OFFICE FOR PERSONAL DATA PROTECTION

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* UOOUX00EGYWN *

Ref. UOOU-04103 / 19-31

DECISION

The President of the Office for Personal Data Protection as the appellate body competent under the provisions

§ 10 and § 152 paragraph 2 of Act No. 500/2004 Coll., Administrative Procedure Code, decided in accordance with the

provisions of § 152 paragraph 6

letter b) of Act No. 500/2004 Coll., Administrative Procedure Code, as follows:

Dismissal of the party to the proceedings, the company XXXXXX, against the decision of the Office for Personal Protection

data ref. UOOU-04103 / 19-25 of 30 June 2020, is rejected and the contested decision

is confirmed.

Justification

Definition of things

[1]

Administrative proceedings conducted under file no. UOOU-04103/19, in case of suspicion of committing

offense according to § 62 par. 1 let. b) of Act No. 110/2019 Coll., on the processing of personal data,

in connection with the processing of personal data of members of the unit owners' committees

and members of the community of unit owners in insolvency on the website XXXXXX, was

initiated by delivery of order no. UOOU-04103 / 19-10 on February 13, 2020 accused the company

XXXXXX (hereinafter "the accused").

[2] The basis for issuing the order was the file material collected during the inspection

sp. UOOU-10021/18 kept by the Office for Personal Data Protection (hereinafter referred to as the "Office")

for the accused from 12 February 2019 to 31 July 2019, including the settlement of the President's objections

Office ref. UOOU-10021 / 18-21 of 23 July 2019.

[3] For the application of the legislation, it is necessary to state that it entered into force on 24 April 2019
Act No. 110/2019 Coll., on the processing of personal data, which follows directly applicable
European Union regulation, ie Regulation No. 2016/679 of 27 April 2016 on the protection of natural
persons with regard to the processing of personal data and on the free movement of such data and on cancellation
Directive 95/46 / EC (hereinafter referred to as "Regulation (EU) 2016/679"). Due to the fact that during

committing the wrongdoing of the accused there was a change in legislation, the administrative body had to
having regard to the continuing nature of the infringements specified in its statements
assess the decision (ie the order and subsequently also the decision challenged by the defendant)
liability of the accused for its wrongdoing under the law in force at the time it occurred
to complete the negotiations. At the same time, it is clear that this meeting lasted at least until 7 October 2019. Administrative
the first-instance body therefore assessed the conduct accused pursuant to Act No. 110/2019 Coll.

[4] According to the file collected, on 11 November 2018, as well as
On December 12, 2018, the Office received a complaint from which it was clear that personal data
the applicant's name, surname and address, which is the same as the registered office
unit owners' associations (SVJs) are unjustified without his consent
published on the website of the accused XXXXX in connection with his activities as a member
Committee XXXXXX. Finally, the complainant stated that this was a disproportionate interference with the private
the lives of the persons mentioned in the published information.

[5] Subsequently, on the basis of the above complaint, the Office analyzed the above
website. The complainant's personal data and data were found to be published here
other members of the Community Owners Committee XXXXXX. The complainant was therefore advised to raise
objection to such processing pursuant to Article 21 of Regulation (EU) 2016/679 if it does not agree
processing of your personal data. The complainant submitted to the Office an objection to the processing of his
personal data of 30 October 2018, which he filed with the accused, in which he requested it, in accordance

with Article 17 of Regulation (EU) 2016/679, on the deletion of your personal data. In the opposition also stated that, pending the settlement of this objection, it exercised the right to restrict processing under Article 18 Regulation (EU) 2016/679.

[6] The accused responded to this request for deletion of personal data by letter dated 30 November 2018, in which she informed the complainant, inter alia, that his personal data were so-called public unrestricted information, which the public administration publishes without any Anyone has restrictions and access to all information without further conditions. Accused for that stated that it performed the so - called balance test and came to the conclusion that the preconditions for processing of personal data from the public register on the basis of a legitimate interest, without necessity obtaining the consent of the data subject under Regulation (EU) 2016/679. Accused of this communication The complainant responded by letter received by the Office on 21 January 2019, stating that that, following the objection lodged, the defendant did not prove to him that her legitimate interest outweighed it his rights.

