

FOR PRIVACY PROTECTION AND STATE TRANSPARENCY Tatari tn 39 / 10134 Tallinn / 627 4135 / info@aki.ee /

www.aki.ee Registration code 70004235 PRELIMINARY WARNING in personal data protection case no. 2.1.-1/21/3287 Issuer of the injunction Data Protection Inspectorate lawyer Virve Lans Time and place of the injunction 19.01.2022 in Tallinn

Recipient of the injunction - personal data processor Aktiaselts PlusPlus Capital address: Tartu mnt 83, 10115 Tallinn e-mail address: info@pluspluscapital.eu Responsible person of the personal data processor Board member

RESOLUTION: On the basis of § 56 (2) point 8, § 58 (1) of the Personal Data Protection Act (IKS) and Article 58 (1) point (d) and (2) points (g) and (f) of the General Regulation on Personal Data Protection, also taking into account Articles 5 and 6, I issue a mandatory injunction for compliance: 1. The companies belonging to the PlusPlus Capital group stop processing personal data of debtors' close relatives; 2. The companies belonging to the PlusPlus Capital group must delete the personal data of debtors' close relatives collected so far; I set 10.02.2022 as the deadline for fulfilling the injunction. Report compliance with the order to the e-mail address of the Data Protection Inspectorate at info@aki.ee by this deadline at the latest.

REFERENCE FOR DISPUTES: You can contest this order within 30 days by submitting either: - an appeal in accordance with the Administrative Procedure Act to the Data Protection Inspectorate or - an appeal in accordance with the Administrative Court Procedure Code to the Tallinn Administrative Court (in this case, the appeal in the same matter cannot be reviewed). Challenging a precept does not stop the obligation to fulfill it or the implementation of measures necessary for fulfillment.

EXERCISE MONEY WARNING: If the injunction has not been complied with by the specified deadline, the Data Protection Inspectorate will issue the addressee of the injunction on the basis of § 60 of the Personal Data Protection Act: Extortion money of 5,000 euros for each unfulfilled injunction point. A fine may be imposed repeatedly - until the injunction is fulfilled. If the recipient does not pay the penalty, it will be forwarded to the bailiff to start enforcement proceedings. In this case, the bailiff's fee and other enforcement costs are added to the enforcement money.

MISCONDUCT PUNISHMENT WARNING: Failure to comply with the prescription under Article 58(2) of the Personal Data Protection General Regulation may result in a misdemeanor proceeding based on § 69 of the Personal Data Protection Act. For this act, a natural person may be fined up to EUR 20,000,000, and a legal person may be fined up to EUR 20,000,000 or up to 4 percent of its global annual turnover of the previous financial year, whichever is greater. The out-of-court procedure for a misdemeanor is the Data Protection Inspectorate.

FACTUAL CIRCUMSTANCES: On 06.10.2021, the Data Protection Inspectorate received a complaint from the data protection authority of the Republic of Lithuania through the cross-border processing system IMI, regarding the contact of a resident of the

Republic of Lithuania XXX via Facebook Messenger and the transmission of his personal data via Facebook Messenger to third parties by the employee XXX of the PlusPlus Baltic OU Lithuanian branch. On 27.10.2021, we forwarded an inquiry to PlusPlus Capital AS, in which we wanted to know who makes decisions related to the processing of personal data in companies belonging to the PlusPlus Capital group. On 05.11.2021, PlusPlus Capital AS responded to the inspection's inquiry, in which it confirmed that PlusPlus Capital AS is the responsible processor in companies belonging to the PlusPlus Capital group and determines the purposes and means of personal data processing and adopts decisions related to personal data processing. On 10.11.2021, the inspectorate forwarded an inquiry to PlusPlus Capital AS, in which we wanted to know what personal data PlusPlus Capital AS or another company belonging to the PlusPlus group has about XXX, on what legal basis and purpose XXX personal data is processed, whether PlusPlus Capital AS or another company belonging to the PlusPlus group the company has contacted XXX and using which channels. We also wanted to know whether PlusPlus Capital AS or another company belonging to the PlusPlus group has contacted XXX's relatives or acquaintances, including his mother XXX, and what personal data has been transmitted and for what legal basis and purpose it has been done. On 25.11.2021, PlusPlus Capital AS responded to the inspection's inquiry and forwarded the relevant documents.

