance body will be, inter alia, to take into account the differentiated

the nature of the data in the ARES system in terms of their classification as open data and, where applicable

draw conclusions from this (the statement about the absent nature of open data appears on page 6).

It should also be recalled that this is not a predictable processing of personal data

within the meaning of recital 50 of Regulation (EU) 2016/679, with the predictability of processing

personal data in the application of the legal title according to Article 6, paragraph 1, letter (f) Regulation (EU) 2016/679

realizes

public interest in updating

is one of the relevant criteria in the opinion of WP 29 expressed in the opinion

concerning legitimate interests of 9 April 2014. Predictability of processing

personal data by the controller can be derived primarily from the already existing legal relationship between

by these two entities. Moreover, the public does not, a priori, confer certain rights on certain data

further unlimited processing. Entrepreneurial individuals thus cannot predict their

personal data entered in public registers (on the basis of relevant legislation,

which they must endure) will be the subject of further processing by publishing them on

unlimited administrators, which is clearly at odds with the primary purpose

trade register and the basic principles of personal data protection contained in the Regulation

(EU) 2016/679.

It should also be pointed out that, although the party to the proceedings objects that through its

web portal XXXXXX

information

on business entities, as out-of-date information can be detected and, as a result

to request a correction also in the source public register, it was repeatedly within the control

demonstrated that the party itself did not update the information provided by the public registers

took over. It is therefore quite evident that this function is justified by a legitimate interest

public on the processing of personal data in question, does not fulfill the processing in question

and therefore does not contribute to increasing the transparency of the business environment.

Beyond the subject matter of the proceedings, the appellate body states that in the case of evaluation of entrepreneurs (evaluation given to users of the website), which was also part of the subject processing of personal data, the legal title referred to in Article 6 (1) (a) f) Regulation (EU) 2016/67 also enjoy. Obviously, this is not the processing of personal data necessary for purposes of the legitimate interests of the relevant administrator or third party. It is also not filled here a condition of reasonable expectation of the data subjects, the informative value of this information (in relationship with the public) is highly controversial and the party to the proceedings in the balance test he carried out completely failed to take into account the legitimate interest of entrepreneurs, respectively. He immediately concluded that this evaluations will be considered advantageous without taking into account the mechanism chosen by it on the contrary, the evaluation can lead to (even unjustified) damage to the entrepreneur. On the subject processing of personal data then no other legal title can be applied.

As regards the sanction, the appellate body states that, in the light of the above conclusions cannot agree with the party's view that in the present case it will be sufficient imposition of a reprimand instead of a fine. The amount of the fine imposed by the administrative first instance authority it appears, given the repeated finding of error party as reasonable.

The Appellate Body is of the opinion that although it will be necessary due to incorrect legal conclusion of the administrative body of the first instance to redefine the scope of the participant's tortious conduct procedure, the amount of the fine imposed should be maintained, taking into account the results inspections conducted under file no. UOOU-07543/18, when the inspectors found a violation obligations set out in Article 6 (1) (a) (f) Regulation (EU) 2016/679 only in in relation to the processing of personal data of entrepreneurs for whom the period of four years has elapsed since termination of their last trade license. The appellate body thus took into account the fact that

that the remedy of the defective condition of the party to the proceedings during the inspection proceedings was directed only at

relation to the infringement found by the inspectors. However, the appellate body does not see room for

suspension of the proceedings or waiver of the imposition of a sanction, as the party to the proceedings should have been the administrator

aware of his / her obligations for the entire period during which he / she carried out the processing, at least in

in relation to the processing of personal data of entrepreneurs for whom the period of four years has elapsed since

termination of their last trade license. The appellate body then in this context

considers it necessary to emphasize in particular that the party has been penalized as systemic

errors, not for errors relating to specific data subjects.

In conclusion, the Appellate Body finds that, for all the above reasons, it has found

the contested decision as illegal and incorrect and therefore ruled as set out in

opinion of this Decision.

Lessons learned:

Pursuant to the provisions of Section 91 (1) of the Act, this decision shall be challenged

No. 500/2004 Coll., Administrative Procedure Code, cannot be revoked.

Prague, September 12, 2019

official stamp imprint

JUDr. Ivana Janů

chairwoman

(electronically signed)