[7] On 12 February 2019, the Office initiated an inspection of the accused in relation to compliance with obligations resulting from Regulation (EU) 2016/679, by delivering a notice of initiation of the inspection, in which he also requested the submission of the documents specified in the notification. On it Executive XXXXXX, as the accused's statutory body, responded by letter dated 22 February 2019, in stating that the XXXXX application is an online non-commercial open source social project and published data. Volunteers work on it exclusively in their free time and has none employees. XXXXXX He informed the Office that he is not a citizen of the Czech Republic, he currently lives in Scotland and for this reason he will contact a lawyer who will represent him in the inspection. On March 7 2019 The Office received a letter from the lawyer accused XXXXXX, a lawyer, in which he stated that he took over the legal representation of the accused, as evidenced by a written power of attorney dated 4 March 2019. The defendant's lawyer attached to his letter the required documents, which are part of the file.

[8] The documents submitted to the Office also included the document "Protection Impact Assessment personal data ", which shows, inter alia, that the application of the accused contains its own database, which contains publicly available data from the ARES (Register of Economic Entities) and ISIR registers (insolvency register), which the accused downloads and processes. The database accused is regular overwritten every day and thus always contains the latest data, when the published data are for website XXXXXX essential entities from the register of unit owners and for these subjects are processed published data: SVJ ID number, SVJ name, SVJ registered office and members SVJ Committee (name, surname and title of the committee member, his position and the date of commencement of his term of office) period). From the published data are essential data on current debtors, where the address the place of residence coincides with the address of some SVJ. The only ISIR data that the website publishes are the number of the insolvency proceedings and a reference to the proceedings in a publicly available application (https://isir.justice.cz/isir/common/index.do).

[9] From another document entitled "Proportionality test for the assessment of the beneficiary operator's interest "means, inter alia, that the XXXXXX website allows searches persons registered in publicly available databases in so-called open data sources, for the purpose of obtaining an overview of the performance of the care of a proper manager of the members of the statutory bodies of SVJ, when a member SVJ is an insolvency debtor who is in bankruptcy pursuant to Act No. 182/2006 Coll., Act on bankruptcy and ways to solve it. An integral part of the information contained in open data sources are personal data of the persons concerned, namely members of the statutory body and insolvency debtors. Department, resp. Anonymizing such personal information would, according to the accused the service has lost its meaning and would become worthless to users.

[10] According to the accused, the service is also set up because the search requires a certain technical skill, knowledge and orientation in public registers, which, however, most users services, ie members of statutory bodies or members of SVJ, and this is undoubtedly the reason

why they are looking for this service. The accused further refers in this document to Article 17 (1)
to 3 Resolution of the Presidency of the Czech National Council 2/1993 Coll., on the promulgation of the Charter of
Fundamental Rights
and freedoms as part of the constitutional order of the Czech Republic, and further states that the processing
personal data on the XXXXXX website is based on a legitimate interest under Article 6
paragraph 1 (a) (f) Regulation (EU) 2016/679. Further in this document states that the primary
the accused's legitimate interest is to make a profit and to exercise the right to free exercise
entrepreneurship (freedom of enterprise), including through the provision of free
services involving the processing of publicly available information containing personal data of natural persons
persons (members of the statutory bodies of the SVJ and insolvency debtors - members of the SVJ), which is a part of
its business model. Obtaining information is a secondary legitimate interest
users of the service and to be able to familiarize themselves with the public in a user-friendly way
available information, in particular to prevent damage and to protect oneself
and, last but not least, increasing the transparency of the public sphere. Further from the document
It follows that in connection with the legitimate interest in maintaining a website with personal data
members of committees and members of SVJ in insolvency, the accused assesses: a) Suitability - by providing
the information on the website provides information for the purpose of caring for the property; b) Necessity
- it is necessary for a member of the SVJ committee to comply with the legal requirement of due diligence
use information sources, in particular (but not exclusively) the insolvency register, because if so
does not do so, he is exposed to danger which may have serious consequences for SVJ, hence for him in
and c) Proportionality - unambiguous and error-free
data subject identification. Personal identification data entered into is used for this identification

