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OPINION OF THE PERSONAL DATA PROTECTION COMMISSION

Reg. Amendment to Ordinance № 8 of 26 February 2008 on the functions and organization of the activities of criminal records offices

Commission for Personal Data Protection (CPDP) composed of: Chairman: Ventsislav Karadzhov and members: Tsanko Tsolov and Tsvetelin Sofroniev, at a meeting , held on 24.01.2018, considered a request (entry № NDMSPO-10-1 / 15.01.2018) by Ms. Tsetska Tsacheva - Minister of Justice, stating that a working group of the Ministry of Justice is prepared a draft Ordinance for amendment, etc. implementation of Ordinance № 8 of 26.02.2008 on the functions and organization of the activities of criminal records bureaus (Ordinance № 8). Pursuant to Art. 10, para. 1, item 8 of the Personal Data Protection Act (PDPA), Ms. Tsacheva addresses the commission for an opinion on the submitted draft ordinance, as provided in Art. 26, para. 4 of the Law on Normative Acts, 30 days. The draft Ordinance amending Ordinance № 8 of 26.02.2008 on the functions and organization of the activities of criminal records bureaus was published for public consultation on 03.01.2018 on the website of the Ministry of Justice and on the portal for public consultations. Attached to the request for opinion are: 1. Draft Ordinance amending and supplementing Ordinance № 8 of 26.02.2008 on the functions and organization of the activities of criminal records bureaus; 2. Project report. The report to the draft Ordinance for amendment and supplementation of Ordinance № 8 states that with the entry into force of the Act for amendment and supplement of the Act for restriction of the administrative regulation and the administrative control over the economic activity (promulgated, SG No. 103). from 28.12.2017, in force from 01.01.2018) it is necessary to make changes in the texts of Ordinance № 8 from 26.02.2008 on the functions and organization of the activities of the criminal records bureaus. The project was prepared in implementation of Decision № 338 / 23.06.2017 of the Council of Ministers to take measures to reduce the administrative burden on citizens and businesses by removing the requirement to provide some official documents on paper, as by Order № LS-04-1243 / 18.07.2017, the Minister of Justice has established a working group to prepare a proposal for the necessary amendments to the bylaws to alleviate the administrative burden of citizens in obtaining criminal records. The draft ordinance provides for the reduction of the administrative burden of citizens upon receipt of a criminal record issued by the criminal records bureaus of the district courts in the country by removing the requirement to submit a copy of the birth certificate or birth certificate in original or notarized copy. or other document issued by

a competent authority certifying the identity of the person's parents. The data on the parents of the person requesting a criminal record will be checked through official access to the National Population Database. The main change in Ordinance № 8 is related to the creation of Art. 35b, which introduces the electronic criminal record (ESSS) as a means of achieving the official exchange of data necessary for the issuance of a criminal record and removing the requirement for citizens to submit the document to the administration of the executive branch. The most important provisions are: 1. The ESRC will be issued upon application by the central and territorial bodies of the executive power through officials specially authorized to have access to criminal records of persons in respect of whom a normative act provides for official establishment of the court. status; 2. The ESSS will be able to be issued only in respect of persons for whom no criminal records have been drawn up, including under Art. 78a of the Criminal Code. In other cases, as well as for persons born abroad, a criminal record certificate will be issued in accordance with the generally established procedure; 3. The Ministry of Justice will be competent to issue the ESSS after submitting an application form electronically; 4. The application will be submitted by filling in an electronic form available on the website of the Ministry of Justice, and the identification of the applicant will be done with a qualified electronic signature; 5. A short deadline for the issuance of the ESS shall be no later than three working days. No state fee will be due; 6. As with the paper criminal record and the electronic criminal record, the ESSS shall be valid for six months from the date of issue. Legal analysis: In general, the draft Ordinance amending Ordinance № 8 on the functions and organization of the activities of criminal records bureaus submitted for public discussion corresponds to the basic principles of personal data processing taking into account the priorities of the Government of the Republic of Bulgaria to reduce of the administrative burden on citizens and businesses. In this case, these priorities will be achieved by outlining mechanisms that provide maximum convenience for individuals, providing that when applying for a criminal record to present only the original identity card (Article 35, para. 5 of the project). The submitted project eliminates the requirement to present a paper and a copy of the birth certificate or birth certificate in original or notarized copy or other document issued by a competent authority certifying data about the parents of the person requesting a criminal record. The positive moment of the draft ordinance submitted for public discussion in connection with the issuance of specific measures regarding the security of information in the register should also be taken into account, namely: · the territorial bodies of the executive power to have access to the data on criminal records of persons for whom a normative act provides for official establishment of the judicial status; · Providing a technical possibility for identification of the authorized official by using a qualified electronic signature when submitting the application.

