No. Fac.: 12.10.001.025.021 December 8, 2020 BY HAND Subject: Sick leave monitoring system at the Cyprus Electricity Authority DECISION I am referring to the correspondence between us ending with your email dated 06.05.2020, regarding the automated recording system, control and monitoring of the sick leaves of the employees of the Cyprus Electricity Authority (hereinafter "the complaint") using the Bradford Coefficient and I inform you of the following: Facts 1.1. Based on the task of examining complaints provided to the Personal Data Protection Commissioner by article 57(1)(f) of Regulation (EU) 2016/679 (hereinafter "the Regulation") and article 24(b) of the Law which provides for the Protection of Natural Persons Against the Processing of Personal Data and for the Free Circulation of Such Data (Law 125(I)/2018), on 21.01.2020, on my own initiative, I sent a letter to the complainant, regarding the automated system they implemented in order to manage, monitor and control employee absences due to illness, using a scoring tool known as the "Bradford Factor". With my said letter, I informed her of the complaint that:  The date of the sick leave and the frequency of receiving sick leave concerning a living natural person, insofar as his identity is immediately or indirectly revealed, constitute "special categories of personal data", according to the definition given in article 9(1) of Regulation 679/2016.  The automated system used constitutes a "filing system" based on the definition in Article 4(6) of the Regulation.  Feeding an automated system with the above personal data, grading them using the "Bradford Coefficient" and subsequently compiling a profile of natural persons, based on the results produced/extracted, constitutes processing of personal data, in the sense of article 4(2) of the Regulation. 1  The Complainant, as the employer, has the right to supervise the frequency of sick leave and/or the validity of sick leave certificates. However, such a right should not be exercised abusively and should also be exercised within the limits set by the relevant legislative framework. A processing to be lawful should be limited to what is necessary for the organization, control and processing of the company's turnover. The employer cannot exercise unlimited control and supervision over the employees, violating their personality.  When the objective identified by the employer can be achieved in a less intrusive and burdensome manner, the employer should consider this option.  There is no existing legal framework and/or contract that allows the grading of the frequency of taking sick leave  According to my Decision dated 25.10.2019 against the Companies LGS Handling Ltd, Louis Travel and Louis Aviation, the grading of sick leave employees using the Bradford Coefficient has been found to lack legal basis and therefore illegal. Additionally, with the same letter, I requested the positions/comments/actions of the complainant - EAC. 1.2.1. XXXXX, Legal Services Officer A' and Data Protection Officer of the Complainant, with her letter No. Fac.: IN2/679/A/A/1242839 and dated 29.01.2020, which he sent by e-mail, he stated, among other things, the following: (a) The

Bradford system was implemented in the case of the complaint from 1 February 2011 and a related Circular dated January 25, 2011 was sent to all staff (I find a contradiction in the date of implementation of the system, since the Circular states that "This system will be applied retroactively for sick leaves from January 1, 2011.") (b) ) The Bradford system helped rationalize the use of sick leave in its early years. For the subsequent operation, it was necessary to make changes to the IT systems, which had not been done, resulting in the system being down. (c) The system in question has never been used in a way that supersedes the Regulations, but only in a way that assists in not abusing sickness absences. (d) The Complainant created a file due to the implementation of Procedure D-A-048, which consisted of the sick leaves presented by each employee and entered in his personal file, as well as the E-A forms -051 "Return to work interview after sick leave", E-A-052 "Stage 1. Counseling discussion", E-A-053 "Stage 2. 1st Written Marking", E-A-054 "Stage 3. 2nd Written Marking" and E-A-055 "Stage 4. Referral to the Human Resources Directorate". The file in question was registered in the personal sick leave files of the 2 staff and was kept in a specially configured area with controlled access. (e) The above file will be destroyed in accordance with the provisions of the Personal Data Protection Policy of the Complainant, which is posted on its website, on the internal Network Portal and at the same time all staff have been informed about it. According to paragraph 8 of the above Policy, the personal data concerning employees and pensioners of the Complainant are destroyed 85 years from the date of birth of the employee/pensioner, unless the pensioner or his/her widow/s are alive, according to the Directive of the State Archives for Departmental Archives Officers which is issued by the Superintendent of State Archives based on the State Archives Law of 1991 to 2017. 1.2.2. In addition, XXXXX attached 4 documents as Exhibits, which, among other things, state that: 1.2.2.1. Appendix 1: The Circular to all staff of the Complainant, dated 25.01.2011 "Human Resources Directorate January 25, 2011 Circular to all Staff Management of Sick Leave It has been established that the average sick leave in the EAC shows an increasing trend in recent years, with the corresponding increase in sick leave costs for the Authority. With the aim of efficient, fair and uniform management of sick leave, a system of management and control of sick leave is adopted from February 1, 2011. The Service recognizes that some degree of sickness absence is unavoidable. However, employees are expected to keep sickness absence to a minimum and maintain their level of attendance as high as possible. The control of the level of absences due to illness will be carried out by the entire administrative mechanism of the Authority. Managers have an obligation to inspect and control the sick leave levels of their existing staff ensuring that the balance of meeting the personal needs of staff is maintained with the correct use and not abuse of the system. Within these frameworks, from February 1,

2011, the following apply: 1. Return-to-work interview after sick leave Upon the return of an employee who has been absent on sick leave of any duration, an interview will be conducted which will be recorded and conducted by his superior. 3 a (BF) Factor method constitutes Bradford The interview will take place in a meeting, which will be held between the supervisor and the employee to discuss the circumstances surrounding his absence. Under no circumstances should the personal data of the employee be mentioned in this meeting, nor should any attempt be made to establish the authenticity of his illness. This procedure must be done in all cases without any exception. 2. Bradford Sick Leave Tracking System Employee attendance/absence tracking is widely used in organizations aiming to track and reduce staff sick leave. In particular, this system recognizes systematic absences for each person, counting the total number of sick leave days and the frequency with which sick leave is taken. The Bradford Factor is calculated using the following formula: BF (employee) = Σ x Σ x H, for the 52 week period Σ: Frequency (number of sick leave cases) H: Total number of sick leave days This system will be applied retrospectively for sick leave from 1 January 2011. All absences due to sick leave up to 42 days will count for the period of the previous 52 weeks from the given counting time. Any absence before this date will not be taken into account. The system allows the employee to "clear" his history. Credits are accumulated for the previous 52-week period, so credits and actions taken prior to that date are expunged from the employee's file. Depending on the units awarded by the system, the following stages will be followed: Stage 1. Counseling Discussion Over 150 BF sickness units An employee who is found to have an index of more than 150 BF sickness units in the period of the previous 52 weeks from a given time, will be called through the Director of his department to attend a consultative discussion with his supervisor. Stage 2. 1st Written Marking Additional 125 BF sickness credits When an employee in a period of 52 weeks after the date of the Counseling Discussion, completes an additional 125 points then he will be called by his supervisor to get the 1st Written Marking signed by the Head of his department . Stage 3. 2nd Written Marking Additional 125 Sickness Points BF 4 When an employee in a period of 52 weeks after the date of the 1st Written Marking, completes an additional 125 points then they will be called by their Unit Manager to get the 2nd Written Marking.  In addition, the DAD will refer the employee to a medical officer of the Authority to determine whether he is fit to perform his duties.  From this point onwards, certificates will not be accepted unless they are also certified by the Authority's medical officer. Stage 4. Handling by DAD On the next sick leave in a period of 26 weeks after the date of the 2nd Written Notice the employee will be referred by their Unit Manager to DAD for further handling. If necessary, the employee:  Will be referred to the Authority's Medical Board to determine if he is fit to perform his duties. (Note: Emphasis

mine)  A report will be prepared for the employee and submitted to the General Manager. (Note: Emphasis mine) Notification of absence due to illness All sick leave certificates to be accepted must be certified by a medical practitioner in the specialty related to the illness. It is recalled that based on previous circulars of the Human Resources Department, the following should be observed: 1. When the employee is going to be absent on sick leave, he should inform his supervisor by phone on the same day and not a colleague. 2. The employee is responsible for providing a legible sick leave certificate. 3. Sending the medical certificate of sickness no later than the third day of the sick leave Legible certificate of sick leave XXXXX Director of Human Resources" 1.2.2.2. Appendix 2: Electronic message dated 14.01.2020 that was sent by Ms. Kyprianou to the Senior Director of Human Resources, on the subject of "Proposal to abolish the sick leave monitoring process - Bradford System (Δ-A-048)", in which the following was mentioned: On the occasion of the Decision of the Commissioner for the Protection of Personal Data dated October 25, 2019, under the title "Grading of sick leave of employees in the Louis Companies using the Bradford Coefficient" and following the results of the audit of the Personal Data Processing Activity File Directorate of Human Resources, the Complainant's Data Protection Team recommended the abolition of the Sick Leave Tracking Process - Bradford System (Δ-A-048), which collected data on the sick leave of its employees, since the You cannot fill in the 5th file from the Human Resources Department and the existence of a legal processing purpose. When examining the complaint against the Louis group of companies, the Commissioner concluded that, in cases where automated processing of special category personal data is carried out, in addition to the existence of a legal basis (Article 6), at least one of the exceptions of Article 9 must be observed at the same time ( 2) of the Regulation. In order to verify and document the above, the Article 29 Working Group recommends conducting a Legitimate Interest Assessment, as described on pages 21-24 of the decision. The Commissioner ruled that the processing of personal data is not lawful and ordered the Louis companies to immediately terminate the operation of the Bradford Factor using the automated system and immediately destroy the file that had been created. Additionally, based on the powers granted to the Commissioner by the provisions of subsection (i) of paragraph (2) of article 58 of the Regulation, financial penalties were imposed on the companies LGS Handling Ltd, Louis Travel Ltd and Louis Aviation Ltd, for committing a breach of the obligation those from articles 6(1) and 9(2) of the Regulation. Since according to Article 6 of the Regulation, the processing is lawful only if and as long as at least one legal basis applies, both the D-A-048 process and the data collected from time to time, do not appear to be part of lawful processing. The abolition of the above Procedure does not affect the right or ability of the Complainant to supervise her staff, since the heads of Departments and