operator web interface. The basic information is the name and surname of the statutory member
SVJ authority, SVJ headquarters street or SVJ ID number. The accused considers this information to be adequate and
necessarily. The accused states at the end of the document that she has a legitimate interest in

processing of personal data of the persons concerned from open data sources in the provision of the service in

within the meaning of Article 6 (1) (a) (f) Regulation (EU) 2016/679 and is authorized to process such personal data

data of the persons concerned on a legal basis of legitimate interest.

[11] The "Personal Data Processing Statement" states that the accused is

operator and administrator of personal data published on the XXXXXX website.

It is further stated here that the accused processes personal data on this website

natural persons only to the extent of the data that have been published in the official registers and as a matter of priority

processes personal data in the range of name, surname, date of birth, address of permanent residence

and personal data of natural persons in the scope of published data, which they contain officially

published registers mentioned above. These are members of the statutory bodies of the SVJ and members of the SVJ,

towards

insolvency proceedings were opened. From the file material, especially from the acquired ones

prinstscreenů shows that the accused processed the personal data of the members of the SVJ committee to the extent

position in SVJ, title, name and surname of the committee member and date from which he is a member of the committee

performed and the same data of the members of the SVJ committees were listed on the websites of the members

SVJ committees in cases where insolvency proceedings are initiated against SVJ members. Further from the document

it follows that the personal data of the members of the SVJ Committee are processed systematically and automatically, and

it obtains them from public sources, which are the insolvency register, the public register and the collection of documents

(Register of Association of Unit Owners) of the Ministry of Justice of the Czech Republic. Further is

The secondary legitimate interest accused in disseminating information from open data sources is

above all, to increase the transparency of the public sphere, increase public opportunities

control of statutory bodies of SVJ, especially care of proper manager, elimination of property

damage to SVJ and increase the enforceability of SVJ 's own receivables through their timely application in

insolvency proceedings. It also follows from this document that the accused stores personal data in

depending on their validity and after deleting them from the source register, it no longer stores them. In the next

part of the document contains information within the meaning of Articles 12 and 13 of Regulation (EU) 2016/679,

which are data on the administrator, his contact details, the purpose of processing personal data, time

processing, as well as information on the rights of the data subject within the meaning of Articles 15 to 22 of Regulation (EU)

No 1095/2010.

2016/679.

[12] From the file, in particular from the official records of 22 March 2019

and April 2, 2019, it appears that the XXXXXX website was hosted when viewed from computers

in the Office building was inaccessible and for this reason an access control was performed

via mobile devices from another IP address via another connection when

through the search engine www.seznam.cz managed to connect. Subsequently, it was done

concurrent connection to the above websites via remote

connection to facilities outside the Office and through a normal connection in the Office building.

The XXXXXX website was displayed via a remote connection, containing the text:

"CZK 117,556,158, honest owners lost in unregistered insolvencies due to inactivity

committees. ”but a text page was displayed on a computer screen in the Office building

"Error http 403, Microsoft Edge can't get to this page." That was it

documented by obtaining print screens and listings of selected pages.

[13] It is further apparent from the file that the defendant lodged a complaint against the audit findings

objections, which were rejected by the President of the Office on 23 July 2019, while pending

