

Athens, 29-08-2022 Prot. No.: 2138 DECISION 44/2022 The Personal Data Protection Authority held a meeting at its headquarters on 20.01.2021 at the invitation of its President, in order to examine the case referred to in the present history.

The President of the Authority, Konstantinos Menudakos, and the regular members of the Authority, Charalambos Anthopoulos, Spyridon Vlachopoulos and Konstantinos Lambrinoudakis, were present, the latter two also as rapporteurs of the case. Present without the right to vote were Kalliopi Karveli and Georgios Rousopoulos, specialist scientists, as assistant rapporteurs, who left after the discussion of the case and before the conference and decision-making, and Georgia Palaiologou, an employee of the Authority's administrative affairs department, as secretary. The Authority took into account the following: With the no. prot. C/EIS/7273/22.10.20 their complaint to the Authority against the Ministry of Education and Religious Affairs, teachers A, B, C, D, E and F a) question the legality of the processing of personal data carried out in the context of electronic voting for the nomination of the elected Boards of Primary and Secondary Education and request the Authority to investigate whether this processing meets the rules and conditions of the personal data protection legislation and whether it is lawful or not, at a regulatory, organizational and technical level and b) request, pending the issuance of a decision on the above, in view of the dangerous teachers in the Official representatives of the 1 characteristics of the processing and the ongoing data breach in the Panhellenic School Network, the issuance of a temporary order requesting the prohibition of the relevant processing, i.e. the carrying out electronic voting. In particular, the complainants state that the electronic voting process: a) is illegal, because it does not meet the requirements of the personal data protection legislation, since the purpose can be achieved without data processing, b) it is dangerous, because it does not ensure the requested level protection in view of the fact that it is carried out after the announcement of a data breach of the Panhellenic School Network and causes high risks for the right to data protection, as well as for other fundamental rights and freedoms of both voters and electors, c) alters and undermines a collective and fundamental democratic process that constitutes an expression of popular sovereignty and the democratic principle, d) affects almost all teachers of public primary and secondary education in the Greek territory, who are in an inherent position of weakness in relation to the data controller, e) will include data of special categories (political beliefs) and even employees, f) will be carried out in violation of Reason 39 of Regulation 2016/679 (General Data Protection Regulation, hereinafter GDPR) and g) will be carried out using new technologies in an Online environment that does not it has been tested in the past for elections of similar scale and risk. They also state that i) there is no Code of Ethics covering the data processing in question, ii) no impact assessment study has been prepared regarding the protection of personal data

(hereafter DPA) before the processing is carried out, iii) the Recommendation has not been implemented CM/Rec(2017)5 of the Council of Europe on the standards of electronic voting, iv) part of the security of electronic voting is transferred to the end user and concerns the level of information security of his terminal, without the knowledge of this himself or in any case be able to approach it, v) the Helios system, on which the P.S. was based. ZEUS, is of an unacceptable level and directly causes the election to be invalid due to a possible 2 violation of confidentiality and vi) the risk and effects of common cyber attacks on the server, users and the communications infrastructure between users and the server have not been identified, evaluated and taken into account. The Authority, in accordance with article 15 par. 8 of Law 4624/2019 in conjunction with article 58 par. 2 f of the GDPR, with the no. 1/20 Decision of its President, rejected the request for the issuance of a temporary order, as it considered that there is no threat of risk to the personal data of the data subjects, which would constitute a reason for the issuance of a temporary order. In the context of investigating the complaint, the Authority sent from 29.10.20 and with no. prot. C/EX/7273-1 document to provide clarifications to the Ministry of Education and Religious Affairs (hereafter Ministry of Education), which in no. prot. C/EIS/7589/05.11.20 his response document stated the following: a) the Ministry of Health, during the planning of the processing activity, ensured the selection of the ZEYS information system, which has built-in guarantees and has been tested for a number of years, so so that it can be ensured that all the requirements of the personal data protection legislation are met and the rights of the data subjects are protected, as well as that, by design and by definition, the ZEYS system processes the absolutely necessary personal data necessary for the electronic voting, b) the requirement under no. 39 of the GDPR recital is carried out with the electronic voting system, as on the one hand the principles governing the voting are ensured and in fact more effective and on the other hand the absolutely necessary personal data are processed, c) the intended processing is provided for in a legislative provision (no. 22 N . 4728/2020), from which the basic characteristics of the processing emerge, i.e. the Processor, its purpose, the data subjects and the main categories of personal data processed, i.e. those that are necessary in any electoral process for the formation of Electoral Committees, the identification of voters and the registration of candidates and their successful candidates. The other processing issues that are left to be regulated by ministerial decision are of a technical and detailed 3 implementation issues of the electronic voting information system, the regulation of which requires specialized scientific knowledge and, therefore, the provision of authorization for the regulation, by ministerial decision, of the issues of implementation of the electronic voting established in the law does not conflict with article 43 par. 2, subsection b of the Constitution, d) taking into account the no. 65/2018 decision of the Authority

