

FOR PRIVACY PROTECTION AND STATE TRANSPARENCY Tatari tn 39 / 10134 Tallinn / 627 4135 / info@aki.ee /

www.aki.ee Registration code 70004235 PRELIMINARY WARNING in personal data protection case no. 2.1.-4/20/1662 Issuer

of the injunction Data Protection Inspectorate lawyer Liisa Ojangu Time and place of the injunction 30.11.2020 in Tallinn

Recipients of the injunction - personal data processors OÜ Mustamäe Apteek Jürgen Jänese address: Pärnu mnt 102d-32,

11312 Tallinn e-mail address: jyrge.janese@apotheker.ee Veerenni Apteek OÜ Ene Bötter address: Veerenni tn 53a, 10138

Tallinn e-mail address: ene.botter@sydameapteek.ee OÜ PharmaMint Piret Raad address: Akadeemia tee 45, 13520 Tallinn

e-mail address: pharmamint@gmail.com Person in charge of personal data processor Board member RESOLUTION: Section

28(1) of the Law on the Protection of Law and Order (KorS), §56(2)(8), §58(1) of the Personal Data Protection Act, §58(1) and

Article 58(2)(f), Article 5 of the General Regulation on Personal Data Protection On the basis of paragraph 1 point a) and

Article 5 paragraph 2, Article 6 paragraph 1, Article 9 paragraph 1, I issue a mandatory order for execution: Stop the display of

the list of valid prescriptions of a person based on the personal identification number in e-pharmacies to other persons, insofar

as there is no legal basis for such publication. I set the deadline for the execution of the order to be 01.12.2020. Report

compliance with the order to the Data Protection Inspectorate by this deadline at the latest. REFERENCE FOR DISPUTES:

This order can be challenged within 30 days by submitting either: - an appeal under the Administrative Procedure Act to the

Data Protection Inspectorate or - an appeal under the Administrative Court Procedure Code to the 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. FINANCIAL MONEY WARNING: If the injunction has not been complied

with by the set deadline, the Data Protection Inspectorate will impose a monetary fine of 100,000 euros on the recipient of the

injunction based on § 60 of the Personal Data Protection Act. 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:

Failure to comply with the prescription under Article 58(2) of the Personal Data Protection General Regulation may result in a

misdemeanor proceeding based on § 69 of the Personal Data Protection Act. 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 (AKI) started a self-initiated monitoring

procedure on the basis of § 56 (3) point 8 of the Personal Data Protection Act (IKS) in connection with the fact that it is possible to see another person's personal code in the Apotheke e-pharmacy, the Südameapteeg e-pharmacy and the Azeta.ee e-pharmacy when entering a list of his current prescription drugs. AKI is of the opinion that publishing personal data in this way is not legal. PERSONAL DATA PROCESSOR'S EXPLANATION: Pursuant to § 40 (3) point 1 of the Administrative Procedures Act, the administrative procedure may be conducted without hearing the opinion and objections of the party to the procedure, if it is necessary to act immediately to prevent damage resulting from delay or to protect public interests. AKI is of the opinion that a situation in which any person is able to consult another person's list of valid prescriptions by knowing their personal identification number is a significant violation of the requirements of personal data processing, which must be stopped as soon as possible. GROUNDS OF THE DATA PROTECTION INSPECTION: Legal basis for the processing of special personal data AKI is of the opinion that the data of valid prescriptions for a specific person must be treated as special personal data within the meaning of Art. 9 of the General Regulation on the Protection of Personal Data (GPA), insofar as it is possible to draw clear conclusions about the person's state of health based on the prescriptions prescribed to a person, in particular about diseases for which the drug has been prescribed. Today, even without a medical education, it is very easy to find comprehensive explanations about medicines and their active ingredients, including which health conditions they are used to treat, through an internet search. In this case, the legal bases for processing special types of personal data are primarily the person's own consent (Article 9(2)(a) of the GDPR) and processing on the basis of national law (Article 9(2)(b) and (g) of the GDPR). Consent In this case, in any e-pharmacy environment, it is not checked whether the person whose prescription data is viewed on the basis of his personal identification number has given voluntary consent. The data viewer's confirmation that he is entitled to see the data of another person is not equivalent to the data subject's own voluntary consent, because the data processor cannot check whether and for what purpose the consent was given at all and whether it was given voluntarily. According to article 7 paragraph 1 of IKÜM, the controller must be able to prove that the data subject has agreed to the processing of his personal data. According to article 4 point 7 of IKÜM, the responsible processor is the person who determines the purposes and means of personal data processing. In the current case, the responsible processor of the data is the pharmacy, not the person who wants to view the list of other person's prescriptions, as the pharmacy has created the means to view other people's prescription drugs for the purpose of purchasing them. Basis arising from the legal act According to § 81 (5) of the Medicines Act, the pharmacy service provider is obliged to process the prescription, except for the

prescription of the European Union, through the prescription center, recording the information related to the sale of the medicine, including the data of the person buying the prescription medicine. On the basis of § 81 (9) of the Medicines Act, the person who dispensed the drug or medical device on the basis of the prescription or medical device card has the right to see prescriptions that the person has not purchased from the prescription center. According to § 10 of the statute of establishment of a prescription center and maintenance of a prescription center, the following have the right to receive data from the prescription center in order to fulfill the tasks assigned by the law or the legislation issued on the basis of the law: 1) a person who has the right to issue a prescription or medical device card; 2) the person issuing the drug or medical device; 3) Health insurance fund; 4) at the Health Board; 5) at the Medicines Board; 6) at the Ministry of Social Affairs; 7) Data Protection at the Inspectorate. Therefore, in the process of buying out the medicine, only the person issuing the medicine, i.e. the pharmacist, has the right to see the list of other people's prescriptions. Even when physically buying prescription drugs for another person in a pharmacy, the list of valid prescriptions is not displayed to the buyer, only the pharmacist can see it, and the buyer verbally specifies the name or when he wants to buy the prescription drug. As a result of the above, the AKI is of the opinion that displaying a list of valid prescription drugs in an e-pharmacy to any person on the basis of another person's personal identification number is not legal within the meaning of article 5, paragraph 1 of the IKÜM, because there is no legal basis for disclosing the list of prescriptions as a special type of personal data from article 9 of the IKÜM. Therefore, such disclosure of personal data must be stopped immediately. /digitally signed/ Liisa Ojangu lawyer under the authority of the director general

For information: Sotsialministeerium info@sm.ee; Health Insurance Fund info@haigekassa.ee; The Medicines Agency info@ravimiamet.ee; Health Board info@terviseamet.ee.