Directorates can monitor their staff through the D-A-020 Procedure for Leave Management – Sick Leave, after removing references to D-A-048. The Complainant's Data Protection Team further recommended that the relevant Directorate carry out a Legitimate Interest Assessment, as described on pages 21-24 of the Commissioner's Decision against the Companies LGS Handling Ltd, Louis Travel and Louis Aviation. He again and imperatively proposed the abolition and removal of the above Process from the Quality Management system of the Complaint, the deletion of all the data/file that had been created and at the same time informing the staff that control will be exercised through the Process D-A-020 and not on the basis of an automated evaluation system. 1.2.2.3. Appendix 3: Electronic message dated 14.01.2020, with sender XXXXX and recipients the staff of the Complainant, with which the link where my Decisions are posted on the website of my Office was shared. In the same e-mail, XXXXXX emphasized that my Decisions issued in the period October – December 2019 are of interest, emphasizing my Decision against the Companies LGS Handling Ltd, Louis Travel and Louis Aviation, which used the Bradford System. 6 1.2.2.4. Appendix 4: (a) Electronic message dated 16.01.2020 and time 9:48 am, with sender XXXXX, Assistant Sub-Head of the Time Management Department of the Human Resources Directorate of the Complaint to the Quality Management System, with which informed its members that the implementation of the DA-048 Procedure which related to the monitoring or Quality Management System of sick leave using the Bradford System is immediately discontinued. (b) Electronic message dated 16.01.2020 and time 2:23 pm, with sender XXXXXX and recipients staff members of the Complainant, with which the above email from XXXXXX was forwarded to them. (c) Electronic message dated 27.01.2020, with sender XXXXXX, in which he informed the staff of the Head Offices of the Client of the complaint for the Discontinuation of the application of Procedure Δ-Α-048 which related to the monitoring of sick leaves using the System Bradford as well as to stop completing form E-A-051 (return to work interview after sick leave. 2. Introduction - Update on the Bradford Factor 2.1. The logic of the automated system that uses the Bradford Factor, for scoring of the sick leaves of the Complainant's employees is that short, frequent and unscheduled absences are more disruptive than longer absences. of illness, duration of absence and dates of absence.As stated in the Circular of the Directorate An Human Resources dated 25.01.2011 (as attached as Appendix 1 to her letter of termination dated 29.01.2020), the Bradford Index/Coefficient is calculated using the following formula: BF (employee) = Σ x Σ x H, for in the 52-week period S: Frequency (number of sick leave cases) H: Total number of sick leave days Then, after the complaint and after the rating, the Director conducts personal interviews with the employees whose rating reached the "trigger points", to determine if their absencewas accidental or intentional, in order to take action against them, if necessary.

The measures even include terminating their employment. Personal interview questions may also concern health data. 7 2.2. Purpose of an automated system using the Bradford Coefficient of sick leaves by processing the According to the Circular of the Human Resources Department of the Complaint, dated 25.01.2011, it is stated that, the average sick leave of the employees in the Complaint showed an increasing trend in recent years, with a corresponding increase in the cost of sick leave for it. With the aim of effective, fair and uniform management of sick leave, a system of management and control of sick leave was adopted approximately from January 1, 2011, with the ultimate goal of monitoring and reducing sick leave to a minimum. 2.3. The original purpose of the processing of sick leaves The correct administration of employees, which includes the registration and counting of sick leaves, in the context of the execution of a contract between the Complainant and her employers. 2.4 Additional Facts 2.4.1 On May 5, 2020, the Complainant was summoned to submit her positions/opinions regarding possible violations on her part of the provisions of articles 6(1) and 9(2) of the Regulation , as well as on what grounds he believes that any administrative sanction should not be imposed. 2.4.2 On June 9, 2020, the Defendant responded to the complaint and presented, among other things, the following: 1) EAC is a legal entity under public law established on the basis of Article 3 of the Electricity Development Law, Chapter 171. As a legal entity under public law, it has the same obligations as Government Departments and Services. 2) The Bradford system was applied to the EAC retroactively from January 1, 2011. Before the sending of the Circular dated On January 25, 2011, presentations were made to the administrative staff of EAC and a relevant memo was sent. 3) The reason for implementing the Bradford system was the increasing trend of sick leave as well as the criticism received by the EAC from the Auditor General in relation to the increase in sick leave. 4) In the context of the management of sick leaves at acceptable levels, but also the effective, fair and uniform management of sick leaves, the Control Management System was adopted, in the context of which the following were introduced: 1. Return to work interview / Return to work interview. 2. Monitoring / scoring system of short-term A/A/ Bradford. 3. Categorization of A/A by type of disease. 4. Systematic statistical analyses. 5. Systematic feedback to the Directors on the evolution of their department's A/A indicators. 6. Stricter control of certificates through the License Management department of the Human Resources Directorate. In addition to the above, the sending of medical certificates should have been done no later than the 3rd day of the absence. 8 5) Indicative result of the implementation of the system, the reduction in receiving A/A by 31% for the period from 2011 to 2013 and halting the growth trend that existed before the implementation of the system in question. 6) From 2016 onwards, it was necessary to make changes to the IT systems, since the data appearing in the relevant report per

employee and the relevant statements per work base were voluminous, as a result of which a long period of time was required for the study and implementation of the various procedures of the Bradford system. The requested changes could not be made in the program that had been created and used up to the given moment, so the possibility of creating another program in another EAC system (Cognos) was considered. Therefore, the implementation of the Bradford system procedures began to malfunction from the end of 2016 to the beginning of 2017 and especially from 2018 onwards, when only the return-to-work interview form was applied in most of the Agency's work bases, with individual cases of application, as suggested by my Office in my letter dated May 5, 2020, p. 26, par. 4.3. The automated grading scheme was only monitored at some sites employing around 650 people, with around 100 staff affected at various stages of Bradford implementation. 7) All long term sick leave, pregnancy and chronic illness leave were excluded from the Bradford system. 8) It was not used for future pattern prediction, as in the example with Italy. On the contrary, EAC, as an employer, supported and supports employees who need medical assistance, support of any kind, implements a sick leave fund system and maintains a Medical Care Fund, which complements the benefits of GESY. 9) No employee is expelled and/or forced to resign and/or stop working at EAC due to sick leave and by extension health, nor does it have adverse consequences on his grading and/or advancement due to any health problem. There is provision for retirement for health reasons and a Pension and Grants Scheme for Employees of the Cyprus Electricity Authority and their Dependents and it is not related to the grading that was done through the Bradford system. 10) The intended consequence of repeated abuse of sick leave could lead to a violation of the provisions of the EAC (Conditions of Service) Regulations and/or the Disciplinary Code. However, this did not adversely affect the rights of the person, since the process was not automated, but required the intervention and/or involvement of the human factor. Even when the process reached the 4th stage and had to be handled by the Human Resources Department and referred to a Medical Board, they did not proceed. Therefore, in practice the EAC used and uses less intrusive and burdensome ways of managing the issue, from 2016 onwards. 11) EAC was awarded in 2014 by the OEB with the Cypriot Award for Bradford Tracking/Scoring System Implementation. on 12) No legal opinions appear to have been received during 2011 on the legality of the Bradford system in the EAC. It was a decision of the EAC Board of Directors, in the presence of an external Legal 9 Advisor. During the period in question, the EAC was not obliged, nor had it appointed a DPO. 13) He considers it unfair to report that the EAC had not complied with the issuance of the Decision of my Office against the company Louis et al., since the decision came to its attention on 13.1.2020, the date of its publication, and on 16.1.2020 it had the decision to terminate the implementation of the