and the Guidelines for the impact assessment regarding data protection of the Working Group of art. 29, the Ministry of Health, as the Data Controller, decided that the processing carried out through the ZEYS system cannot pose a risk to the rights and freedoms of natural persons, therefore the conditions according to art. 35 of the GDPR for the conduct of GDPR, e) the observance of the principle of data minimization is absolutely ensured, according to art. 5 par. 1 para. c GDPR, as an element of the principle of proportionality, f) "ZEUS DIGITAL VOTING" takes into account and operates within the framework set by the Council of Europe with Recommendation CM/Rec(2017)511 , as the latter was adopted by the Committee of Ministers of the Member States, g) the processor EDYTE SA has an ELOT ISO /IEC 27001:2013 Certificate, Information Security Policy, which has been approved by the 03/03/2020 Decision of the 516th Meeting of its Board of Directors, Personal Data Protection Policy, which has been approved by the 12/04/2019 Decision of the 482nd Meeting of its Board of Directors, and follows the Code of Ethics established by GÉANT, which is the pan-European network of research and education that interconnects Europe's national research and education networks (NREN), and h) during the electoral process through the "ZEUS DIGITAL VOTE" the security and impartiality guarantees are met. The Authority, after examining the elements of the file and after hearing the rapporteur and the assistant rapporteurs, who withdrew after the discussion of the case and before the conference and decision, after a thorough discussion

4 CONSIDERED ACCORDING TO THE LAW 1 Because in the provision of art. 22 Law 4728/2020 (Government Gazette A' 186/2020) defined: "Methods of election of the elected members of the service councils of educational staff and special educational staff of special education 1. Article 19 of the p.d. 1/2003 (A' 1) is replaced as follows: "The elected representatives of primary and secondary education teachers, who participate in: a) Regional Service Councils of Primary Education (P.Y.S.P.E.), b) Regional Service Councils of Secondary Education (P.Y.S.D.E.), c) Higher Regional Service Councils for Primary Education (A.P.Y.S.P.E.), d) Higher Regional Service Councils for Secondary Education (A.P.Y.S.D.E.), e) Central Service Council for Primary Education (K.Y.S.P.E.) and f) Central Service Council for Secondary Education (K.Y.S.D.E) .), are elected by direct, universal and secret ballot held on the first Saturday of November every other year. The election is held at the headquarters of each Directorate of Education." 2. Article 34 of the p.d. 1/2003 is replaced as follows: "The elected representatives of the Special Education and Special Auxiliary Staff of special education in the Regional Service Councils of Special Education Personnel (P.Y.S.E.P.E.P.) and in the Central Service Council of Special Education Personnel (K.Y.S.E.P.) are elected by direct, universal and secret ballot held on the first Saturday of November every second year. The election is held at the headquarters of each Regional Directorate of Education. Members of the Special Educational

and Special Auxiliary Staff, who serve in Educational and Counseling Support Centers (K.E.S.Y.) and in School Units for Special Education and Education (S.M.E.A.E.) that operate away from the headquarters of the Regional Directorate of Education, they can vote by mail. 3. The electoral procedures carried out pursuant to paragraphs 1 and 2 may be conducted by means of electronic voting following a decision of the Minister of Education and Religious Affairs, which also determines the necessary details as to the manner of conducting electronic voting, by way of derogation of p.d. 1/2003 and other relevant provisions that exclusively regulate the conduct of the electoral process with the voters appearing in person before electoral commissions or by mail. 4. By decision of the Minister of Education and Religious Affairs, the dates of the various stages of the election process for the nomination of the elected members of the said service councils are determined and redefined. By joint decision of the Ministers of Education and Religion and Health, if the electronic voting of par. 3 is not possible, various stages of the declared election process are suspended for reasons of protecting public health or the health of the participants in these processes. In this case, with the same decision, the term of office of the elected members of the said service councils is extended for the period of time that is absolutely necessary to delay the electoral procedures and in any case not beyond eight (8) months. 5. The provisions herein shall be applied to the electoral procedures carried out after the entry into force of this, regardless of the issuance of a ministerial decision, which has determined a different time and manner of conducting them." Subsequently, with the under no. Φ.350/51/139940/E3 Decision of the Ministers of Education and Religion and State (Government Gazette B

