

Tatari tn 39 / 10134 Tallinn / 627 4135 / info@aki.ee / www.aki.ee Registration code 70004235 FOR INTERNAL USE OF THE INSTITUTION Information holder: Data Protection Inspectorate Note made: 03.01.2022 Access restriction valid until: 03.01.2097 P 2 until the decision enters into force Basis: AvTS § 35 paragraph 1 p. 12, AvTS § 35 paragraph 1 paragraph 2 PRESCRIPTION-WARNING in personal data protection case no. 2.1.-4/21/1537 Injunction maker Data Protection Inspectorate lawyer Merili Koppel Time and place of injunction Tallinn Recipient of injunction - personal data processor XXX e-mail address: XXX Copy Representatives XXX (XXX), XXX (XXX) RESOLUTION: Personal Data Protection Act ( IKS) on the basis of § 56 subsection 1, subsection 2 point 8, § 58 subsection 1, § 10 and Article 58 subsection 1 point d and subsection 2 points f and g of the General Regulation on Personal Data Protection (IKÜM), as well as taking into account Article 6 The Data Protection Inspectorate issues a mandatory injunction to comply with XXX: 1. Termination of Facebook accounts, pages, posts and groups managed by XXX, including Facebook groups "Fraudsters and debtors made public", "Loans from private individuals to private individuals" and "Loan assistance: loans to private individuals", without IKÜM art 6 Disclosure of other people's personal data without consent in accordance with paragraph 1 p. I set the deadline for the execution of the injunction as 18.01.2022. 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. FINE WARNING: If the injunction has not been complied with by the set deadline, the Data Protection Inspectorate will impose a fine of 3,000 euros on the recipient of the injunction based on § 60 of the IKS. 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: 2 (7) Failure to comply with the injunction in accordance with Art. 58(2) of the Criminal Procedure Code may initiate a misdemeanor proceeding on the basis of Section 69(1) of the Criminal Procedure Code. 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: The Data Protection

Inspectorate has received numerous complaints regarding the disclosure of private individuals' debt information on social media. Therefore, the Data Protection Inspectorate decided to initiate a self-initiated monitoring procedure regarding such Facebook pages and groups. As part of the supervision procedure, on 19.04.2021 XXX (hereafter also the data processor) the inspectorate made a proposal in personal data protection case No. 2.1.- 4/21/1537, the content of which was as follows: "1. Stop disclosing posts containing personal data in social media groups managed by you. 2. To delete the personal data of other people disclosed so far without a legal basis in the above-mentioned Facebook groups and pages. ". The deadline for responding to the proposal was 30.04.2021. In the proposal, the inspectorate drew attention, among other things, to the possibility of making an injunction and imposing a fine, and the right to present one's opinion and objections on the matter in accordance with § 40 (1) of the Administrative Procedure Act before issuing an administrative act. On 17.05.2021, representatives of the data processor XXX and XXX submitted a response to the inspection's proposal, in which they submitted a request to terminate the initiated supervision procedure. In the response, objections were raised mainly regarding the application of the IKÜM, the qualification of the data processor as a responsible data processor, and the legal basis for the processing of debt data in general. The data processor did not comply with the inspection's proposal by the stipulated time (26.04.2021). Hereby, the Data Protection Inspectorate responds to the views expressed in the data processor's reply of 17.05.2021 and justifies the need to issue an injunction, while not repeating in detail the content of the proposal of 19.04.2021.

GROUND OF THE DATA PROTECTION INSPECTION: 1. Competence of the Data Protection Inspectorate to issue a proposal and injunction, in paragraph 3A of the response dated 17.05.2021, the data processor has expressed that according to § 4 of the Law on Law and Order (KorS), the administrative body can resolve relations between private parties in the course of state supervision only if three cumulative conditions are met, including if it is not possible for a person to get legal protection in a timely manner. In addition, the data processor has referred to the opinion published by the inspectorate in personal data protection case No. 2.1.-3/18/642, according to which in private legal relations, the possibility of turning to a civil court is provided for the enforcement of one's rights. Therefore, the data processor considers that the Data Protection Inspectorate should justify the need to intervene in this matter. First of all, I explain that in this case it is not a matter of solving a legal relationship between private individuals, as found in p. 3.8 of the answer. The inspection does not assess the validity of debt relationships between the parties or other private law issues, but rather the admissibility of disclosure of personal data.