Bradford system has already been taken. The stoppage of the automated processing by the EAC was initially done voluntarily from 2016, when the technical issues were presented and officially, immediately after the publication of the Decision of my Office and before the initial letter of my Office dated 21.1.2020. Through the relevant documents referred to my Office by the Complainant, there is also relevant information on January 27, 2020, that in addition to the interruption of the Bradford system (which had been decided on January 16, 2020) it is immediately interrupted and completion of form E-A-051 (return to work interview after sick leave). I should note here that the relevant reference in the letter dated May 5, 2020 was not only for the EAC's compliance with my Decision, but also for the non-information of my Office, in relation to the EAC carrying out/carrying out processing with the Bradford system. 14) During the material time of implementation of the Bradford system, the Processing of Personal Data (Protection of the Individual) Law of 2001, Law 138(I)/2001, as amended, was in force. According to the then Article 4, the EAC acted as a controller and had the responsibility to ensure, among other things, that personal data is processed lawfully and lawfully. Processing also had to be lawful for sensitive information such as medical certificates and health data. In addition to legality, the provisions of the then Article 6(2) had to be applied. At the given time, the aim of the processing was to reduce sick leave, because an increasing trend was observed and in some cases abuse, leading to the waste of public money. In view of the correct application of Regulations 44, 51 and 52 of the EAC (Terms of Service ) Regulations, of the Fourth Schedule (Leave Regulations) of the said Regulations, as well as the EAC Disciplinary Code, the EAC implemented the said system in order to be able to reduce the potential fraud observed, in relation to the misuse of sick leaves by thestaff. Through the study of the Decision of my Office (dated 25.10.2019 in relation to the company Louis et al.), the Complainant, considers that it is not criticized but I am not against the control of the employees by the employer, since in my Decision I recognize the right or possibility of the employer to supervise his staff by interviews. 15) From 25.5.2018 onwards, EAC had to comply with GDPR 2016/679. As part of compliance, EAC has created its own Activity Archive with over 600 documents. It has over 2000 employees and 18 Departments. The compilation and control of this File was and is a time-consuming but interesting task. The 10 competent Human Resources Directorate, which had the authority to complete and update the procedure concerning the Bradford system, is extremely understaffed, resulting in incomplete completion of the File. The reason that due importance was not given and the legal basis was not filled in was because the process involved in the Bradford system was under-functioning in terms of the automated processing of special category data, since this was still in place until the day terminated, only at specific work bases, which employ around 650 people. The intention was to abolish

the said system, due to its inactivity, long before the issuance of our own decision. That is why the cancellation was made within 3 days of the publication of the decision. 16) Regarding the legal basis of the processing, the EAC supports the processing in combination with Articles 6(1)(b) and (c) and 9(2)(b) of GDPR 2016/679. He never considered using Article 6(1)(f) as a justification, because it does not apply to processing carried out by public authorities in the exercise of their duties. Although there is no clear interpretation of "public authority" in the Regulation in question, the EAC considers that it falls within the definition. 17) In relation to the legality of the processing, the EAC considers that the processing is lawful because it is necessary for the execution of a contract to which the data subject is a "contracting party". As mentioned, EAC employees are appointed subject to compliance with the EAC (Conditions of Service) Regulations 1986 (including the Leave Regulations) and the Disciplinary Code. At the same time, EAC considers that the processing of personal data in question is necessary to comply with its legal obligation as a data controller, since EAC, in accordance with the above Regulations, has the responsibility to control compliance with the Regulations, as well as as a public law organization, has a responsibility not to allow the waste of public money. They noted that the Regulations on sick leave, in addition to their inclusion in Regulations approved by the House of Representatives, are also the result of Collective Agreements. So, they consider that the workers, through the actions of the trade unions that represent them, have agreed. 18) Finally, the Complainant suggested that her immediate response and compliance with my Decision, as announced on 13.1.2020 on the website of my Office, be taken into account. He noted that they did not object, nor did they disagree with my proposal. Instead, they have adopted it voluntarily and immediately, while informing their staff about the abolition of the system in question and adopting different methods of controlling sick leave, which are less intrusive. There were no effects on the subjects since the most adverse effect would be the referral of the employee to the Medical of the data, nor was it disproportionate, 11 EAC Officer. EAC, as an employer, never assumed the role of "doctor". 19) He also added that the violation was not due to malice, but due to the negligence of the EAC to carry out the Interest Assessment in 2011, noting that the Opinion of the Article 29 Group was issued in 2014. He considered the actions of the EAC as very important to mitigate the damage, as well as prompt admission and cooperation with my Office, concluding that it was not possible for the EAC to foresee that the processing of personal data through the Bradford system was not compatible with GDPR 216/679, in 2011 which was put the said system in place. When it was detected during the audit of the EAC's Processing Activity File around 2019, a recommendation was made to remove it. 20) Regarding EAC's turnover for the year 2018, it amounted to XXXXX while it employed 2151 people on 1.6.2020. 21) In relation

to the data retention period (85 years) he provided a copy of the State Archive to Departmental Archive Officers. He also confirmed by contacting the State Archive that the Directive in question is still in force. of the Directive 3. Legal Framework 3.1. Article 4 - Definitions: ""personal data": any information relating to an identified or identifiable natural person ("data subject"); an identifiable natural person is one whose identity can be ascertained, directly or indirectly, in particular by reference to an identifier such as a name, an identity number, location data, an online identifier or one or more factors that characterize the physical, physiological, genetic, psychological, economic, cultural or social identity of that natural person." ""processing": any operation or series of operations carried out with or without the use of automated means, on personal data or sets of personal data, such as collection, registration, organization, structuring, storage, adaptation or the alteration, retrieval, retrieval of information, use, disclosure by transmission, dissemination or any other form of disposal, association or combination, restriction, deletion or destruction." ""profiling": any form of automated processing of personal data consisting of the use of personal data to assess certain personal aspects of a natural person, in particular to analyze or predict aspects related to work performance, financial situation, health, personal preferences, interests, reliability, conduct, location or movements of the natural person in question." "'filing system': any structured set of personal data that is accessible according to specific criteria, whether that set is centralized or decentralized or distributed on a functional or geographical basis.". ""controller": the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and manner of processing personal data; when the purposes and manner of processing thereof are determined by Union law or the law of a Member State, the controller or the specific criteria for his appointment may be provided for by Union law or the law of a Member State." ""health-related data": personal data which relate to the physical or mental health of a natural person, including the provision of health care services, and which disclose information about the state of their health.". With reference to health-related data, recital 35 of the Regulation clarifies that: "(35) Personal health-related data should include all data related to the health status of the data subject and which disclose information about the data subject's past, current or future state of physical or mental health. This includes information about the natural person collected when registering for and providing health services as referred to in Directive 2011/24/EU of the European Parliament and of the Council (9) to that natural person; a number, a a symbol or an identifying feature attributed to a natural person for the purpose of fully identifying the natural person for health purposes; information resulting from examinations or analyzes of a part or substance of the body, including from genetic data and biological samples and any information, for example , regarding disease, disability, risk of disease,

medical history, clinical treatment or the physiological or biomedical condition of the data subject, regardless of source, for example, from a physician or other health professional, hospital, medical device or diagnostic test in vitro.". 3.2. Article 6 – Legality of the processing 3.2.1. In accordance with the provisions of article 6 of the Regulation, which concern the legality of the processing: "1. The processing is lawful only if and as long as at least one of the following conditions applies: a) the data subject has consented to the processing of his personal data for one or more specific purposes, b) the processing is necessary for the performance of a contract whose the data subject is a contracting party or to take measures at the request of the data subject prior to the conclusion of a contract c) the processing is necessary to comply with a legal obligation of the controller d) the processing is necessary to preserve vital interest of the data subject or other natural person, 13 e) the processing is necessary for the fulfillment of a task performed in the public interest or in the exercise of public authority assigned to the controller, f) the processing is necessary for the purposes of legitimate interests pursued by the controller or a third party, unless these interests are overridden by the interest or the fundamental rights and freedoms of the data subject that require the protection of personal data, in particular if the data subject is a child. Item f) of the first paragraph does not apply to the processing carried out by public authorities in the exercise of their duties. 2. Member States may maintain or adopt more specific provisions to adapt the application of the rules of this Regulation regarding processing to comply with paragraph 1 points c) and e), specifying more precisely specific requirements for processing and other measures to ensure legal and legitimate processing, including for other special cases of processing as provided for in chapter IX. 3. The basis for the processing referred to in paragraph 1 items c) and e) is defined in accordance with: a) Union law , or b) the law of the Member State to which the controller is subject. The purpose of the processing is determined on the said legal basis or, with regard to the processing referred to in paragraph 1 point e), is the necessity of the processing for the fulfillment of a task carried out in the public interest or in the exercise of a public authority delegated to the controller. This legal basis may include specific provisions to adapt the application of the rules of this regulation, among others: the general conditions governing the lawful processing by the data controller; the types of data processed; the relevant subjects of of data; the entities to which the personal data may be communicated and the purposes of such communication; the limitation of the purpose; the storage periods; and the processing operations and processing procedures, including measures to ensure lawful and legitimate processing, such as those for other special cases of processing as provided for in chapter IX. Union law or Member State law responds to a public interest purpose and is proportionate to the intended legal purpose. 4. When the processing for a purpose