4537/2020) regulated the manner of conducting the electoral process and determined the necessary details regarding the manner of conducting electronic voting and consequently the roles of the participants entities and the purpose of the personal data processing carried out. All relevant technical and detailed issues for the implementation of the electronic voting process were foreseen in the said decision. The electoral process in question with electronic voting is implemented through the special information system "ZEUS DIGITAL VOTING" of the National Technology and Research Infrastructure Network (EDYTE S.A.), which can be accessed through its official website. Pursuant to art. 2 par. 4 para. b' of the above Ministerial Decision no. first COMPLIANCE 11635/16-10-2020 MEMORANDUM OF COOPERATION ON 6 CONFIDENTIALITY AND THE PROTECTION OF PERSONAL DATA with EDYTE as the processor. In this Memorandum, conditions for the protection of personal data were included, the detailed information and the recording of the data to be processed are included in the provision of art. 22 of Law

4728/2020 and in the above-mentioned issued based on it, no. F.350/51/139940/E3 Ministerial Decision published in the Government Gazette. 2. Since, from the provisions of Articles 51 and 55 of the GDPR and Article 9 of Law 4624/2019, it follows that the Authority has the authority to supervise the implementation of the provisions of the GDPR, this law and other regulations concerning the protection of individuals from the processing of personal data. In particular, from the provisions of articles 57 par.1 item. f of the GDPR and 13 par. 1 item g' of Law 4624/2019 it follows that the Authority has the authority to deal with the specific complaint and to exercise, respectively, its powers according to the provisions of Articles 58 of the GDPR and 15 of Law 4624/2019. 3. Because Article 5 of the GDPR defines the processing principles that govern the processing of personal data. Specifically, it is defined in paragraph 1 that personal data, among others: "a) are processed lawfully and legitimately in a transparent manner in relation to the subject of the data ("legality, objectivity, transparency"), b) are collected for specified, explicit and legitimate purposes and are not further processed in a manner incompatible with these purposes, c) are appropriate, relevant and limited to what is necessary for the purposes for which they are processed ("data minimization"), (...)". In particular, for the processing of personal data to be permissible, it must have a legal basis, i.e. be provided for by a provision of a formal law or by a regulatory act issued on the basis of a special legislative authorization and within its limits (indicative Authority Opinion 3/2017). 4. Because, according to the provisions of article 5 paragraph 2 of the GDPR, the data controller bears the responsibility and must be able to prove his compliance with the processing principles established 7 in paragraph 1 of article 5 As the Authority¹ has judged, with the GDPR a new model of compliance was adopted, the central element of which is the principle of accountability, in the context of which the data controller is obliged to design, implement and generally take the necessary measures and policies, in order for the data processing to be in accordance with the relevant legislative provisions. In addition, the data controller is burdened with the further duty to demonstrate at all times his compliance with the principles of article 5 par. 1 GDPR. 5. Because, further, in accordance with the provisions of article 6 par. 1 item c of the GDPR, the processing of personal data is lawful, when it is necessary to comply with a legal obligation of the controller. 6. Because, in accordance with article 8 paragraph 1 of the Charter of Fundamental Rights of the European Union, article 9A of the Constitution and recital 4 of the GDPR, the right to the protection of personal data is not absolute, but must be assessed in relation to its function in society and weighed against other fundamental rights, in accordance with the principle of proportionality. The GDPR respects all fundamental rights and observes the freedoms and principles recognized in the Charter, in particular respect for private and family life, residence and communications, protection of personal data, freedom of