Apart from the stated indisputable advantages of the act presented for discussion, emphasis should be placed on some aspects of the draft Ordinance amending Ordinance № 8 on the functions and organization of the activities of criminal records bureaus, related to basic principles of personal data processing , respectively the protection of the personal inviolability of the citizens and the fair processing of personal data relating to them, namely: In the newly created Art. 35b, para. 1 stipulates that the issuance of ESSS shall be carried out by the Ministry of Justice after submission of an application electronically by the central and territorial bodies of the executive power through persons authorized by them. ESSS is issued only for persons for whom no criminal records have been drawn up, including under Art. 78a of the Penal Code. In other cases, as well as for persons born abroad, a criminal record certificate is issued in accordance with the generally established procedure. In Art. 2 of Ordinance № 8 states that the criminal records bureaus at the district courts collect, store data and exchange information on criminal records of persons born in the area of the respective court who have been convicted by Bulgarian courts or have been convicted by foreign courts with entered into force judicial act in criminal cases, adopted for execution by the order of art. 453 - 470 of the Code of Criminal Procedure (CPC), as well as for persons released from criminal liability by Bulgarian courts, who have been imposed administrative penalties under Art. 78a of the Penal Code, ie in practice the criminal records bureaus store information about the entire judicial past of the persons, including data on their release from criminal liability. This information is contained in the bulletins for criminal record and the bulletins for imposed administrative penalties under Art. 78a of the Penal Code. According to Art. 5 of Ordinance № 8, the registration of convicted persons in the criminal records bureaus shall be carried out through bulletins for criminal records and bulletins for imposed administrative penalties under Art. 78a of the Penal Code, which are prepared on paper and in an electronic archive. Based on the data in the criminal records, the criminal records bureaus issue: - criminal records at the request of the interested parties; - references for criminal record for official purpose of the bodies, indicated in art. 33, para. 5 of Ordinance № 8, namely: court, prosecutor's office and investigative bodies, National Intelligence Service, National Security Service, State Agency for National Security, Military Information Service of the Ministry of Defense, State Agency for Technical Operations, Main National Police Directorate, General Directorate of Border Police, General Directorate of Fire Safety and Protection of the Population and Regional Directorates of the Ministry of Interior, Military Police Service of the Minister of Defense, institutions and departments when legally entitled to receive such information, judicial authorities of another state, when this is provided for in an international treaty to which the Republic of Bulgaria is a party, or in an act of the European Union (EU), a central body for transmitting or receiving information