other than that for which the personal data have been collected is not based on the consent of the data subject or on Union law or the law of a Member State which is a necessary and proportionate measure in a democratic society for the ensuring the purposes referred to in Article 23 paragraph 1, the controller, in order to ascertain whether the processing for another purpose is compatible with the purpose for which the personal data is initially collected, takes into account, among others: a) any relationship among the purposes for which the personal data have been collected and intended further processing, the purposes of 14 the existence of appropriate guarantees, which may include b) the context in which the personal data were collected, in particular with regard to the relationship between data subjects and the controller, c) the nature of the data of a personal nature, in particular for the special categories of personal data processed, in accordance with Article 9, or whether personal data related to criminal convictions and offenses are processed, in accordance with Article 10, d) the possible consequences of the intended further processing for the data subjects, e) encryption or pseudonymization." 3.2.2. A useful reference can also be made from the Opinion 2/2017 of the Working Group of Article 29 regarding the processing of data at work, which also examines the obligations of data controllers in the context of the Regulation. The following excerpts are quoted: "performance of a contract and legitimate interests may sometimes be invoked, provided that the processing is strictly necessary for a legitimate purpose and complies with the principles of proportionality and subsidiarity;." “The development of new technologies and new processing methods in this context have not changed the situation – in fact, one could say that these developments have made the relevant need more important. In this context, employers should: ... ensure that data is processed for specific and legitimate purposes that are proportionate and necessary." "In summary, employers must therefore take the following into account:  For most of this data processing at work, the legal basis cannot and should not be the consent of the employees [Article 7(a)], because the nature of the relationship between employer and employee;  the processing may be necessary for the performance of a contract [Article 7(b)] in cases where the employer must process personal data of the employee in order to comply with any such obligation;  it is it is very common for labor legislation to impose legal obligations [Article 7(c)] which require the processing of personal data; in such cases the employee must be clearly and fully aware of such processing (unless an exception applies);  if the employer invokes a legitimate interest [Article 7(f)], the purpose of the processing should be lawful; the chosen method or technology should be necessary, proportionate and implemented in the least intrusive way possible, together with enabling the employer to demonstrate that appropriate measures are in place to ensure a balance with the fundamental rights and freedoms of workers;  processing should also comply with transparency

requirements (Articles 10 and 11) and employees should be clearly and fully informed about the processing of their personal data, including the existence of monitoring; and  appropriate technical and organizational measures to ensure the security of processing (Article 17)." 15 of the controller or - Processing of special categories of data 3.3. Article 9 of a personal nature 3.3.1. The processing of special categories of personal data is governed by Article 9 of the Regulation and expressly provides that: "1. The processing of personal data that reveals racial or ethnic origin, political opinions, religious or philosophical beliefs or membership in a trade union is prohibited, as well as the processing of genetic data, biometric data for the purpose of indisputable identification of a person, data concerning the health or data concerning a natural person's sex life or sexual orientation. 2. Paragraph 1 does not apply in the following cases: a) the data subject has provided express consent to the processing of such personal data for one or more specific purposes, unless the law of the Union or a Member State provides that the prohibition referred to in paragraph 1 cannot be lifted by the subject of the data, b) the processing is necessary for the performance of the obligations and the exercise of specific rights of the data subject in the field of labor law and social security and social protection law, if permitted by the law of the Union or a Member State or by a collective agreement in accordance with national law providing appropriate guarantees for the fundamental rights and interests of the data subject, c) the processing is necessary to protect the vital interests of the data subject or another natural person, if the data subject is physically or legally unable to consent i,  d) the processing is carried out, with appropriate guarantees, in the context of the legal activities of an institution, organization or other non-profit body with a political, philosophical, religious or trade union objective and provided that the processing concerns exclusively the members or former members of the body or persons who have regular communication with it in relation to its purposes and that the personal data are not shared outside the specific body without the consent of the data subjects, e) the processing concerns personal data that has been manifestly made public by the subject of the data, f) the processing is necessary for the establishment, exercise or support of legal claims or when the courts act in their jurisdiction, g) the processing is necessary for reasons of substantial public interest, based on the law of the Union or a Member State, which is proportional to the intended goal, respects the ushi a of the right to data protection and provides appropriate and specific measures to safeguard the fundamental rights and interests of the data subject, h) the processing is necessary for the purposes of preventive or professional medicine, assessment of medical diagnosis, provision of health or social care or treatment or management of health and social systems and services based on Union law or Member State law or by virtue of a contract with a health professional and subject to the conditions and guarantees referred to in

paragraph 3, the employee's ability to work, 16 i) the processing is necessary for reasons of public interest in the field of public health, such as protection against serious cross-border threats to health or ensuring high standards of quality and safety of healthcare and medicines or medical devices, based on the law of the Union or the law of a Member State, which provides for appropriate and specific measures to protect the rights and freedoms of the data subject, in particular professional confidentiality, or j) the processing is necessary for archiving purposes in the public interest, for purposes scientific or historical research or for statistical purposes in accordance with Article 89(1) based on Union or Member State law, which are proportionate to the objective pursued, respect the essence of the right to data protection and provide for appropriate and specific measures to ensuring the fundamental rights and interests of the data subject. 3. The personal data referred to in paragraph 1 may be processed for the purposes provided for in paragraph 2, point h), when such data is processed by or under the responsibility of a professional who is subject to the obligation to maintain professional secrecy based on of Union or Member State law or based on rules established by competent national bodies or by another person who is also subject to an obligation of confidentiality under Union or Member State law or based on rules established by competent national bodies. 4. Member States may maintain or establish further conditions, including restrictions, regarding the processing of genetic data, biometric data or health-related data." 3.3.2. Regarding the processing of special categories of personal data, recital 51 of the Regulation states that: "51) Personal data which are by nature particularly sensitive in relation to fundamental rights and freedoms need special protection, as the context of their processing could create significant risks to fundamental rights and freedoms. Such personal data should include personal data revealing racial or ethnic origin, where the use of the term "racial origin" in this Regulation does not imply that the Union accepts theories supporting the existence of separate human races. …….. Such personal data should not be processed , unless the processing is permitted in specific cases provided for in this Regulation, taking into account that the law of the Member States may provide for specific data protection provisions in order to adapt the application of the rules of this Regulation due to compliance with a legal obligation or due to the fulfillment of a duty performed in the public interest or in the exercise of public authority delegated to the controller. In addition to the specific requirements to which the processing in question is subject, the general principles and other rules of this regulation should be applied, in particular as regards the conditions of lawful processing. Derogations from the general ban on the processing of personal data falling under these special categories should be expressly provided for, among other things, in the case of the express consent of the data subject

or when it comes to special 17 needs, in particular when the processing is carried out in the context of legitimate activities certain associations or institutions, the purpose of which is to allow the exercise of fundamental freedoms." 3.4. Article 21 - Right to object and profiling 3.4.1. Based on article 21 (1) of the Regulation, which concerns the right to object, "the data subject has the right to object, at any time and for reasons related to his particular situation, to the processing of personal data concerning him, which is based on in Article 6(1)(e) or (f), including profiling'. In such a case, the controller no longer processes the personal data, "unless it demonstrates compelling and legitimate reasons for the processing which override the interests, rights and freedoms of the data subject or for the establishment, exercise or support legal claims". 3.4.2. The Article 29 Data Protection Working Party (formerly the Article 29 Working Party) issued, on 6 February 2018, Guidelines on automated decision-making and profiling for the purposes of the Regulation, which set out, inter alia, the following excerpts: "Profiling consists of three elements:  it must be an automated form of processing,  it must concern personal data, and  the of the profiling must be to assess personal aspects of a natural person.". "Profiling must involve some form of automated processing, although human involvement does not necessarily exclude the activity from the definition." "The GDPR (General Data Protection Regulation) states that profiling is the automated processing of personal data to evaluate personal aspects, in particular to analyze or make predictions about natural persons. The use of the word 'assessment' suggests that profiling involves some form of assessment or judgment about a person." “There are potentially three ways in which profiling can be used: i) general profiling, ii) decision-making based on profiling, and iii) purely automated decision-making, including profiling, which produces legal effects or significantly affects the data subject in a similar way (Article 22(1)).' 18 "Profiling can be unfair and discriminatory." "Profiling may involve the use of personal data that was originally collected for another purpose." "The controller must carry out a balancing of interests to assess whether the interests or fundamental rights and freedoms of the data subject prevail over his own interests. Particularly relevant to the above are the following:

…… the consequences of profiling (the effects on the data subject), and  safeguards aimed at ensuring objectivity, non-discrimination and accuracy in the profiling process." "Controllers may process special categories of personal data only if they can satisfy the conditions set out in Article 9 paragraph 2, as well as a condition of Article 6. The above includes special categories of data extracted or derived from a training activity Profile.". "Under Article 21(1), the data subject may object to processing (including profiling), for reasons related to his/her particular situation. Controllers must specifically grant this right in any case where the processing is based on

Article 6(1)(e) or (f). After the data subject has exercised this right, the controller must stop1 (or refrain from starting) the profiling process, unless he can demonstrate the existence of compelling and legitimate reasons that override the interests, rights and of the freedoms of the data subject. The controller may also need to delete the relevant personal data2." 3.5 including profiling 3.5.1. Based on article 22 of the Regulation, the following applies: "1. The data subject has the right not to be subject to a processing decision, including legal consequences that concern him or her in a similar way. 2. Paragraph 1 does not apply when the decision: a) is necessary for the conclusion or performance of a contract between the data subject and the data controller, b) is permitted by Union law or the law of a Member State to which it is subject the controller and which also provides appropriately Article 22 – Automated individual decision-making, of profiling, which produces automated exclusively taken on the basis of 1 GDPR - Article 18 paragraph 1 letter d) 2 GDPR - Article 17 paragraph 1 letter c) 19 measures to protect the rights, freedoms and legitimate interests of the data subject or c) is based on the express consent of the data subject. 3. In the cases referred to in paragraph 2 items a) and c), the data controller applies appropriate measures to protect the rights, freedoms and legal interests of the data subject, at least the right to ensure human intervention on the part of the data controller, expressing an opinion and contesting the decision. 4. The decisions referred to in paragraph 2 shall not be based on the special categories of personal data referred to in Article 9(1), unless Article 9(2)(a) or (g) applies and appropriate measures are in place to protect rights, of the freedoms and legal interests of the data subject." 3.5.2. Recital (71) further clarifies the following: "(71) The data subject should have the right not to be subject to a decision, which may include a measure assessing personal aspects concerning him, obtained solely on the basis of automated processing and which produces legal effects against that person or significantly affects him in a similar way, such as the automatic rejection of an online credit application or electronic recruitment practices without human intervention. Such processing includes "profiling" consisting of any form of automated processing of personal data to assess personal aspects about a natural person, in particular analyzing or predicting aspects related to work performance, financial situation, health , the personal preferences or interests, the reliability or behavior, the position or movements of the data subject, to the extent that it produces legal effects against that person or significantly affects him in a similar way. However, decision-making based on such processing, including profiling, should be permitted where expressly provided for by Union or Member State law to which the controller is subject, including for the purposes of monitoring and fraud prevention and of tax evasion in accordance with the regulations, standards and recommendations of the Union institutions or national supervisory bodies and in order to ensure the security and reliability

of the service provided by the controller, or when necessary for the conclusion or performance of a contract between a data subject and a data controller or when the data subject has provided his express consent. In any case, this processing should be subject to appropriate guarantees, which should include specific information of the data subject and the right to ensure human intervention, the right to express his opinion, the right to receive justification of the decision taken in the context of said assessment and the right to challenge the decision. The measure in question should not concern a child. In order to ensure fair and transparent processing in relation to the data subject, taking into account the specific circumstances and the context in which the processing of personal data takes place, the controller should use appropriate mathematical or statistical procedures to draw up the profiles, implement technical and organizational measures to correct the factors that lead to inaccuracies 20 in personal data and minimize the risk of errors, make personal data secure in a way that takes into account the potential risks associated with interests and rights of the data subject and in a way that prevents, inter alia, the effects of discrimination against natural persons on the basis of racial or ethnic origin, political opinion, religion or belief, membership of trade unions, genetic status or health status or sexual orientation, or measures of equivalent effect. Automated decision-making and profiling based on specific categories of personal data should only be allowed under specific conditions.' 3.6. Article 30□ Maintenance of Record of Activities 3.6.1. Paragraph 1 of the referenced article provides that□ “Each controller and, where applicable, his representative, shall keep a record of the processing activities for which he is responsible. This file shall include all of the following information: a) the name and contact details of the controller and, where applicable, the joint controller, the controller's representative and the data protection officer, b) the purposes of the processing, c) description of the categories of data subjects and the categories of personal data, d) the categories of recipients to whom the personal data is to be disclosed or has been disclosed, including recipients in third countries or international organizations, e) where applicable, the transmissions personal data to a third country or international organization, including the identification of said third country or international organization and, in the case of transfers referred to in Article 49 paragraph 1 second subparagraph, the documentation of the appropriate guarantees, f) where possible, the prescribed deadlines for deletion of different categories of data, g) where possible, a general description of the technical and organizational security measures referred to in Article 32 paragraph 1.". 3.6.2. Furthermore, paragraph 5 of the same article states that□ "5. The obligations referred to in paragraphs 1 and 2 do not apply to an enterprise or organization employing fewer than 250 people, unless the processing carried out may cause a risk to the rights and freedoms of the data subject, the processing is not occasional or the processing includes special

categories of data according to Article 9 paragraph 1 or processing of personal data relating to criminal convictions and offenses referred to in Article 10." 3.7. Article 35 – Data Protection Impact Assessment 21 of the impacts 3.7.1. Article 35(1) and (3) of the Regulation, regarding the Impact Assessment regarding data protection, provides that: "1. When a type of processing, in particular using new technologies and taking into account the nature, scope, context and purposes of the processing, may entail a high risk for the rights and freedoms of natural persons, the controller shall, before the processing, assessment of the planned processing operations in the protection of personal data. An assessment may consider a set of similar processing operations which involve similar high risks.  3. The data protection impact assessment referred to in paragraph 1 is required in particular in the case of: a) a systematic and extensive assessment of personal aspects concerning natural persons, which is based on automated processing, including profiling, and on which decisions based produce legal results concerning the natural person or similarly significantly affect the natural person, b) large-scale processing of the special categories of data referred to in Article 9 paragraph 1 or personal data relating to criminal convictions and offenses referred to in Article 10 or c) systematic monitoring of publicly accessible space on a large scale." 3.7.2. As a key accountability tool, as required under Article 5(2) of the Regulation, the data protection impact assessment allows the data controller to assess the risks posed by automated decision-making, including profiling. It is a way to demonstrate that appropriate measures are in place to address the risks in question and, therefore, to demonstrate compliance with the Regulation. 3.8. Article 61 – Mutual assistance 3.8.1. My Office conducted an investigation, in the form of a questionnaire, which was sent to the Respective Authorities for the Protection of Personal Data, through the mutual assistance of Article 61 of the Regulation, regarding the legality of the grading of sick leaves, using the "Bradford Factor". 3.8.2. It is noteworthy that the Italian Authority, with its Decision issued in February of an automated system called "SAVIO", which was used by the Social Insurance Department to schedule the medical examinations that employees had to undergo, after the control of the sick leave certificates from the doctors. By using special algorithms, the system was able to predict potential unjustified sick leaves. The system analyzed data regarding employees, such as frequency and duration of sick leave, position held by the employee in the organization and size of the organization. The Italian Authority considered that, through the specific automated system, automated decisions were taken, including profiling, on the basis of which it deemed illegal the operation of 2018, 22 of the employees in the context in particular for the purposes of recruitment, execution of statistical models. The result was a prediction of employee behavior. 3.9. Article 88 – Processing in the context of employment 3.9.1. Article 88 regarding processing in the context of employment

provides that: "1. Member States, through legislation or through collective agreements, may establish specific rules in order to ensure the protection of rights and freedoms against the processing of personal data of an employment nature, the employment contract, including the performance of the obligations provided for by the law or from collective agreements, management, planning and organization of work, equality and diversity in the workplace, health and safety at work, protection of the property of employers and customers and for the purposes of exercising and enjoying, on an individual or collective basis, rights and benefits that related to employment and for the purposes of terminating the employment relationship. 2. These rules include appropriate and specific measures to safeguard the human dignity, legal interests and fundamental rights of the person to whom the data refer, with particular emphasis on the transparency of the processing, the transmission of personal data within a group of companies, or group of companies carrying out a common economic activity and the monitoring systems in the workplace.". 3.9.2. Opinion 2/2017 of the Article 29 Working Party on data processing at work states that: "Processing in the context of employment" Article 88 of the GDPR states that Member States, through legislation or through collective agreements, may establish special rules in order to ensure the protection of rights and freedoms against the processing of personal data of employees in the context of employment. Specifically, these rules can be established for the purposes of:  recruitment;  performance of the employment contract (including the performance of obligations provided for by law or collective agreements);  management, planning and organization of work;  diversity in the workplace;  health and saf at work;  protecting the property of employers and clients;  exercising and enjoying (on an individual basis) employment-relat rights and benefits; and  terminating the employment relationship. equality and 23 According to Article 88 paragraph 2, these rules should include appropriate and specific measures to safeguard the human dignity, legal interests and fundamental rights of the person to whom the data refer, with particular emphasis on the following :  the transparency of the processing;  the transmission of personal data within a group of companies, or a group of companies exercising a common economic activity; and  monitoring systems in the workplace.". 3.10. Decisions 3.10.1. The European Court of Human Rights (Grand Chamber) during the trial of the case Bărbulescu v. Romania (application no. 61496/08) ruled that, in order to assess whether a particular measure is proportionate to the intended purpose, Member State authorities must consider: (a) whether the employee has been informed of the possibility that the employer may take measures to monitor his mail and the existence of such measures, (b) the extent of the monitoring and the degree of interference with the employee's privacy, (c) whether the employer has reasonable grounds to justify such monitoring, (d) whether the employer could implement a monitoring system based on milder