thought, conscience and religion, freedom expression and information, business freedom, the right to an effective remedy and an impartial tribunal and cultural, religious and linguistic diversity. 7. Because Article 35 GDPR states, "When a type of processing, in particular using new technologies and taking into account the nature, scope, context and purposes of the processing, may entail a high risk to the rights and freedoms of natural persons of persons, the controller carries out, before the processing, an assessment of the effects of the planned 1 See Authority decision 26/2019, paragraph 8, available on its website. 8 processing operations in the protection of personal data". 8. Because in the present case, the processing of personal data takes place for the purpose of the nomination by direct, universal and secret vote of the elected representatives of primary and secondary education teachers, who participate in: a) Regional Service Councils of Primary Education (P.Y.S.P.E.), b) Regional Service Councils of Secondary Education (P.Y.S.D.E.), c) Higher Regional Service Councils of Primary Education (A.P.Y.S.P.E.), d) Higher Regional Service Councils of Secondary Education (APYSDE), e) Central Service Council of Primary Education (KYSPE) and f) Central Service Council of Secondary Education (K.Y.S.D.E as well as the Special Educational and Special Auxiliary Staff of special education in the Regional Service Councils of Special Educational Personnel (P.Y.S.E.E.P.) and the Central Service Council Special Educational Personnel (K.Y.S.E.E.P.). The end purpose is carried out by: a) the electronic compilation of voter lists, b) the announcement of the nominations, c) the provision of access codes to the members of the Electoral Committee system, d) the registration in the "ZEUS" system of the necessary data for the conduct of the vote, which includes the voter lists, the electronic ballots and the data of the members of the Electoral Committees, e) sending the voters an e-mail message on the one hand informing them about the procedure on the one hand for notifying them of the exact online address at which they will exercise their right to vote, f) sending voters a digital proof of vote registration and g) issuing the voting results. 9. Whereas, the above processing in the context of the election process with electronic voting for the selection of elected representatives of teachers in the Service Councils of Primary and Secondary Education and of the members of Special Educational Staff (SEP) and Special Auxiliary Staff (SSP) in the Service Councils of the Special Educational Staff has been provided for by a legislative provision (art. 22 Law 4728/2020 and the above-mentioned under no. F.350/51/139940/E3 Ministerial Decision). From the said 9 provisions the basic characteristics of the processing emerge, i.e. the controller, the purpose thereof, the subjects of the data and the main categories of personal data that are processed, i.e. the elements that are necessary in any electoral process for the formation of Electoral Committees, the identification of voters and the registration of candidates and their successful candidates. The determination of the subjects

results from the very nature of the electoral process in combination with the provisions of the p.d. 1/2003, which is also mentioned in the preamble of the above ministerial decision, and in particular the art. 19 et seq. of this presidential decree. In particular, it is clear from the above provisions of Article 22 of Law 4728/2020 that the process of election by electronic vote of the elected representatives of teachers in the above-mentioned Service Councils is carried out on behalf of the Ministry of Education, which fully defines the means of processing and which is therefore the sole Controller. Moreover, as permitted, according to article 43, paragraph 2, subsection b of the Constitution, the other issues of the processing, which are mainly of a technical and detailed nature of the implementation of the electronic voting information system, are regulated by ministerial decision, the regulation of which requires specialized scientific knowledge (cf. Council of Ministers 3539/2003, 3472/2001).

Wrongly, but with the above under no. Φ.350/51/139940/E3 Ministerial Decision (article 2 par. 4 para. a) it is stipulated that the Ministry of the Ministry of Health performs the role of Processing Manager together with each of the electoral committees provided for in this decision for the conduct of the electoral process, given that the electoral commissions are bodies of the Ministry of Health, which carry out the processing on its behalf. Consequently, they cannot be considered Controllers either independently or jointly, in accordance with the provisions of articles 4 point 7 and 26 of the GDPR. This incorrect characterization of the electoral commissions as joint Controllers does not, however, affect the legality of the processing carried out on the basis of the above provisions, but the ministerial decision should be amended in order to eliminate this incorrect characterization.