The statement of objections stated, inter alia, that open data that is publicly available and possible

is to be used "in the course of business or other gainful activity, for study or scientific purposes

or in the case of public control of obligated subjects ”, pursuant to Section 4b (2) of Act No. 106/1999 Coll.,

on free access to information, consider only those listed

kept in accordance with Government Decree No. 425/2016 Coll., on the list of information published as

open data and as the source personal data in question are not on this list

included in the complexity, the defendant's view that it must be justified must be rejected

interest in the very concept of open data. However, this does not a priori preclude the application of Article 6 paragraph 1 (a) (f) Regulation (EU) 2016/679. The President of the Office further stated that the accused no legitimate interest other than the above, ie that this is an immanent part of the so-called open data, did not declare in the submitted objections. By the defendant under no relevant legitimate interest has been substantiated, it is primarily excluded to apply Article 6 (1) (a) (f) Regulation (EU) 2016/679, without the need for a test within the meaning of this Regulation provision. It is further stated here that the additional publication of already published personal data in addition combined so that they multiply their information value represents a higher dimension invasion of privacy, which should be taken into account. On the other hand, it would be possible within application of Article 6 (1) (a) f) Regulation (EU) 2016/679 accept use (further processing) personal data in question to cover a specific specified legal need, e.g. recovery of a certain debt by a legitimate person without disclosure, which, of course, is not the case. And no other legal title for the processing in question personal data is then out of the question. In conclusion, the President of the Office stated that above this framework, it should be noted that if a legal title is found, others should be followed obligations imposed by Regulation (EU) 2016/679, eg to ensure the accuracy of those processed personal data, fulfill information obligations towards data subjects, etc.

[14] After settling the objections against the audit findings, she was charged with the order no. UOOU-03659 / 19-2 of 9 September 2019 imposed remedial measures, namely to delete and not further process personal data of the complainant and not to process personal data of members of SVJ committees without consent and members of SVJ not registered for insolvency. On October 9, 2019, the Office received a statement from the accused that complied with the remedial measures imposed in full, as the content of the XXXXXX website is no longer displayed as of October 8, 2019, as evidenced by the screen print from the same day.

[15] Control file no. UOOU-10021/18 was, given the seriousness of the violation of the provisions Regulation (EU) 2016/679, forwarded to the Administrative Inspector on 24 September 2019 authority of the first instance to conduct infringement proceedings.

[16] On 17 October 2020 and subsequently on 11 November 2020, it was the governing body of the first level of inspection of the website of the accused, during which it was found that that the complainant's personal data are still listed here, but by the web operator XXXXXX has been another company based in the Seychelles since 11 October 2019.

[17] Subsequently, on 12 February 2020, an order was issued by the first instance authority UOOU-04103 / 19-10 in the matter of suspicion of committing an offense pursuant to § 62 para. b) Act No. 110/2019 Coll., on the processing of personal data in connection with the processing of personal data data of members of the unit owners 'committees and members of the unit owners' association in insolvency on the XXXXXX website, which was delivered to the accused on 13 February 2020.

[18] Against the above order, the defendant filed on 21 February 2020 his legal representative XXXXXX, lawyer, resistance, thus in accordance with § 150 paragraph 3 of Act no.

500/2004 Coll., The Administrative Procedure Code revoked this order and the administrative proceedings continued. Administrative

The authority then sent the defendant 's lawyer a summons to acquaint himself with the background to the decision which he responded by letter entitled 'Opinion and observations of the party, request for an order of 12 March 2020, the content of which is set out in the statement of reasons for the decision administrative authority of the first instance. At the end of his letter, the lawyer asked the accused administrative body on the order of oral proceedings in accordance with § 80 paragraph 2 of Act No. 250/2016 Coll. On that request was replied to the defendant's lawyer by letter of 23 March 2020 that given the state of emergency caused by the global coronavirus pandemic COVID-19 and following the measures taken by the Government of the Czech Republic, the Office also asks the public to as a precautionary measure, it prioritized electronic and telephone communication over personal visit to the Office building. In view of the fact that the lawyers accused of letter of 23 March 2020 did not respond, he was contacted by telephone on 15 April 2020 p by asking whether he will respond in writing to the case or to continue the oral hearing. XXXXXX

he stated that he had terminated the power of attorney for the accused and for that reason he no longer represented it. About this

In fact, it sent a written notification to the Office dated 15 April 2020.