EXPLANATION OF PERSONAL DATA PROCESSOR:

1. Personal data that PlusPlus Capital and PlusPlus Baltic OÜ have about XXX: name, personal identification number, contact information, data related to contracts with Esto UAB, description of communication with the data subject and related data
2. Personal data is processed to fulfill the contract concluded with the participation of the data subject (GDPR Art. 6 (1) b)), to fulfill PlusPlus Capital's legal obligations (GDPR Art. 6 (1) c)) and also on the basis of PlusPlus Capital's legitimate interest (GDPR Art. 6 (1) f). PlusPlus Capital buys portfolios of financial receivables from banks, lenders, electronic communications companies and other similar companies. PlusPlus Capital acquires the claims on the basis of the assignment of claims agreement concluded with the original creditor, taking the place of the previous creditor and becoming the new owner of the claims. PlusPlus Capital has also acquired Esto UAB's claim against XXX. The purpose of personal data processing is the fulfillment of PlusPlus' business interests and goals, i.e. the successful satisfaction of the claim.
3. XXX has been contacted by the employees of PlusPlus Capital's subsidiary PlusPlus Baltic OÜ Lithuanian branch (registration code 303012217) and they have used the following channels for this purpose: registered mail, regular mail, e-mail, Facebook Messenger, telephone.
4. The Lithuanian branch of PlusPlus Baltic OÜ has contacted XXX via Facebook Messenger. XXX sent XXX's first and last name and year and month of birth. Exact translation of the message sent by XXX: "Hello! I would like

to ask if you know XXX who was born XXX XXX? ". The legal basis for the processing of personal data - including transmission - was PlusPlus Capital's legitimate interest and the purpose was to forward the contact request to the debtor (see the legal interest analysis in Appendix 2 for more details). 5. The Lithuanian branch of PlusPlus Baltic OÜ has contacted XXX (see point 4 for more details). We further explain here that PlusPlus Capital bought the claim against XXX from Esto UAB (as the creditor that issued the loan) and thus acquired all the creditor's rights as a result of the assignment, including the right to demand the debtor to fulfill its obligation. Contrary to the argument presented by XXX, the assignment of the claim was legal and the Lithuanian branch of PlusPlus Baltic OÜ informed XXX about the assignment of the claim (as the client also explicitly stated in his complaint to the Lithuanian supervisory authority). The surrender notice was sent to XXX's known address. Among other things, the transfer notice clearly stated that: (i) the Lithuanian branch of PlusPlus Baltic OÜ acted as the representative of the new creditor for PlusPlus Capital; and (ii) the privacy notice applicable to the legal relationship is available on the PlusPlus website. Although XXX had received the assignment notice, it did not contact the Lithuanian branch of PlusPlus Baltic OÜ to inform about the alleged circumstances related to the original loan. Only after the Lithuanian branch of PlusPlus Baltic OÜ had tried to contact the customer using all other available contact details regarding the claim, it was finally possible to reach the customer via Facebook Messenger. After a short exchange of messages, XXX blocked the customer manager of the Lithuania branch of PlusPlus Baltic OÜ. Only after that, the customer manager tried to contact XXX's mother via Facebook, with the aim of conveying to the customer only a request to get in touch. For this purpose, only a minimal amount of information (name, month and year of birth) was disclosed to XXX's mother. The creditor attempted in good faith to contact XXX and his mother regarding a claim known to the creditor to be due and valid, and given that the customer had knowingly ignored and/or actively avoided all previous attempts to contact him through other means. In doing so, the creditor also followed the principle of minimal personal data. Based on this, we find that the processing of personal data referred to by XXX was not unlawful and both PlusPlus Capital and the Lithuanian branch of PlusPlus Baltic OÜ acted in accordance with the current legislation regulating the processing of personal data. XXX has also contacted the Lithuanian branch of PlusPlus Baltic OÜ at the moment, in order to reach an agreement to pay the debt. 6. Yes, legitimate interest has been relied upon, among other things. We hereby present the analysis requested by AKI. AS PlusPlus Capital's legitimate interest consideration decision states, among other things: AS PlusPlus Capital (hereinafter "controller") has a legitimate interest in the following personal data processing operations: Collection of information, the purpose of which is to contact the debtor. Information may be collected by

