

Home »Practice» Opinions of the CPDP for 2020 »Opinion of the CPDP on the provision of data by ESGRAON under Art. 106, para. 1, item 2 of the Civil Registration Act Opinion of the CPDP regarding the provision of data by ESGRAON pursuant to Art. 106, para. 1, item 2 of the Civil Registration Act

OPINION OF THE COMMISSION FOR PROTECTION OF PERSONAL DATA reg. № PNMD-01-87 / 2020 Sofia, 28.08.2020 SUBJECT: personal data (CPDP) composed of - Chairman: Ventsislav Karadzhov and members: Tsanko Tsolov, Maria Mateva and Veselin Tselkov, at a meeting held on 26.08.2020, considered a request with ent. № PNMD-01-87 / 19.08.2020 by the Minister of Transport, Information Technology and Communications, by which he informed that his ward Executive Agency "Automotive Administration" (IAAA), which is a secondary budget administrator to the Minister, implements project: Upgrading the registers and databases maintained by the Executive Agency "Automotive Administration". Building a new model of control activity based on risk assessment ", funded by the Operational Program" Good Governance ", co-financed by the European Union through the European Social Fund. The envisaged project is aimed at ensuring inter-register connectivity and official exchange of information and reducing the administrative burden for citizens and businesses. For this purpose, the registers maintained by the IAAA will be upgraded, incl. by implementing interfaces for automatic official retrieval of data from other internal and external systems / registers, reengineering of work processes, implementation of electronic administrative services, incl. internal administrative and creation of a new model of control activity based on risk assessment. A significant part of the project is related to the provision of automated access to two primary registers, administered by the General Directorate "Civil Registration and Administrative Services" in the Ministry of Regional Development and Public Works (MRDPW) - National Population Database and Classifier of current and permanent addresses. The access is necessary for the implementation of the functions of the agency in connection with the requirements of the Law on Electronic Government, as well as for significant alleviation of the administrative burden on citizens and businesses. Specifically, for the purposes of the project, inquiries and checks are required for the following administrative services and activities: electronic submission of an application for the issuance, re-issuance, replacement or issuance of a duplicate driver qualification card; electronic submission of an application for the issuance of a digital tachograph card; electronic submission of an application for an ADR card (driver's license for dangerous goods); submitting an application for taking an examination for acquiring the right to drive a motor vehicle; submission of an application for an ADR exam by a driver of a vehicle for the transport of dangerous goods; submitting an application for an examination for acquiring the qualification of a safety consultant for the transport of dangerous goods; submitting an application for an examination for obtaining a driver's

license for a taxi; electronic submission of an application for issuance of licenses for public transport of passengers and goods; electronic submission of an application for the issuance of one-off permits for the international transport of goods; theoretical and practical examinations for acquiring the right to drive a motor vehicle. In his letter, the Minister points out that on an annual basis these administrative services are requested and provided nearly 408,400 times. In connection with the mentioned usability of the administrative services, the provision of automated access for inquiries will lead to a great reduction of the administrative burden for citizens and businesses and will allow the automation of work processes in the IAAA. This will lead to a significant increase in the quality of work of the administration. In view of the above, the Minister of Transport, Information Technology and Communications requests the CPDP to issue a permit for temporary access to the National Population Database and Classifier of current and permanent addresses pursuant to Art. 106, para. 1, item 3 of the Civil Registration Act for the duration of the project and for achieving its objectives, including in the period of ensuring the sustainability of the results".

Legal analysis: The Civil Registration Act (CRA) is the normative act regulating the terms and conditions for the civil registration of natural persons in the Republic of Bulgaria. It includes the set of data about a person that distinguishes him from other persons in society and in his family as a holder of subjective rights such as name, citizenship, marital status, kinship, permanent address and others. (Article 1, paragraphs 1 and 3 of the Civil Procedure Code). As far as personal data related to civil registration are concerned in the specific case, the provisions of the Civil Protection Act are special in terms of their provision to third parties. The Unified System for Civil Registration and Administrative Services of the Population (ESGRAON) is a national system for civil registration of individuals in the Republic of Bulgaria and a source of personal data for them. One of the key functions of ESGRAON is to provide information and administrative services to the legislative, executive and judicial branches in the country (Article 101, item 6 of the Civil Procedure Act). In this regard, in the provision of Art. 106, para. 1 of the Public Procurement Act lists exhaustively the conditions and categories of entities to which the General Directorate for Civil Registration and Administrative Services (DG GRAO) in the Ministry of Regional Development and Public Works (MRDPW) provides data from ESGRAON, namely: 1) Bulgarian and foreign nationals, as well as stateless persons to whom they relate, as well as third parties, where such data are relevant to the emergence, existence, modification or termination of their legal rights and interests; 2) state bodies and institutions in accordance with their statutory powers; 3) Bulgarian and foreign legal entities - on the basis of a law, an act of the judiciary or a permit of the Commission for Personal Data Protection. According to the long-standing practice of the Supreme Administrative Court (SAC) 1, the conditions under which ESGRAON data are to be