[19] On 20 April 2020, the administrative body of the first instance requested the President of the Office

on the consideration of the procedure according to § 80 par. 4 let. d) of Act No. 500/2004 Coll., ie the issuance of a resolution

on a reasonable extension of the statutory deadline for issuing a decision until 30 June 2020, as

reasonably assumed that a decision would be issued within that period. By resolution of 14 May

2020, the deadline for issuing the decision was extended to 30 June 2020.

[20] The accused was sent an oral hearing order of 26 May 2020, which was

ordered on 10 June 2020. The official record of 10 June 2020 shows that

that the accused was summoned to order by the fiction on 5 June 2020

and the accused did not appear at the oral hearing without a proper apology.

[21] The administration then sent the defendant a notice of the possibility of exercising its right, which

consists in getting acquainted with the documents of the decision no. UOOU-04103 / 19-24 of 10 June 2020

to which the accused did not respond.

[22] On 30 June 2020, a decision was issued by the first instance authority,

Ref. UOOU-04103 / 19-25 ('the contested decision'), by which the accused was recognized

guilty of committing an offense pursuant to Section 62, Paragraph b) of Act No. 110/2019 Coll. because she violated

one of the basic principles for the processing of personal data pursuant to Articles 5 to 7 or 9 of the Regulation

(EU) 2016/679 of the European Parliament and of the Council, which, as the controller of the personal data of the members

associations of unit-holders listed in Article 4 (7) of the Regulation

(EU)

pages

XXXXXX, processed at least from November 11, 2018, but the longest until shutdown

website on 7 October 2019 personal data of an unspecified number of members of Community committees

unit owners and members of the community of unit owners in insolvency and assigned to personal

information to members of the community of unit-holders that they are with the data subject

insolvency proceedings were conducted and at the same time attached a direct reference to the insolvency register.

web traffic

2016/679,

committed

by

at

that

[23] By doing so, the accused infringed Article 6 (1) of Regulation (EU) 2016/679, ie

the obligation to process personal data only for some legal reason

adjusted in letter a) to f) of this provision, for which it was, according to § 35 letter b) of the Act

No. 250/2016 Coll., on liability for misdemeanors and proceedings on them, and in accordance with Article 83, paragraph 5,

letter and)

Regulation (EU) 2016/679 imposed a fine of CZK 30,000.

6/10

[24] The administrative authority of the first instance justified its decision by stating that the personal data contained

in the ARES information system, which are in accordance with point 19 of Government Decree No. 425/2016 Coll.,

published as open data, the accused has the opportunity to further process. According to the administrative

authority of the first instance to further process this personal data for the purpose of its implementation

entrepreneurial or other gainful activities, including through the provision of

free services involving the processing of publicly available information containing personal

data of natural persons (members of statutory bodies of SVJ and insolvency debtors - members of SVJ),

may bear a legal title pursuant to Article 6 (1) (a). (f) Regulation (EU) 2016/679. Administrative body of the first

The Court also stated that to assess the feasibility of the application of this legal title

a balance test is performed, which also includes a rebuttable legal presumption of the advantage of another

processing of open data before the rights and legitimate interests of data subjects contained

in the last sentence of § 4b paragraph 2 of Act No. 106/1999 Coll., on free access to information. How stated by the administrative authority of the first instance, each administrator must before processing personal data to determine the purpose and means of processing open data and to comply with others obligations that fall on him as an administrator (the obligation to process only precise personal data) data, fulfill the information obligation, enable data subjects to exercise their rights - the right to be forgotten, the right to object, the right to access personal data and others).