talking to the debtor's relatives, asking the debtor's relatives to forward the contact notice to the debtor if possible. Using public sources (including Google, Facebook, registers) for the purpose of gathering information about the debtor's close family members, to get in touch with the debtor's close family members and, as a result, ultimately with the debtor. Since one of the activities of the data controller is debt collection, the processing of personal data in question is directly related to the commercial purpose of the data controller. At the same time, the data controller is itself a creditor - i.e. debt collection is not offered as a service to third-party creditors. The purpose of said personal data processing operations is to find a way to contact the debtor, which is necessary for debt collection. The controller uses the measures described above to seek contact with the debtor only if the usual contact options have been exhausted without results. The controller has an interest in directing the debtor to fulfill his obligations. Such interest is legitimate in its nature (i.e. there is no illegal purpose) and is not speculative (in practice, communication with close relatives gives effective results; debtors knowingly ignore the creditor's protections to contact the debtor directly). The fact that the controller in this case has a legitimate interest in the processing of the personal data of the debtor and the debtor's immediate family is also supported by recital No. 47 of Regulation (EU) 2016/679 of the European Parliament and of the Council (hereinafter referred to as "GDPR"), according to which a legitimate interest may exist for example, when there is a relevant and appropriate relationship between the controller and the data subject. In this case, the controller has a financial claim against the debtor. Such a relationship between the controller and the debtor can be considered a relevant and suitable relationship, as a result of which the controller has a legitimate interest in processing personal data for the purposes described above. Even more, GDPR Art. 6 (1) (f), it is permitted to process even special types of personal data if the processing is necessary for the establishment, presentation or defense of legal claims. In this case, it is not a special type of personal data processing, and despite the fact that an analogous basis has not been expressly stated in GDPR Article 6 (i.e. if it is not a special type of personal data processing), based on the practice of the European Court of Justice, it has been confirmed that the processing of personal data, which is necessary to prepare, present or defend a legal claim can be based on a legitimate interest (see, among others, C-13/16 p. 29), and in such a case, the data subject's rights are also limited (see GDPR Art 17 (3) e). However, in order to rely on a legitimate interest, it is necessary to check its admissibility under GDPR Art. 6 (1) (f) - this means that such an interest must not be outweighed by the interests or fundamental rights and freedoms of the data subject. The processing of personal data in question is important and necessary for the data controller, because without it the data controller will not be able to fulfill the set purpose. The processing of

personal data in question takes place in a situation where the controller fails to contact the debtor using usual channels or using known contact details, in order to explain to him the circumstances related to the debt and the possibilities for fulfilling the obligations. In this situation, the debtors often do not respond to the creditor's phone calls and other inquiries in order to avoid fulfilling their obligations. Communication with the debtor's relatives is necessary in such a situation in order to obtain information about the debtor's (possible) location or to ask the debtor's relatives to leave a message for the debtor. The debtor's close relatives are the persons who are most likely to have some information about the debtor's whereabouts and activities. There are also alternatives to achieve the goal, but they would require a disproportionate effort by the controller. Possible alternatives (e.g. going to court, applying the help of a bailiff) would be significantly more ineffective, time-consuming and costly for the data controller than asking for additional information from the debtor's relatives. An out-of-court settlement of the matter is also in the debtor's own interest. Therefore, the processing of personal data is necessary to achieve the purpose.