Regarding the exercise of state supervision on the basis of KorS § 4, however, I explain that before the IKÜM came into force,

the Data Protection Inspectorate had to be based on IKS and KorS, from which the inspection's intervention criteria were derived. At the same time, the Tallinn District Court has found in decision No. 3-19-579 that, regardless of the fact that the inspection has developed principles, which are the basis for the decision to process complaints, this does not provide a basis to leave the supervision request that does not comply with them essentially unresolved. 3 (7) Tallinn Administrative Court found the following in the same case: "As the district court also stated in the order of July 8, 2019, the IKS does not allow to refuse to carry out supervision based solely on the argument that a person would be able to file civil legal claims for the protection of his rights against persons who allegedly directly violate his rights against. ". Thus, the fact that the data processor has not prevented data subjects from exercising their (civil) rights does not preclude the inspection's intervention (p. 3.5 of the answer). In terms of its own supervisory competence (i.e. the scope of application of IKÜ and IKS due to IKS § 56), the Data Protection Inspectorate must carry out supervisory procedures to check the legality of personal data processing, which means that this procedure is legal. 2. IKÜM's application to the disclosure of disputed debt data In point 3.15 of the answer, the data processor has taken the position that the processing of debtors' debt information in Facebook groups managed by private individuals falls under the exception given in point 18 of the IKÜM's reasoning and that the requirements of the IKÜM therefore do not apply to the data processing carried out by the data processor. The Inspectorate does not agree with the data processor's position. Recital 18 of the IKÜM states: "This regulation should not be applied to the processing of personal data carried out by a natural person exclusively for personal or domestic purposes and therefore outside of professional business activities. Personal and home activities could include correspondence and mailing lists or activities on social networks and the Internet that are conducted as part of such personal or home activities. ". Similar to the IKÜM, the referred clause, according to which the requirements for personal data processing are not applied to data processing carried out for personal or domestic purposes, was also included in Article 3(2)(2) of the Data Protection Directive (95/46/EC). Although neither legal act exhaustively defines the concept of personal or domestic data processing , already during the period of validity of the directive, efforts were made to open up its content in the legal literature. In order to determine whether data processing belongs to a person's domestic sphere, the following control questions<sup>1</sup> were developed: - Is the data disclosed to an unlimited number of persons or between friends/family members/acquaintances? The subject of this procedure is data processing in the following Facebook groups: 1) "XXX" - 21,000 members; 2) "XXX" – 1,600 members; 3) "XXX" - 2600 members. Based on the number of members of the group, it is obvious that the data is not disclosed among close relatives. It follows from the names given to

the groups (e.g. "XXX") that the purpose of the groups is to disclose personal data to the widest possible circle of persons.

Although some groups are designated as private, this is a purely technical nuance and does not change the fact that with such a large circle of persons, it cannot be a matter of persons having a close relationship. The data processor has also not pointed out that, in the case of private groups, a pre-assessment or other procedure would be carried out for the persons who wish to join, which would enable them to find out whether there is a need to assess the creditworthiness of the data subjects in accordance with IKS § 10(1). express their wish with the group 1 Available:

[https://ec.europa.eu/justice/article-29/documentation/otherdocument/files/2013/20130227\\_statement\\_dp\\_annex2\\_en.pdf](https://ec.europa.eu/justice/article-29/documentation/otherdocument/files/2013/20130227_statement_dp_annex2_en.pdf). 4 (7)

to join. Thus, in this case, it is essentially a disclosure of personal data to an unlimited circle of persons. - Does the data processor have a personal or domestic relationship with the data subject? In these Facebook groups, the data of persons with whom the data processors only have a relationship arising from the loan agreement between the parties (provided that the agreements are valid at all) are disclosed, which cannot be considered as personal or domestic property. - Does the scope and frequency of data processing indicate a commercial purpose or a domestic activity? Given that posts are published in groups on a daily basis and that the data subjects are constantly different persons, mass processing of personal data takes place in the groups, rather than posting as a hobby from time to time. In addition, it must be taken into account that lending is not an activity considered for domestic purposes, which is usually accompanied by an interest claim, i.e. a profit-making component. In p. 3.47 of the answer, the data processor himself has pointed out that the purpose of data processing is to ensure a safer and more transparent business environment. Therefore, there can be no dispute that the activity of the data processor is related to a commercial, not a domestic purpose. - Can data processing have negative consequences for individuals, including invasion of privacy? Data processing is accompanied by an obvious invasion of the privacy of data subjects, which, in addition to the lack of a legal basis, is also excessive considering the composition of the data. For example, it is not permissible to disclose the debtor's photos, personal identification number, complete extracts of conversations held with him, etc. From the above analysis, it clearly follows that the purpose of the data processing that is the object of the injunction is to disclose personal data to as many persons as possible, while the data is accessible to people who have no real need to assess the creditworthiness of the data subjects. It also follows from the data processor's own views (data processing is necessary to achieve a more transparent business environment, to warn other people about persons with negative payment behavior) that data processing is not carried out for personal or domestic purposes, which would fall under the exclusion stated in pp. 18 of