means of direct access to the content of the employee's mail, (e) the consequences of the monitoring for the employee and the employer's use of the results of the monitoring, and (f) whether there are adequate safeguards for the employee to ensure that the employer will not be able to access the content of the mail unless the employee has previously been informed of this possibility. 3.10.2. An important decision on the interpretation of "legitimate interest" was issued on 4 May 2017 by the Court of Justice of the European Union (CJEU) in case C-13/16 "Rīgas satiksme". Specifically, the preliminary question concerned the interpretation of the concept of the controller's legitimate interest as a reason that legitimizes the legality of data processing (Article 6(1)(f) of the Regulation). The request was made in the context of a legal dispute between the competent office for the certification of traffic violations, which was under the national security police directorate of the Riga region, Latvia, and the Riga city trolley company 24 (Rīgas satiksme), with the request to disclose the identification data of the cause of the accident. In particular, a traffic accident took place and Rīgas satiksme submitted a request to the Police, requesting information about the person who had been administratively sanctioned after the accident, as well as copies of the statements of the taxi driver and the passenger regarding the conditions of the of the accident, as well as the name, ID card number and residential address of the taxi passenger. The Police partially accepted Rīgas satiksme's request and shared the name of the passenger, but refused to share his ID card number and home address. Rīgas satiksme filed an appeal before the first-instance administrative court against the decision of the Police, for refusing to disclose the identity card number and address of the passenger involved in the accident. The court accepted Rīgas satiksme's appeal and the Police appealed. The Court considered that the interpretation of the term "necessary" is not clear for several reasons, among which, there are three cumulative conditions for the lawful processing of personal data: first, the pursuit of a legitimate interest on the part of the controller or third party or third parties to whom the data is communicated, secondly, the necessity of the processing to achieve the intended legitimate interest and, thirdly, the condition that the fundamental rights and freedoms of the person concerned by the protection of the data do not take precedence  data. 3.10.3. A useful reference can also be made to the excerpt below from Decision No. 46/2011 of the Hellenic Authority for the Protection of Personal Data: "As consistently accepted by the national and European supreme courts, …… The measure is appropriate (appropriate), when it enables the effective achievement of the intended purpose. The measure is deemed necessary when the intended purpose cannot be achieved by milder means, or, in other words, among several appropriate measures that equally achieve the intended purpose, the one that induces the least burdensome consequences is chosen." 4. Rationale 4.1. The date of sick leave and the frequency of taking sick leave

concerning a living natural person, to the extent that his identity is immediately or indirectly revealed, constitute "special categories of personal data", according to the definition given in Article 9(1 ) of the Regulation. The automated system used constituted a "filing system" under the definition in Article 4(6) of the Regulation. Feeding an automated system with the above personal data, grading them using the "Bradford Coefficient" and then compiling profiles of natural persons, based on the results that were produced/extracted, constituted processing of personal data, within the meaning of Article 4(2) of the Regulation. The Complainant is responsible for processing the complaint (Article 4(7) of the Regulation). Subjects of the data are the employees of the Complainant (Article 4(1) of the Regulation). 4.2. The Complainant, as the employer, has the right to supervise the frequency of sick leave and/or the validity of sick leave certificates. However, such a right should not be exercised abusively and should also be exercised within the limits set by the relevant legislative framework. A processing to be lawful should be limited to what is necessary for the organization, control and processing of the company's turnover. The employer cannot exercise unlimited control and supervision over the employees, violating their personality. Further, the employer has power under the existing labor law to take action against employees who violate it and thus it is neither necessary nor necessary to operate such a system, which is intended to carry out profiling, with adverse consequences for the employees, after grading ( scoring) of their sick leaves, using the Bradford Coefficient. Scoring statutory sick leave is beyond the employer's remit, as in doing so they make themselves a doctor or health professional and "punish" employees who take sick leave on certain days of the week/month and/or frequently and/or systematically. 4.3. Where the objective identified by the employer can be achieved in a less intrusive and burdensome manner, the employer should consider this option. In the case under consideration, the Complainant could invite to oral interviews/meetings the employees who are absent on certain days of the week/month and/or frequently and/or systematically due to illness and/or the employees for whom there was suspicion and/or alleging that they presented false sick leave certificates, as it has finally admitted to doing in most cases, after 2018 when the Bradford system experienced problems due to data overload. Although the system began to malfunction from the end of 2016, however, until its complete shutdown on 16.1.2020, the Complainant continued to use the Bradford system at some work bases employing around 650 people, with affected staff around 100 people. 4.4.1. In considering the question of grading sick leave, the employer should always bear in mind that, although employees have a right to a certain degree of personal protection in the workplace, this right must be balanced against their right to control the operation of his business and to be protected from actions of employees that may harm his legal interests, such as for example the legal responsibility of the

employer for the actions of his employees. 26 4.4.2. In this context, the employer must carry out a Legitimate Interest Assessment. Based on Opinion 06/2014 of the Article 29 Data Protection Working Party, dated April 9, 2014, on the concept of legitimate interests of the controller, this Assessment includes three decisive stages: 1st stage: Determination of the legitimate interest. That is, what is the purpose of processing personal data and why is it important to the controller. However, even if the controller's interest for a specific purpose is obvious and legitimate based on its objectives, it should nevertheless be clearly formulated and communicated to the affected persons so that they are aware of the legal basis of the processing to which the data are to be subjected. their personal data. 2nd stage: Carry out Necessity Check. That is, the controller should consider whether the processing of personal data is absolutely necessary to satisfy his interests (such as, for example, commercial and business interests). In the event that the specific processing is deemed necessary in combination with the purpose, it can proceed to the third stage, which is also the most important. 3rd stage: Proportionality Check. The controller can rely on a genuine legitimate interest only when the rights and freedoms of the person whose personal data will be processed have been assessed and do not override his own legitimate interests. The control should include: □ □ □ □ □ the type/nature of the persona being processed (for example whether the processing concerns special categories of personal data), the way the personal data is processed (for example, whether the data processed for profiling), the potential impact of the intended processing on the data subjects (for example, emotional impact such as fear and agitation), their reasonable (basic) expectations (i.e. whether they could expect such processing), and the status of the controller and the status of data subjects, emphasizing a possible unbalanced relationship between controller and subjects. The controller should then make a provisional weighing of the interests and rights at stake, as described in the three stages of the Legitimate Interest Assessment. In this weighing, the measures taken by the data controller to comply with, among other things, the minimization principle, contribute significantly to its compliance with the requirements of Article 6(1)(f) of the Regulation. Full compliance means that the impact on persons is reduced, that the interests of data subjects are less likely to be undermined or the fundamental rights or freedoms of data subjects are infringed. Subsequently, the controller should obtain additional guarantees, in order to arrive at an overall and final assessment. Such guarantees include, extensive use of anonymization techniques, grouping of 27 data, increased transparency and right to object (Article 21 of the Regulation). Regarding these guarantees and the overall, final weighting, the Working Group emphasizes three issues of increased importance in the context of Article 6(1)(f): □ the possible need for additional measures which will increase □ □ transparency and accountability, the data subject's right to object to processing and