GROUND FOR DATA PROTECTION INSPECTION: I Processing of personal data of a natural person There must be a legal basis for processing personal data. The legal basis comes from Article 6 of the IKÜM. Regardless of the legal basis, the data processor is obliged to follow, among other things, the principles set forth in Article 5 of the IKÜM, including the provisions of Article 5(1)(a), (b), (c): - Processing is legal, fair and transparent to the person; - Personal data are collected precisely and clearly for specified and legitimate purposes - Personal data are relevant, important and limited to what is necessary for the purpose of their processing (collection of as little data as possible). Fulfillment of the said obligation must be proven by the responsible processor (IKÜM art. 5 paragraph 2). Personal data may be processed only to the extent necessary to achieve the defined goals, and in doing so, it must be ensured that the purpose of data processing is ensured by measures that infringe the fundamental rights of the individual as little as possible. For this purpose, the data processor must always assess in advance whether data processing is unavoidably necessary to fulfill the purpose or whether it is possible to limit the fulfillment of the purpose to less intrusive measures. Data processing is, among other things, legal if it is carried out for the purpose of concluding or fulfilling a contract with the data subject. The processing of debt data is regulated by IKS § 10. Debt data may be transferred and processed for creditworthiness assessment or other similar purposes and only if the responsible or authorized processor has checked the correctness of the data to be transferred and the legal basis for the transfer of personal data and has registered the data transfer. However, the debt collection company does not have the right to share debt information with third parties (relatives, friends, acquaintances, employers, etc.) if the debtor himself has not given his consent. PlusPlus

Capital has confirmed that when contacting the debtor's relatives, a minimum amount of data is transmitted, and at the same time, the debtor's debt data is not transmitted, but the debtor is asked to pass on a message to contact the company. However, it must be taken into account that the business of companies belonging to the PlusPlus Capital group is debt collection, so there is a high probability that the debtor's close family may assume that they want to contact the debtor precisely because of his breach of obligations. Searching for a debtor through social media channels and making contact in itself is not a prohibited activity, but it must be absolutely clear that the account owner being contacted is this particular debtor. Creating an account on social media channels does not require personal identification, and each account creator has the opportunity to let his imagination fly and put a username accordingly. It is also not uncommon for there to be several people with the same name. There must not be a situation where personal data is transferred to outsiders. When processing personal data, the reasonable expectations of the data subject must also be taken into account in every processing, i.e. that his personal data is not processed in a way that he cannot reasonably foresee. The close relatives of the debtor cannot reasonably expect that their personal data will be processed in connection with the debts of someone they know, a relative, etc.

II Legitimate interest

According to article 6 paragraph 1 point f of the IKÜM, the processing of personal data is legal if the processing of personal data is necessary for the legitimate interest of the data controller or a third party, unless such interest is outweighed by the interests of the data subject or the fundamental rights and freedoms for which personal data must be protected. Thus, Article 6 paragraph 1 point f of IKÜM stipulates three conditions, all of which must be met in order for the processing of personal data to be permitted:

- The controller or third parties have a legitimate interest in data processing
- The processing of personal data is necessary for the exercise of a legitimate interest
- The controller and/or the third party's legitimate interest is outweighed by the interests, fundamental rights and freedoms of the protected data subject.

In order to assess the existence of a legitimate interest, the responsible processor is obliged to compare its own legitimate interests with the interests and fundamental rights of the data subject, as a result of which it becomes clear whether it is possible to rely on IKÜ Article 6(1)(f) as the legal basis for processing. The controller's legitimate interest is only one of the elements that must be analyzed, and whether the basis of legitimate interest can be relied on depends on the results of the balancing. It is the responsibility of the controller to make sure whether the legitimate interest provision can be relied on, who must carry out the consideration in a transparent manner and be able to justify it. Having described the interests of the parties, it is necessary to assess whether the impact caused by data processing on the data subject is proportional to the requested goal. An infringement of fundamental rights and freedoms is

excessive if there is another means that helps to achieve the set goal just as well, but does not infringe the rights of the individual as strongly. A measure is proportionate only if it is appropriate, necessary and moderate to achieve the stated goal. A remedy is appropriate if it facilitates the achievement of the goal of the restriction. A remedy is necessary when the goal cannot be achieved with another, less burdensome remedy. In order to assess moderation, the importance of the interests of the data subject and the extent of the infringement of rights must be considered on the one hand, and the importance of the purpose of the processing on the other hand. When weighing interests, the legitimate interest of the controller or third party is placed on one scale, and the interests and rights of the data subject on the other. When weighing the interests, the possible impact on the data subject from the processing (collection, use, storage) of personal data is compared with the legitimate interests of the controller, and it is assessed whether and to what extent the legitimate interest of the controller outweighs the interests of the data subject. When weighing the interests and evaluating the impact on the data subject, the reasonable expectation of the data subject must also be taken into account, i.e. that his personal data will not be processed in a way that he cannot reasonably foresee, and whether less intrusive methods enable the controller's goals to be achieved. An infringement of fundamental rights and freedoms is excessive if there is another means that helps to achieve the set goal just as well, but does not infringe the rights of the individual as strongly. If the impact on the data subject is very large, but the weight of the personal data processor's interests is small, then a firm decision can be made: the interference is disproportionate and the planned personal data processing is not allowed. The more intense the infringement of the data subject's rights, the more compelling the reasons justifying it must be.