on criminal records from an EU member state , foreign diplomatic and consular missions in the Republic of Bulgaria for their citizens. According to Art. 36, para. 2 of Ordinance № 8, all convictions are indicated in the criminal record, regardless of the subsequent amnesty or rehabilitation. With regard to the criminal record, this is not the case. According to Art. 39, para. 2 of Ordinance № 8, the conviction certificate does not include the conviction for a crime for which the person has been amnestied or rehabilitated. In practice, this normative decision is dictated by the presumption of fair processing of information regarding the judicial past of the persons, as it can be made available in full only to a limited number of bodies referred to in Art. 33, para. 5 of Ordinance № 8 and for specific official purposes. In other cases, where a normative act requires the issuance of a criminal record certificate, it is assumed that the establishment of judicial status is established by the information contained in the criminal record certificate, which does not include a conviction for crimes for which the person is amnestied or rehabilitated. The criminal record certificate does not contain any information about the imposed administrative penalties under Art. 78a of the Penal Code. Given the above-stated normative regulation, through the envisaged amendment of Ordinance № 8 - to allow the ESSS to be issued only in respect of persons for whom no criminal records have been drawn up, including under Art. 78a of the Penal Code, an indirect opportunity is provided for obtaining information about the judicial past of the persons, given the fact that bulletins for criminal record have been drawn up for them, including under Art. 78a of the Penal Code, despite the lack of specific information on the content of the criminal record bulletin. The report to the draft Ordinance amending Ordinance № 8 of 26.02.2008 on the functions and organization of the activities of criminal records bureaus does not state reasons why it is necessary to write such a distinction. For example, the central and territorial executive bodies will need to issue an ESSS for the purposes of the procedure for the appointment of civil servants. According to Art. 7, para. 1, item 4 of the Civil Servant Act, a person who has not been convicted of an intentional crime of a general nature of imprisonment may be appointed a civil servant. This circumstance can be verified through the ESSS. The hypothesis of receiving an automatically generated message (Art. 35b, para. 6 of the draft) that the ESSS cannot be issued for the person, as there are compiled bulletins for the same, including under Art. 78a of the Penal Code, to some extent contradicts one of the basic principles for processing personal information, namely the minimum necessary and legally justified.

The protection of personal information is a fundamental right of European citizens under the Charter of Fundamental Rights of the Union. It is also enshrined in the Treaty on the Functioning of the European Union. That is why the protection of personal data is contained in a number of directives and regulations of the European Union, and from 25 May 2018 a new common

regulation will come into force - the General Regulation on Data Protection (GDPR) of the European Parliament and the Council of 27 April 2016. This act is binding and will be directly applicable in all countries of the European Union. The European legislator has paid special attention to the rights of individuals by writing a separate chapter in the Regulation on this issue. Special attention is paid to the processing of personal data related to sentences and violations, as explicitly in Art. Article 10 of the GDPR states that appropriate safeguards for the rights and freedoms of data subjects should be provided for this processing.

We draw your attention to the fact that in this case the envisaged changes in the considered by-law normative act may serve for contestation by the interested persons of the ordinance according to the respective order.

Apart from the above, it is important to note that the principles of personal data processing exclude the possibility that information containing such data may be stored indefinitely. As the storage of personal data is an act of personal data processing, according to the legal definition specified in § 1, item 1 of the Additional Provisions of the LPPD, it should be subject to the general rules for personal data processing. The proposal outlined in Art. Art. 35b, para. 12 of the draft Ordinance amending Ordinance № 8 on the functions and organization of the activities of criminal records bureaus, according to which "All circumstances of the ESSS are stored indefinitely in the information system of the Ministry of Justice" contradicts the principles of personal data protection . These principles do not allow indefinite processing of information containing personal data. Setting deadlines for the preservation of personal data is a guarantee of the right to privacy of citizens. The report to the draft Ordinance does not state reasons for the need to indefinitely store all the circumstances of the ESSS in the information system of the Ministry of Justice.

In connection with the above and on the grounds of Art. 10, para. 1, item 4 of LPPD, the Commission for Personal Data Protection expresses the following

OPINION:

In view of the protection of individuals in the processing of personal data for the purposes of issuing an Electronic Certificate of Criminal Record, the text of Art. 35b, para. 12 of the draft Ordinance amending Ordinance № 8 should be reformulated, setting a specific deadline for storing the circumstances related to the ESS in the information system of the Ministry of Justice.

THE CHAIRMAN:

MEMBERS:

Ventsislav Karadzhov

Tsanko Tsolov

Tsvetelin Sofroniev / p /

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