the strengthening of data subjects' rights: data portability and the availability of flexible mechanisms for data subjects to access, amend, delete, transmit or further process in other ways (or allow third parties to further process) the data concerning them. 4.4.3. Regarding the three stages of the Legitimate Interest Assessment, the temporary weighting and the overall, final weighting, Opinion 06/2014 explains that: - The more sensitive the information, the greater the possible consequences for the persons to whom the data refer . However, this does not mean that it is permitted, under Article 6(1)(f) of the Regulation, to process data which appear to be harmless in themselves. Even this data can, depending on the way in which it is processed have a significant impact on data subjects. - In general, the more negative or uncertain the impact of the processing, the lower the chances that the processing will ultimately be considered lawful. Consequently, it is appropriate to investigate the availability of alternative methods to achieve the objectives pursued by the controller, which have less negative consequences for the data subjects. - An important role in the assessment of legal interest is played by the status of the data controller. For example, a large multinational company may have more resources and greater bargaining power than data subjects and therefore may more easily enforce its "legitimate interest" at the expense of data subjects, especially if has a dominant position in the market. If the company is left to act unchecked, data subjects may be harmed. In fact, the Opinion states that the legislative framework on personal data protection could play an important role in preventing any unjustified infringement of the rights and interests of data subjects. - Article 6(1)(f) is based on the principle of accountability. The controller is required to carry out a careful and effective weighing in advance, taking into account the particular circumstances of the case, and not vague parameters, as well as the reasonable expectations of the persons to whom the data refer. For reasons of good practice, it is recommended, depending on the case, that this weighting be documented in a manner that is sufficiently detailed and transparent, so that it is possible to verify its completeness and accuracy – if required – by the interested parties, including the 28 data subjects, by data protection authorities and, ultimately, by the courts. - The concept of accountability is closely related to the concept of transparency. In order for data subjects to be able to exercise their rights, controllers should explain in a clear, simple and comprehensible way to data subjects the reasons why they consider that their interests override interests or fundamental rights and freedoms of data subjects. They should also explain the guarantees they have provided for the protection of their personal data, including the right to object to processing (Article 21 of the Regulation). 4.5. According to Opinion 06/2014 on the meaning of the legal interests of the controller, dated April 9, 2014, as well as the Guidelines for automated decision-making and profiling for the purposes of the Regulation, dated February 6, 2018, Prof. of the complaint in

order to be able to process data related to health, it must be able to satisfy the conditions specified in article 9(2) as well as a condition of article 6 of the Regulation. The application of Article 9 cumulatively with Article 6 aims to provide a higher level of protection for special categories of personal data. The above includes special category data extracted or inferred from profiling activity. 5. Conclusions Taking into account the above, I am of the opinion that: 5.1. Invoking a legal basis for automated sick leave checking and profiling 5.1.1. As the Defendant mentions the complaint in her letter with Fax No.  YN2/679/A/A/1242839 and dated 29.01.2020, the Bradford System was used by the employers. Also, in the Circular dated 25.01.2011, which was signed by the Director of Human Resources, Mr. XXXXX and sent for information to the staff of the Complainant, the following passages are mentioned "It has been established that the average sick leave in EAC shows an increasing trend in recent years, with a corresponding increase in the cost of sick leave for the Authority." "The Service recognizes that some degree of sickness absence is unavoidable. However, employees are expected to keep sickness absence to a minimum and maintain their level of attendance at the highest possible level." 5.1.2. From the above, it can be concluded that the purpose of creating and maintaining the file in question by the Bradford Contributor was the monitoring of sick leaves using 29 for monitoring and controlling the receipt of sick leaves and by extension its limitation. Furthermore, the Plaintiff has stated that the reason for implementing the Bradford system was the increasing trend of sick leave and the consequent criticism she received from the Auditor General in relation to this increase. Thus, in the context of managing sick leaves at acceptable (according to the complaint) levels, the Control Management System was adopted. Again according to the Complaint, the intended consequence of repeated abuse of sick leave could lead to a violation of provisions of the EAC (Terms of Service) Regulations and/or the Disciplinary Code. What would be considered "abuse", however, was directly linked to the scoring effect that would be created by the use and processing of the data in the Bradford system. 5.1.3. Furthermore, I do not agree with the position of the Complainant that the processing can be legally supported in Articles 6(1)(b) and (c) and 9(2)(b) of GDPR 2016/679. Under no circumstances may the provisions of Article 6(1)(b) apply (the use of the Bradford system is necessary for the performance of a contract to which the data subject is a contracting party), since such processing in order to be permissible/ legal must be provided for by labor law and this does not exist in this case. The same applies to the invocation of Article 6(1)(c) and 9(2)(b). There is no relevant legal regulation regarding the use of such a system in the workplace. A system, which using automated processing and using a standardized mathematical formula (in which essentially the number of cases of absence due to sick leave (frequency) is squared and multiplied by itself), identifies and profiles employees, who theoretically "abuse" the right to

receive sick leave, aiming to evaluate and make decisions which may produce (beyond the stigmatization of the employee in question) legal results for him. 5.1.4. It is also not possible to invoke consent on behalf of the employees through their Trade Unions. Due to the employer-employee dependency relationship, the issue of obtaining consent from the employees is irrelevant, since such consent cannot be considered as "free" whereby the employee "declares that he agrees, by statement or clear affirmative action, to the personal data concerning him are the subject of processing." (article 4(11) of the Regulation). 5.1.5. In the event that the invocation of legality was applicable on the basis of Article 6(1)(f) of the Regulation, then the processing would be permitted subject to the application of the weighing of the legal interests of the controller against the interests or the fundamental rights and freedoms of the data subjects. 5.1.6. In such a case, the Complaining Defendant should conduct and present a Legal Interest Assessment, documenting that her legal interests outweighed the interests or fundamental rights and freedoms of the employees, which she did not do. However, I agree with the position put forward by the Defendant in the complaint, that Article 6(1)(f) of the Regulation cannot be invoked, since the Defendant in the complaint falls under the term "public authority". 30 5.2. Taking into account the excessive nature of the profiling of the Complainant's employees, based on the score they received through an automated system, using the Bradford Coefficient, and the possibly inaccurate information/results that were extracted, since:  the employees were scored according to frequency of sick leave they received, without necessarily being confirmed, beyond all doubt, that they presented false sick certificates, and  without there being any legal framework that prohibits taking sick leave on certain days of the week/month and/or frequently and /or systematically,  or any legal framework that allows the use of automated decision-making and/or taking measures whichproduced legal results or significantly affected the employees in a similar way, indicatively I should mention that in the Note dated 25.1.2011 which had been circulated, one of the measures to be taken during the third stage would be to refer the employee to a medical officer of the Authority to ascertain whether he is fit to perform his duties, and subsequently not to accept any additional certificate if this was not also certified by a medical officer of the EAC, while in the fourth stage a relevant (adverse of course) report would be prepared for the employee, and 5.3. Given that the processing carried out through the automated system using the Bradford Coefficient concerned special categories of personal data (data relating to health - Article 9 of the Regulation) and therefore Article 9 must be applied cumulatively with Article 6, it follows that : The considered processing lacks a legal basis, since there is no legal regulation in relation to the use of such a system in labor law, so that the processing in question can be based on Article 6(1)(b) and (c) or 9 (2)(b) of the Regulation. In addition, the data subject should

have the right not to be subject to a decision, which significantly affects him and "consisting of any form of automated processing of personal data for the assessment of personal aspects ... in particular the analysis or prediction of aspects that concern performance at work," since this is not expressly provided for by Union or Member State law and in particular when automated decision-making and profiling is based on special categories of personal data. 5.4. By the way, I consider it appropriate to mention that the keeping of an Activity Record by the Complainant is not evaluated in the context of examining this case. 5.5. The processing, through an automated system, using the Bradford Coefficient, was carried out for 9 years (January 2011-January 2020), even if it was under-functioning from the end of 2016 until it was completely stopped, in violation of the current legislative framework, given that, lacking a legal basis. judged 31 5.6. While the Complainant: (a) Created, maintained and operated for nine years, an automated system that included personal data related to the health of employees (special categories of personal data, which receive increased protection due to their sensitive nature), which were subjected to processing using the Bradford Coefficient, (b) and never informed me of the carrying out/carrying out of such processing, nor did it voluntarily stop it completely, except when it became aware of my similar Decision against the company Louis et al. as it was published on the website of my Office on 13.1.2020, and the relevant imposition of an administrative sanction in the form of a monetary penalty in that case to the Defendants of the complaint. It should be noted that my letter dated 21.1.2020 to the Complainant, it was sent after members of her staff informed me by phone about the operation of the system in question. 5.7. The Complainant admitted to carrying out the illegal processing resulting from the observance of an automated system, using the Bradford Coefficient since (a) Ms. XXXXXX, with her electronic message dated 14.01.2020, to the Senior Director of Human Resources of Ms. the complaint, recommended the abolition of the sick leave monitoring process-Bradford System (Δ-Α-048) (Annex 2 of Ms. XXXXXX's letter, dated January 29, 2020). In her second email dated 14.01.2020, Ms. XXXXXX informed the staff of her complaint of the link where my Decisions are posted on the website of my Office, emphasizing my Decision against the LGS Handling Companies Ltd, Louis Travel and Louis Aviation, in which I ruled that the grading of employees' sick leave using the Bradford Coefficient lacks legal basis and is therefore illegal (Annex 3 of Ms XXXXXX's letter dated 29 January 2020). (b) Subsequently, Ms. XXXXXX, Assistant Sub-Divisional Officer of the Time Management Department of the Complainant's Human Resources Department, sent an email on January 16, 2020 to the members of the Quality Management System, which states that “... .the application of Procedure DA-048 concerning the monitoring of sick leave-Bradford System" (Annex 4 of the letter of Ms. XXXXXX, dated January 29, 2020) is stopped immediately. (c) In her