2.1. AS PlusPlus Capital's legitimate interest in processing personal data of the debtor's close family

If the debtor cannot be contacted using the means of communication and addresses provided by him, PlusPlus Capital collects data about the debtor's close family from public sources and relies on a legitimate interest in this activity (IKÜM Article 6(1)(f)). PlusPlus Capital AS has submitted a consideration decision to the inspectorate to collect personal information about debtors' close relatives based on legitimate interest. In point 2 of its consideration decision, PlusPlus Capital AS has pointed out that there are also alternatives to achieve the goal (appeal to the court, using the help of a bailiff), but they would require disproportionate efforts and would be significantly more ineffective, time-consuming and costly than asking for additional information from the debtor's relatives. An infringement of fundamental rights and freedoms is excessive if there is another means that helps to achieve the set goal just as well, but does not infringe the rights of the individual as strongly. Alternative measures (appeal to the court, applying the help of a bailiff) exist, they are

less offensive measures for the debtor's relatives. In addition, the legitimate interest cannot be based on economic considerations, so PlusPlus Capital cannot rely on the fact that alternative measures would be significantly more ineffective, time-consuming and costly for the controller when processing personal data of the debtor's close relatives. In this case, the inspectorate does not see that the basis of legitimate interest or any other basis given in Article 6 of the IKÜM can be relied upon in connection with the processing of personal data of debtors' close relatives. The debtor's close relatives are in no way related to the debtor's debt, they cannot reasonably expect that their personal data will be processed in connection with the debts of someone they know, relative, friend, etc. It also shows that there are alternative measures to achieve the goal. Therefore, the encroachment on the fundamental rights and freedoms of the debtor's relatives is excessive.

Summary When processing personal data, the reasonable expectations of the data subject must be taken into account in every processing, i.e. that his personal data is not processed in a way that he cannot reasonably foresee. Debtors cannot reasonably expect that information related to their debt can reach their immediate family. Also, the close relatives of the debtor cannot reasonably expect that their personal data will be processed in connection with the debtor's debt. The companies of the AS PlusPlus Capital group have a legal basis for processing the debtor's data, but the inspectorate does not see that personal data of the debtor's close relatives can be processed on the basis of a legitimate interest. The debtor's close relatives are in no way related to the debtor's obligations, they cannot reasonably expect that their personal data will be processed for such a purpose, so it is clearly an infringement of their fundamental rights and freedoms, and such an infringement cannot be justified by the company's economic considerations, even more so if there are alternative measures to achieve the goal. Due to the above, PlusPlus Capital cannot rely on Article 6(1)(f) of the IKÜM to process the personal data of the debtor's close family members.

The controller of personal data is obliged to follow the General Regulation on the Protection of Personal Data, including Articles 5 and 6, when processing personal data. When processing personal data on the basis of a legitimate interest, the IKÜM principles of purposefulness and minimality must be fully followed. Personal data may be processed only in the case and to the extent that it is really necessary to achieve the specified goals and provided that there are no less intrusive measures to fulfill this goal. The cost of an alternative measure that infringes on privacy less or not at all cannot be the sole determinant. If the processing of personal data does not comply with the principles set forth in Article 5 of the IKÜM, the processing of personal data is prohibited. IKÜM is responsible for fulfilling the principles set forth in Article 5, and their fulfillment must be proven by the data processor. According to IKS § 58 paragraph 1 point d and IKÜM article 58 paragraph 2 points f and g, the

inspectorate has the right to impose a ban on the processing of personal data and to issue an order for the data processor to delete personal data. Based on the above, I find that issuing an injunction is necessary and justified in order to stop the violation of the law. /signed digitally/ Virve Lans lawyer under the authority of the director general