the IKÜM. 3. Facebook debtor group moderator as a responsible data processor In paragraphs 3.16-3.23 of the answer, the data processor expresses the position that even if IKÜM applies, the Facebook group moderator would not be considered as a responsible data processor. At the same time, in paragraph 3.52.1 of the answer, the data processor has stated (with the emphasis of the inspection): "The debtor can get additional information about data processing in the Facebook group from the description of the Facebook group, where the data about who are the moderators of the group and therefore the responsible processors, and they can also be contacted via Facebook" . Therefore, first of all, the data processor has clearly accepted that the moderators of the Facebook group are the controllers responsible for the publication of personal data in the groups. In p-3.40.5 of the answer, the data processor has again stated that in the event of a dispute or complaint, the moderators are ready to stop the processing of the debtor's personal data or make corrections if necessary, which indicates the moderator's obligations as a responsible data processor. According to articles 16-18 of the IKÜM, it is the responsible data processor who must correct/delete personal data or limit their 5 (7) processing. Also in point C9 of the legitimate interest analysis, the data processor states that there is usually no connection between the person and the data controller. With this, the data processor itself excludes the possibility that the responsible processor could be a creditor who has a contractual relationship with the person. Consequently, the responsible processor is the administrator of the group, who does not have direct contact with the data subject himself, but checks the group's posts. The statement of the data processor that the moderator of the group is not the responsible data processor in the application of IKÜM, therefore, remains empty and is not even supported by the data processor's own substantive views. In relation to the statement that Facebook together with the creator of a specific post should be considered responsible data processors (p. 3.21 of the answer), the inspectorate notes the following. The European Court of Human Rights has explained in case No. 64569/09 that if the person himself is not the creator of the comments, it does not mean that the person does not have control over the commenting environment. If the platform administrator actively invites comments to be added, then he is responsible for their content (p. 144). Only if users can freely present their ideas on any topic and the platform manager does not direct the discussion in any way with his own contribution or content, the platform manager would not be responsible for the posts (p. 116). In this case, the data processor has published in the description of the group: "THE PURPOSE OF THE GROUP is primarily to warn everyone against entering into transactions with posted persons. /--/ Comments are open at the administrator's discretion. ". With this, the data processor has clearly directed the discussion in the group (vs. created the group with the aim that members could post on freely chosen topics) and has once

again accepted that he has control over the processing of personal data in the groups. 4. On the legal basis for processing debt data - The legal basis for processing debt data is IKS § 10, the requirements of which the data processor has ignored. In point 3.27 of the answer, the data processor's position is presented, according to which data processing is carried out on the basis of IKÜM art 6 paragraph 1 p f or, more precisely, a special form of legitimate interest, i.e. IKS On the basis of § 4, which grounds do not require that the data processor, in addition to fulfilling the requirements for processing based on the assessment of legitimate interest, also fulfill the requirements of § 10 of the IKS. More specifically, the data processor refers to the decision of the European Court of Justice in the combined cases No. C-468/10 and C-469/10, in which the court has stated the following: "However, there is no longer any clarification within the meaning of the relevant Article 5 if national legal regulations exclude the processing of certain categories of personal data possibility by definitively foreseeing the result of weighing the conflicting rights and interests in relation to these categories, without allowing a different result based on the special circumstances of a particular case. ". The Inspectorate points out that the position of the European Court referred to is not applicable in this context. § 10 of the IKS does not definitively provide for the result of weighing conflicting rights and interests with respect to the processing of personal debt data, without allowing a different result based on the special circumstances of a specific case. On the contrary - according to § 10 (2) (3) of IKS, the processing of personal debt data (including on Facebook) is not permitted if it would excessively harm the rights and freedoms of the data subject. Therefore, the data processor has to assess, based on the circumstances of each specific case, whether the right to data processing outweighs the interference caused to the privacy of the person or not. The provision therefore does not definitively provide for the result of the weighing of conflicting rights and interests, which means that the cited European Court's decision is irrelevant in the context of Section 10 of the IKS. When disclosing personal debt data, the data processor should comply with the requirements of § 10 of the IKS, and in any case, the data processor has no right to arbitrarily not apply national law. - The data processor does not have a legitimate interest in accordance with IKÜM art. 6, paragraph 1 p.f. for the processing of personal debt data 6 (7) Even if the disputed data processing could only take place on the basis of IKÜM art. 6, paragraph 1 p.f., i.e. legitimate interest, the analysis of the legitimate interest of the data processor is not appropriate in the opinion of the inspectorate. For example, the inspection does not agree with the statement in point A1 of the legitimate interest analysis that it is a reliable exchange of information between private individuals. The data processor has not justified which methods make the information exchange reliable. In most cases, group posts contain a conversation between two private individuals, where