provided are different and the differences are determined by the type of legal entity that requested access to them. In the norm of art. 106, para. 1 of the Public Procurement Act defines three separate categories of subjects to which data are provided by ESGRAON - individuals (item 1), state bodies and institutions (item 2) and legal entities (item 3). It should be noted here that the CPDP is competent and has the power to allow the provision of data by ESGRAON only in the case of item 3, which provides that the entitled person - the applicant (recipient of data) must be a legal entity. It follows that legal entities are addressees of the norm under item 3 and only in the presence of the legal facts established in its hypothesis, the CPDP must apply its disposition. From the above, it can be reasonably concluded that the request of the Minister is inadmissible due to the fact that he has the quality of a central sole body of the executive power with special competence (Art. 19, para. 2, item 4 in conjunction with Article 25, paragraph 1 of the Administration Act). Moreover, according to Art. 19, para. 4, item 3 of the Administration Act (LAA), the executive directors of the executive agencies shall also be considered bodies of the executive power. The state is a form of organization of the human community on a specific territory. Its main purpose is to protect and guarantee the common interests of this human community and, above all, its comprehensive security. It also aims to create the necessary prerequisites for free (economic, cultural, etc.) expression of each individual in the community. The achievement of these goals is regulated by laws, which determine the bodies authorized to solve the public problems in the respective spheres of life and the ways of their action. Therefore, the state can function only through its bodies determined by the positive law and in the ways regulated by the laws. With decision № 21 of 14.11.1996, under k. № 19 of 1996 (promulgated, SG No. 102/1/29/1996) The Constitutional Court of the Republic of Bulgaria accepts that "the main, essential feature of a state body is the existence of sovereign powers, which by their content include the autonomous directive activity of the body (as an element of its general competence), its right to issue mandatory prescriptions in the form of general or individual binding acts'. In addition, in order to define a public institution as a state body, it must have, in addition to the mark indicated by the Constitutional Court, two more - to be an element of the structure of the state and to be included in the state budget. The Minister, as a central sole body of the executive power with special competence, manages a separate ministry (its administration, which traditionally has the legal organizational form of a legal entity, but in itself does not have sovereign powers). He directs, coordinates and controls the implementation of the state policy according to his statutory powers (art. 25, para. 1 and 2 of the Law). According to Art. 2, para. 1 of the Road Transport Act (RTA), the Minister of Transport, Information Technology and Communications pursues the state policy in the implementation of road transport of passengers and goods on

the territory of the country. For its part, the executive agency is an administration to a certain minister for administrative services to individuals and legal entities, as well as for the implementation of activities and services related to ensuring the activities of state authorities and the administration (Art. 54, para. 1). from ZAdm). It is established by law or by decree of the Council of Ministers and is managed and represented by an executive director, who, as it has already become clear above, is also a body of the executive power. It should be emphasized here that although administrations are tasked with assisting the executive in exercising their powers, they themselves do not have the status of state bodies, but fall into the more general notion of "institution" as an element of public authority. In this case, the IAAA was established by the Law on the Carriage of Passengers and Freight by the Law on the Carriage of Passengers and Freight. IAAA is a legal entity supported by the Ministry of Transport, Information Technology and Communications (Art. 2, para. 2 and 3 of the Law on Public Procurement).

According to the Rules of Procedure of the IAAA adopted by the Council of Ministers, the control over the activities of the agency is exercised by the Minister of Transport, Information Technology and Communications (Article 2, paragraph 2 of the Rules). The Agency is managed and represented by an Executive Director, who is appointed by the Minister of Transport, Information Technology and Communications in coordination with the Prime Minister (Article 5 of the Rules of Procedure). 7 of the Regulations. Traditionally, in the Bulgarian legal system, ministries and various government agencies have the legal organizational form of legal entities, but they have the quality of administration, supporting the authority. This legal construction imposes the conclusion that for them it is excluded to be independent subjects (legal entities), requesting from the CPDP permission for providing data by the order of art. 106, para. 1, item 3, item 3 of the Civil Procedure Code. The opposite understanding, resp. application of the norm would make the existence of the hypothesis under item 2 (state bodies and institutions) meaningless, creating legal uncertainty and a dual regime.