second electronic message, dated January 27, 2020, to the staff of the Complainant's Head Offices, Mrs. XXXXX states that: "... the application of the Δ-Α-048 Procedure which regarding sick leave tracking - Bradford System. 32 The completion of form E-A-051 (return to work interview after sick leave) is also immediately interrupted" (Appendix 4 of the letter of Ms. XXXXXX, dated January 29, 2020). 5.8. I should also mention that there would be no difference if the processing in question was carried out manually, since again there would be a lack of legality (legal basis) of the processing, since, according to the provisions of article 2(1) of the Regulation, the Regulation applies to the fully or partially automated processing as well as the non-automated processing of data, which are included or are to be included in a filing system (see Decision of the Commissioner for Personal Data Protection v. LGS Handling Ltd et al., dated October 25, 2019). 6. Penalties 6.1. As defined in the provisions of article 83(5) of the Regulation, a violation of the provisions of articles 6 and 9, "in accordance with paragraph 2, administrative fines up to EUR 20 000 000 or, in the case of businesses, up to 4 % of the total of worldwide annual turnover of the previous financial year, whichever is higher'. 6.2. Paragraph 2 of article 83 of the Regulation is quoted in its entirety: "2. Administrative fines, depending on the circumstances of each individual case, are imposed in addition to or instead of the measures referred to in Article 58(2)(a) to (h) and Article 58(2)(j). When deciding on the imposition of an administrative fine, as well as on the amount of the administrative fine for each individual case, the following shall be duly taken into account: a) the nature, gravity and duration of the infringement, taking into account the nature, extent or purpose of the relevant processing, as well as the number of data subjects affected by the breach and the degree of damage they suffered, b) the fraud or negligence that caused the breach, c) any actions taken by the controller or the processor to mitigate the damage suffered by the data subjects, d) the degree of responsibility of the controller or the processor, taking into account the technical and organizational measures they apply pursuant to articles 25 and 32, e) any relevant previous violations of the controller or processor, f) the degree of cooperation with the control authority to remedy the violation as well as the limitation of its possible adverse effects, g) the categories of personal data affected by the breach, 33 h) the way in which the supervisory authority was informed of the breach, in particular if and to what extent the data controller or the processor notified the violation, i) in case the measures referred to in Article 58 paragraph 2 were previously ordered against the controller involved or the processor in relation to the same object, the compliance with said measures, j) the observance approved codes of conduct in accordance with article 40 or approved certification mechanisms in accordance with article 42 and k) any other aggravating or mitigating factor resulting from the circumstances of the specific case, such as the financial benefits obtained or losses avoided, directly or indirectly,

from the violation." 7. Penalty assessment 7.1 Taking into account the provisions of Article 83 of the Regulation concerning the General Conditions for the imposition of administrative fines and Article 32(3) of Law 125(I)/2018, during the assessment of the administrative fine I took into account the following factors: (a) The nature of the violation: I take into account as an aggravating factor, the fact that the violation concerns the professional life of the complainants in the context of the employment relationship and the European Court of Human Rights has ruled in relation to the provision of Article 8 of ECHR thatprotection of "private life" based on this article, does not exclude it
professional life of employees and is not limited to life within the place
residence.
(b) The duration of the offence: As an aggravating factor, I take into account
the long period of time that took place, the without legal basis, processing
(2011-2020). On the other hand, as a mitigating factor, I take into account the fact
that the system had begun to malfunction since the end of 2016 and in particular
from 2018 onwards, as well as the fact that GDPR 2016/679 entered
in effect after May 25, 2018. However, processing continued
until January 16, 2020, when it was completely terminated.
(c) The number of data subjects affected by the breach: As
aggravating factor, I take into account the large number of those affected
data subjects, since the Complainant had more than 2000
employees in the year 2018, whose data had already happened
processed through the Bradford system since 2011.
(d) Actions taken by the controller to mitigate
the damage: As a mitigating factor, I take into account the fact that there was
differentiation and exclusion of employees from the system, where applicable
that the sick leaves concerned long-term sick leaves, or leaves
pregnancy and chronic diseases, as well as the fact that after 2018, on
in most cases only the least intrusive way was applied,

of completing the return to work interview form.

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(e) The degree of cooperation with the control authority for its remediation

offense: I also take into account as a mitigating factor, the fact that

The Complainant fully cooperated with my Office and as soon as

The Complainant's Office of the Ombudsman was aware of the issuance of a similar one

Decision, made the corresponding recommendations to her superiors. There wasn't

complete cessation of processing with the Bradford system on January 16, 2020;

(3 days after the publication of the other Decision) and before Ms.

of the complaint, the first letter from my Office, to investigate it

present complaint.

(f) the categories of personal data affected: As

aggravating factor, I take into account the type of data that occurred

processing and which related to the processing of special categories of personal

data (sick leaves).

(g) the manner in which I became aware of the infringement: I take into account

as a mitigating factor, the fact that from 2011 until the end of 2016

where the system was fully operational, I had not received any formal complaints

by data subject, but not even after the system

was underperforming, until recently where I received a verbal update when

another related Decision of mine was made public.

(h) I take into account as an aggravating factor, the fact that the violation of

Articles 6(1) and 9(2) of the Regulation took place during the processing

personal data of data subjects in the field of

labor relations, where it is characterized by imbalance

power between

employer and employees. The importance attributed by the Regulation to

processing of personal data in labor relations, demonstrated by

the fact that it is provided according to Article 88 thereof, to the National Legislator n

possibility of establishing special rules in order to ensure protection

the rights and freedoms of workers, incl

appropriate and specific measures to safeguard human dignity, of

legal interests and the fundamental rights of persons to

which the data refer to, with

special emphasis on systems

monitoring in the workplace (see Decision of the Protection Commissioner

Personal Data v. LGS Handling Ltd et al., date October 25, 2019).

(i) I also take into account as an aggravating factor, the fact that h

violation of articles 6(1) and 9(2) of the Regulation concerns its entirety

personnel and it is not an isolated or occasional breach of

burden of some of the employees, but for a violation that is systemic

(structural) nature, as it relates to the controller's policy (Professor

of the complaint) in relation to the legal basis of the processing. (see Decision

Commissioner for Personal Data Protection v. LGS Handling Ltd et al., date

October 25, 2019).

(j) I take into account as an aggravating factor, the fact of causing harm

to the right to protect employees' personal data from

the violation of the aforementioned articles and in particular the misguided one

impression created by the Complainant to the employees

that the processing of personal data concerning them takes place

with the legal basis of contract execution (Article 6(2)(b) of the Regulation), of

compliance with a legal obligation

(Article 6(2)(c)) and execution

obligations and rights of the controller or the subject thereof

data, in the field of labor law and social security law

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I remind you that it does not exist

and social protection (Article 9(2)(b)).

any legal basis to support these positions.

(k) I take into account as a mitigating factor the misconception that

Kathy had the complaint and which was strengthened even more after the

awarded by OEB in 2014, with the Innovation Award in its category

Wider Public Sector, in relation to the implementation of the Bradford system.

According to the content of the Application for an award, the Complainant

had stated that it was “the first company to import, adapt and

systematically applies the specific system", as it was considered ""best in

class"" and had been invited to present the system in question to "General

Directorate of the Ministry of Health, the Cyprus Police, the Union of Municipalities and

Communities of Cyprus, the University of Cyprus and the Telecommunications Authority

Cyprus, which is in pilot application of the system". This

demonstrates, the magnitude of the fallacy which was possessed in a large part of it

public service, in relation to the legality of the application in question

systemic.

(l) Finally, I note that according to article 32(3) of Law 125(I)/2018, the

maximum amount of administrative fine imposed on a public authority or public

body, is the amount of two hundred thousand euros (€200,000).

8. Conclusion

8.1 In light of the above, I have decided that, the grading of permits

sickness of the employees of the Complainant - Electricity Authority

of Cyprus, using the Bradford Coefficient, lacks legitimacy, since

none of the provisions of Articles 6(1) and 9(2) of the Regulation shall apply.

Therefore, by virtue of the powers conferred on me by the provisions of sub-section (i)

of paragraph (2) of Article 58 of the Regulation, I DECIDED as follows:

I impose on the Defendant the complaint - Cyprus Electricity Authority, under

her capacity as data controller, the fine of €40,000.00 for her

committing a breach of its obligation under Articles 6(1) and 9(2) of

Regulation.

Irini Loizidou Nikolaidou

Data Protection Commissioner

Personal Character