each of them disagrees about the existence, amount, etc. of the debt. The publication of such a conversation without conducting additional investigation (e.g. without making sure of the fact that a loan was granted by means of a payment order) cannot be considered as reliable information publication, which in turn means that the analysis of the data processor's legitimate interest is based on inappropriate factual statements. In addition, the inspectorate is not convinced that the large-scale encroachment on the debtor's privacy would be outweighed by the exercise of freedom of expression in order to save people's time and nerves and to prevent damage that the debtor may cause or causes (paragraph A1 of the legitimate interest analysis). Firstly, it is a presumptive statement, which means that a person's privacy may be infringed upon without him having given any reason at all. Secondly, it cannot be accepted that saving other people's time or nerves is a sufficient reason to disclose personal data without limitation. The creditor's decision to grant an unsecured loan to a person unknown to him as a private individual is his conscious decision, and it is not legitimate to mitigate the risks involved at the expense of the privacy of the borrower. Such reasoning of the data processor remains incomprehensible to the Inspectorate, as it is not believable that thousands of members of Facebook groups would have wanted to give loans to data subjects, but after reading the posts, decided not to do so in order to save their own time. - The disclosure of personal debts in Facebook groups is not related to the journalistic purpose according to IKS § 4 Although the data processor has not taken a clear position on whether it also relies on IKS § 4, i.e. journalistic purpose, as the legal basis for data processing, the inspectorate notes that the fact of the indebtedness of a specific natural person does not fall into the public interest sphere, the publication of which would contribute to the further development of a democratic society. The latter could be the case, for example, if an opinion story was published about why loans are taken lightly in Facebook groups in Estonia and, on the contrary, loans are given, but the publication of personal data of individual debtors does not have the power to advance such a discussion. In such a case, the companies that keep payment default registers in Estonia should also refer to the journalistic purpose as the legal basis of their activity, which is not done and would not be taken seriously. The data processor has not specified how, in his opinion, he fulfills the requirements of the code of journalistic ethics, if the data subject is not heard before publishing the debt data (p. 4.2 of the code) and is not given the opportunity to object (p. 5 of the code). - Apart from IKS § 10, there are no other legal grounds for disclosing personal debt data. In addition to the above, the data processor has not identified any other legal grounds on which the disputed data processing could be based, and in the opinion of the inspectorate, there cannot be any. In particular, it cannot be processing based on consent, as the data subject's consent should be voluntary, specific, informed and

unambiguous (IKÜM pp 32). Voluntary consent is not a situation where the data subject and the data controller are in a clearly unequal situation and where the performance of the contract is made to depend on giving consent, even though it is not actually necessary for the performance of the contract (IKÜM pp 43). Considering that the debtor in dire need of a consumer loan is already in an unequal position compared to the creditor, and in the event of a breach of the loan agreement, the creditor would be able to use other legal remedies, it is doubtful whether the consent contained in the loan agreement to the processing of personal data could even be given voluntarily and thus be the legal basis for data processing. 7 (7) In addition, failure to give consent to the data subject should not have negative consequences (e.g. he is refused a loan, IKÜM pp 42) and he should be able to withdraw his consent at any time (IKÜM art. 7 paragraph 3), i.e. after the debt has already occurred and the debt information has been disclosed on Facebook. At the same time, the inspectorate's complaints are filed for the very reason that the data subject has requested the termination of the processing of his personal data and has withdrawn his consent to the processing, but the data processor has continued to disclose debt data regardless of this. This also indicates that it is not a voluntary consent that would allow the processing of personal data on the basis of Article 6(1)(a) of the IKÜM. In addition, there is no legal obligation that is fulfilled by the processing of debt data on Facebook, nor does the data processor perform a task in the public interest. Both of the mentioned grounds assume that the possibility of processing personal data is provided for in a separate legal act (see IKÜM pp 45), but there is no such provision for the processing of debt data on Facebook. - As a result of the above, the inspectorate's assessment is that the processing of personal debt data on Facebook causes excessive damage to data subjects and is not lawful. Personal data has been processed without a legal basis, therefore XXX must stop disclosing posts containing personal data on Facebook pages, accounts, posts and groups managed by it. In accordance with IKS § 58 paragraph 1 and IKÜ Article 58 paragraph 2 points f and g, the inspectorate has the right to issue an order to limit the processing of personal data. Taking into account that in a specific case, the debt data of natural persons is disclosed on a large scale illegally and that XXX did not agree to the Data Protection Inspectorate's 19.04 .2021 proposal to comply voluntarily, the inspection considers that issuing a mandatory injunction in this case is necessary in order to end the offense as soon as possible. /digitally signed/ Merili Koppel, lawyer under the authority of the Director General