Last but not least, in the current legal analysis it is worth emphasizing the scope of the Electronic Government Act (EEA), which regulates public relations between administrative bodies related to the work with electronic documents and the provision of administrative services electronically, as well as and the exchange of electronic documents between administrative bodies. According to the provisions of the WEU, administrative bodies cannot require citizens and organizations to present or prove already collected or created data, but are obliged to collect them ex officio from the primary data controller. The primary data controller is an administrative body that by law collects or creates data on a citizen or organization for the first time and amends or deletes this data (in this case it is DG GRAO in the Ministry of Regional Development and Public Works). Moreover,

the WEU imposes an obligation on the primary administrator to send the data ex officio and free of charge to all administrative bodies, which on the basis of law also process this data and have expressed a desire to receive it.

In view of the above reasons, it can be concluded that for the CPDP there is no legal basis for issuing a permit under Art. 106, para. 1, item 3, item 3 of the Law on Public Procurement, as the request is not from the legal entity, as required by the hypothesis of the norm, but from an executive body in the person of the Minister of Transport, Information Technology and Communications. Such a decision, adopted in violation of the law, would be null and void due to going beyond the competence of the CPDP. In this regard, both the data provider (DG "GRAO" in the Ministry of Regional Development and Public Works) and the recipient of the data (IAAA) would process personal data without a valid legal basis.

Despite the conclusion made, the Minister of Transport, Information Technology and Communications has a legal opportunity to address his current request directly to DG "GRAO" in the Ministry of Regional Development and Public Works, referring to the applicability of the hypothesis of Art. 106, para. 1, item 2 of the Civil Procedure Act, which stipulates that the data from ESGRAON should be provided to state bodies and institutions in accordance with their statutory powers, as the burden of proving the validity of the request is borne by the applicant. As can be seen from the letter, the requested categories of personal data are directly correlated with the implementation of the statutory powers of the Minister and the Executive Director of the IAAA, in their capacity as executive bodies. Taking into account the requirements of Art. 46, para. 1 of the Law on Normative Acts (LNA), the term "statutory powers" used in item 2 should be interpreted broadly, ie. incl. and those provided for in the by-laws. An official reference on the official website of the IAAA showed that the keeping of the registers for electronic administrative services is carried out on the basis of specific legal grounds, explicitly indicated in the link to the respective registers.

In addition to the specific legislation referred to above, the General Data Protection Regulation (Regulation (EU) 2016/679) regulates the European legal framework for the protection of individuals with regard to the processing of personal data, which can only take place in the presence of of the alternative conditions for legality, exhaustively listed in the provisions of Art. 6 (general) and Art. 9 (special), as well as in strict compliance with the principles of processing, proclaimed in Art. 5 of the Regulation.

Given the arguments presented so far, it can be concluded that for the Minister of Transport, Information Technology and Communications / Executive Director of the IAAA, there is a condition for legality in obtaining the requested by DG "GRAO" in

the Ministry of Regional Development and Public Works. ESGRAON, based on Art. 6, para. 1, p. "E", ex. 2, para. 3, p. "B" of Regulation (EU) 2016/679. A key aspect that has a direct impact on the rights and interests of individuals is compliance with the principle of "restriction of storage", according to which, when retention periods are not specified in applicable law, the controller should determine the retention period required. to achieve the purposes of processing.

For these reasons and on the grounds of Art. 10a, para. 1 of the Personal Data Protection Act in conjunction with Art. 58, para. 3, p. "B" of Regulation (EU) 2016/679, the Commission for Personal Data Protection states the following

OPINION:

1. Subject to the hypothesis of Art. 106, para. 1, item 3 of the Civil Registration Act, the Commission for Personal Data Protection should not rule on a request to it for a permit to provide data from ESGRAON by an entity having the status of state body or institution.
2. The General Directorate "Civil Registration and Administrative Services" at the Ministry of Regional Development and Public Works may provide the data requested by the Minister of Transport, Information Technology and Communications from ESGRAON on the grounds of Art. 106, para. 1, item 2 of the Civil Registration Act.

THE CHAIRMAN:

MEMBERS:

Ventsislav Karadzhov

Tsanko Tsolov

Maria Mateva / p /

Veselin Tselkov / p /

1 Decision № 9979 of 30.11.2004 under Adm. d. № 3377/2004, V otd. of YOU; Decision № 13931 of 19.12.2016 under Adm. d. № 13984/2015, III dept. of YOU; Decision № 87 of 05.01.2017 under Adm. d. № 14661/2015, III dept. of YOU; Decision № 5034 dated 24.04.2017 under Adm. d. № 1356/2016, III otd. of YOU; Decision № 4939 of 20.04.2017 under Adm. d. № 2685/2016, III dept. of YOU; Decision № 6677 of 04.06.2008 under Adm. d. № 4261/2008, III otd. of YOU

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