[25] With regard to the data processed by the accused from the insolvency register in the range of number insolvency proceedings and a direct reference to the proceedings in a publicly available application, the authority of the first instance that the data and personal data from the insolvency register are not part of the open data in the sense of Government Regulation No. 425/2016 Coll. In case of further publication of data from the insolvency register, it is therefore necessary to determine whether a special law, ie Act No. 182/2006 Coll., on bankruptcy and ways of resolving it (insolvency law), allows with information and personal freely handle the data in it. The rules for dealing with the insolvency register are regulated in § 419 paragraph 3 of the above-mentioned Act, as follows: “The Insolvency Register is publicly available, with the exception of the data provided for in this Act. Everyone has the right to it view and obtain copies and extracts from it. An insolvency court judge has access to all data kept in the insolvency register. ”From the above, therefore, according to the administrative body The first instance only provides an opportunity to inspect and obtain from the insolvency register copy and extract. The Insolvency Act does not provide for the possibility of publishing (making available) the insolvency register by an entity other than the Ministry of Justice of the Czech Republic, which is the administrator of the Insolvency Register pursuant to Section 419 Paragraph 1 of Act No. 182/2006 Coll. He is not accused the insolvency law gives the possibility to take over the data from the public register and these data stated on its website. It follows from the above that the accused cannot be personal process data within the insolvency register in the form of their further publication on and to rely on the legal title of legitimate interest under Article 6 (1) (a) f) regulation

(EU) 2016/679.

[26] In imposing the sanction, the administrative authority of the first instance took into account increasing circumstances
the seriousness of the conduct, in particular the fact that the accused in the event of disclosure
the corresponding legal title was missing from the insolvency register for processing, and then also for the period after
which the accused personal data of SVJ members published (at least less than 12 months). After
in the overall assessment of all the circumstances, the fine was imposed at the very lower limit of the rate,
provided for in Regulation (EU) 2016/679, which amounts to EUR 20 000 000.

[27] The defendant filed a complaint against the above-mentioned decision of the administrative body of the first instance
on July 23, 2020 decomposition.

Decomposition content

[28] In her appeal of 23 July 2020, the accused merely stated that she was wrong
disagrees with the decision and files an appeal against this decision, in all statements
decision. The defendant stated that it was seeking annulment of the contested decision.

[29] The administration of first instance sent the defendant a letter of formal notice on 28 July 2020
to eliminate the defects of the submission, within 10 days of receipt of the summons, as of the filed appeal
it is not clear what is found to be a conflict with the law or an incorrect decision or
the procedure preceding the decision. The accused did not respond to the summons within the set time limit, nor
did not pick up the above call in the data box, which is evident from the fact that this
the challenge was delivered by fiction on August 7, 2020.

Assessment by a second instance body

[30] Because the appeal filed by the accused company against the decision
of the first-instance administrative body was not even at the request of the first-instance administrative body
Ref. UOOU-04103 / 19-27 of 27 July 2020 was not substantiated and was not mentioned in it
no appeal, the contested decision was considered by the appellate body only
from the point of view of its compliance with legal regulations pursuant to the provisions of Section 89, Paragraph 2 of the Act

No. 500/2004 Coll., Administrative Procedure Code.

[31] The Appellate Body first notes that the accused took over the personal data of the committee members SVJ from the information system of the Ministry of Finance of the Czech Republic ARES, which makes public data accessible on economic entities from public administration information systems pursuant to Section 7, Paragraph 1 of the Act No. 304/2013 Coll., on public registers pursuant to point 19 of Government Decree No. 425/2016 Coll., on the list information published as open data. The accused also published data from the insolvency register, specifically the number of the insolvency proceedings and the reference to the given proceedings in publicly available application of the Ministry of Justice (https://isir.justice.cz), ie data on current insolvency debtors, if the address of residence coincides with the address SVJ, this is public data, but this data is not in the nature of open data.

[32] It can be stated that the legal protection of personal data, which have the character of public data, by the legislator is stronger than the legal protection of personal data published in the form so-called open data, for which the legislator stipulated in § 4b paragraph 2 of Act No. 106/1999 Coll., law on free access to information rebuttable legal presumption of priority processing of this personal data (but below these consequences).