10 Therefore, in view of the above, according to the aforementioned provisions of Articles 5 and 6 of the GDPR, this specific processing is legal. 10. Because in principle, the processing for the needs of the vote seems that it cannot bring about a high risk according to art. 35 GDPR to the data subjects, based on the criteria of paragraph 3 of this article, as long as during the electronic voting process, the most basic processing of minimal and absolutely necessary personal data is carried out through the ZEUS system and there is no possible risk to the rights and freedoms of the natural persons. However, it should be pointed out that the obligation to carry out an EAPD should be evaluated based on the criteria established by the Authority and approved by the EAPD. As defined in this decision, the implementation of EAPD is considered mandatory when at least one of the criteria of the 1st or 2nd category is met. The criteria of the 1st category includes the criterion "1.7 Large-scale systematic processing of personal data for the purpose of introducing, organizing, providing and controlling the use of e-government services, as defined in article 3 of Law 3979/2011 as applicable." Given that the introduction of the method concerns all teachers who serve in public schools, the activity in question is a scale. Furthermore,

the activity is systematic and concerns the introduction and organization of an electronic government service, in this case electronic voting. Therefore, it follows that the Ministry, as the data controller, had to carry out an EAPD, before the introduction of the method in question, regardless of whether this is provided for in a national law, because the GDPR applies directly. large-scale processing However, as can be seen from the case file, the measures that must be determined through the GDPR do not seem to go back to the core and basic principles of the legal processing of personal data (Article 5 GDPR), nor do they call into question the proportionality and necessity of remote voting or ensuring the privacy of the vote, while, moreover, the processing in question does not constitute an innovative application, but follows widely accepted international standards and its use has been sufficiently tested. Consequently, it is imperative to draw up an EAPD without delay and in any case within 11 days before the next electronic voting for Service Councils. 11. Because in relation to the allegations of the complainants, the Authority judges as follows: a) The purpose of the processing cannot be achieved without data processing. After all, the physical voting process also involves the processing of personal data of the natural persons themselves and in fact creates the same issues regarding the need to ensure the protection of personal data as those mentioned in the complaint (e.g. identification) b) The mentioned "announcement data breach of the Panhellenic School Network" is a precautionary action to inform the users of the PSD and is completely legitimate, and from the breach announced by the Panhellenic School Network it cannot be inferred that during electronic voting high risks are created for the right to protect personal data c) The claim that electronic voting alters and undermines a collective and fundamental democratic process that constitutes an expression of popular sovereignty and the democratic principle is unfounded, as a method is applied that ensures the secrecy of the vote d) The data processed in the context of ψ notification for the election of elected representatives to the Service Councils of teachers, is not sensitive data, since the process of nominating elected representatives to the service councils does not constitute a process for the election of a trade union body, given that, according to Chapter B' of P.D/tos1/2003, the responsibilities of these councils concern matters of staff status e) There is no documented violation of the principle of necessity, since at the time the measure was taken measures to limit movement had been put in place, while the daily operation of the school units had been suspended f) This particular technological solution has been used in the past in many electoral processes, some of which are of high importance (e.g. elections of university rector authorities) while what is mentioned in the 12th complaint about the inadequacy of the technological solution is not substantiated as, as it appears from the documents in the case file, the solution follows the recommendations of the Council of Europe regarding the secrecy of the

vote g) The issues that concern the "code of ethics"² of EDYTE and the previous Helios system are presented as cases, with no essential connection to the specific processing, which is the subject of the complaint. 12. According to what is mentioned in the previous considerations, the complaint must be dismissed as unfounded. However, the Authority decided according to art. 58 par. 2 GDPR exercising its corrective powers in this particular case by imposing corrective measures. In particular, pursuant to the provision of article 58 par. 2 sec. d. GDPR the Authority decided to instruct the Ministry of Education and Religious Affairs a) to amend YA Φ.350/51/139940/E3 (article 2 par. 4 para. a), so that the efferent committees are not defined as joint controllers with the Ministry of Health, in accordance with the provisions of paragraph 9 hereof, and b) to carry out an EAPD without delay and in any case in time before the next electronic voting for Service Councils, in accordance with the provisions of paragraph 10 of the present. FOR THESE REASONS, the Authority A) Rejects the complaint of teachers A, B, C, D, E and F against the Ministry of Education and Religious Affairs as essentially unfounded, for the reasons detailed in the reasoning herein. B) Gives an order to the Ministry of Education and Religious Affairs

- i. to carry out an EAPD without delay and in any case in time before the next one

² Not to be confused with codes of conduct in Article 40 GDPR.

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of electronic voting for Service Councils, according to mentioned in paragraph 10, informing the Authority accordingly.

- ii. to restore the correct application of the provisions of articles 4 paragraph 7 and 26 of the GDPR in accordance with paragraph 9, informing regarding the Authority.

The President The Secretary

Constantios Menudakos Georgia Paleologu

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