[33] Act No. 182/2006 Coll., On Bankruptcy and Ways of Resolving It (Insolvency Act), does not contain an explicit ban on further disclosure of personal data, but neither does it further processing by publication does not foresee. In this case, it would come in theory only the legal title of the processing referred to in Article 6 (1) (a) (f) Regulation (EU) 2016/679, but due to the nature of the published personal data and non-fulfillment of the reasonable assumption expectations of processing the personal data of the accused, given the lack of legal relationship between her and personal data subjects under recital 47 of Regulation (EU) 2016/679, it is clear that

the legitimate interests of the administrator in this case (ie in relation to the purposes declared by him)

processing) does not outweigh the fundamental rights of data subjects. The appellate body therefore agrees conclusion of the administrative body of the first instance, namely that the accused lacked for processing form publication of information from the insolvency register corresponding legal title under Regulation (EU) 2016/679.

[34] Regarding the further processing of personal data taken over from the ARES information system, which were, in accordance with point 19 of Government Decree No. 425/2016 Coll., published as open data, the appellate body states that such further processing (provided the legal conditions are met) possible) is not ruled out, but it is clear that after the separation of the data from the insolvency register [which the defendant processed in breach of Regulation (EU) 2016/679], there will be further processing "Remaining" personal data, ie data taken from the ARES information system, separated from data from the insolvency register, ineffective. This will create a whole new situation. Accused, if he has processing will be maintained, it will be forced to re-determine before such further processing (new) the purpose and means of processing this open data and to comply with other obligations which affect it as a controller of personal data. In addition, the appellate body states that personal data formally marked as open data or actually provided in a format prescribed for open data does not lose all its nature and legal protection. Proof This is the fact that the provisions of § 4b paragraph 2 of Act No. 106/1999 Coll., on free access to information is conceived as a rebuttable legal presumption, not legal fiction.

The possible fiction of the supremacy of the open data regime over the protection of personal data would be moreover, in breach of recital 21 of the Directive of the European Parliament and of the Council Council Regulation (EU) 2003/98 / EC of 17 November 2003 on the re-use of public information sector, which stipulates that the Directive is to be implemented and applied in full compliance with the principles protection of personal data, in accordance with Directive 95/46 / EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, which has been replaced by Regulation (EU) 2016/679. Respectively the public authorities responsible for processing personal data in the open data regime

legal title of processing according to § 6 par. 1 let. (c) Regulation (EU) 2016/679. In the case of another

processing

in the form of further publication

public registers primarily published in open data mode comes theoretically

into account only the legal title of processing according to § 6 par. 1 let. (f) Regulation (EU) 2016/679, where

the actual possibility of applying this legal title depends on the purpose of processing declared

administrator. As part of this further processing for a purpose other than that for which the personal data were provided

not based on the consent of the data subject or on Union or Member State law

in a democratic society, which is a necessary and proportionate measure to secure the objectives

referred to in Article 23 (1), the controller of personal data must take into account, inter alia, the consequences

such processing for the data subject, in accordance with the requirements of paragraph 6 (4). d) Regulation (EU)

2016/679.

this data by private administrators

[35] In addition to the above, the Appellate Body therefore considers it necessary to add that

existing legislation, which does not sufficiently distinguish between personal and other data included in the regime

open data and thus relies on interpretive and application practice, can not be rebuttable legal

presumption in the sense of § 4b paragraph 2 of Act No. 106/1999 Coll. by its nature, not even compensate

lack of a specific legitimate interest, nor to enshrine a purposeful legal purpose

nor normatively anticipate the result of the proportionality test. To achieve such a goal would be

the legislator had to use a different legal construction.

[36] In summary, the Appellate Body did not find the contested party after an overall examination

decision was illegal and did not find any errors in the procedure prior to the issue

of this Decision. The legal conclusions of the first instance administrative body were duly substantiated

and in accordance with applicable law, including a fine of

proportionate to the infringement of Regulation (EU) 2016/679.

[37] On the basis of all the above, the Appellate Body therefore ruled as is

stated in the operative part of this decision.

Instruction: Pursuant to the provisions of Section 91, Paragraph 1 of Act No. 500/2004 Coll.,

Administrative Procedure Code cannot be revoked.

Prague, December 22, 2020

official stamp imprint

Mgr. Jiří Kaucký

chairman

(electronically signed)