

PRIVACY PROTECTION AND STATE TRANSPARENCY INjunction-WARNING in personal data protection case no.

2.1.-1/20/4478 Injunction maker Data Protection Inspectorate lawyer Virve Lans Time and place of injunction 08.11.2021 in

Tallinn Addressee of injunction - personal data processor 1Maaler Ehitus OÜ (14578286) XXXX address : XXXX, Tallinn

13915 e-mail address: info@1maaler.ee XXX Personal data processor responsible person Board member XXXX

RESOLUTION: § 56 subsection 1, subsection 2 point 8, § 58 subsection 1 of the Personal Data Protection Act (ICS) and the General Regulation on Personal Data Protection (IKÜM) on the basis of article 5 paragraph 1 point a, and paragraph 2, article

17 paragraph 1 points c, d and article 58 paragraph 2 point g, I issue a mandatory injunction for compliance: 1 Maaler Ehitus OÜ board member XXXX to delete the personal data (name, voice) held by XXXX containing a recording of a telephone call. I

set the deadline for the execution of the order to be 22.11.2021. Report compliance with the order to 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. EXERCISE MONEY WARNING: If the injunction is not fulfilled by the specified deadline, the Data Protection Inspectorate will issue an injunction to the recipient of the injunction based on § 60 of

the Personal Data Protection Act: Tatari tn 39 / 10134 Tallinn / 627 4135 / info@aki.ee / www.aki.ee Registry code 70004235

Extortion money 4000 euros. 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 received a complaint from XXXX XXXX, according to which XXXX recorded XXXX's phone call with the complainant. XXXXX did not inform XXXX about the fact that the call was recorded. XXXXX forwarded the

recorded call to third parties. Based on the above, the Data Protection Inspectorate started a monitoring procedure on the

basis of § 56 (3) point 8 of the Personal Data Protection Act. In order to find out that the recording and transmission of the call made by XXXX XXX by the board member XXXXX of 1Maaler Ehitus OÜ to third parties complies with ALL requirements, the inspectorate has sent several inquiries to XXXX. On 01.06.2021, the inspectorate inquired of XXXX in connection with the fact that XXXX had recorded the phone call held between XXXX and XXXX without XXXX's consent and forwarded the recording of the phone call to third parties (XXXX and XXXX). The phone call recording contains XXXX's personal data (name, voice). The questioning included the following questions: 1. On which legal basis specified in Article 6 of the General Regulation on Personal Data Protection did you record the phone call XXXX that took place on XXXX? 2. On which legal basis specified in Article 6 of the General Regulation on Personal Data Protection did you transmit the recording of the telephone call XXXX? 3. On which legal basis specified in Article 6 of the General Regulation on Personal Data Protection did you transmit the recording of the telephone call XXXX? The deadline for answering the inquiry was 15.06.2021. On 14.06.2021, XXXX's representative submitted his own explanations and objections to the inquiry. On 27.07.2021, inspection XXXX made a proposal for better compliance with personal data protection requirements - the content of the proposal was to delete XXXX's personal data (the recording of the phone call that took place in XXXX). The deadline for responding to the proposal was 02.08.2021. On 26.08.2021, the representative of XXXX conveyed the opinion of the inspectorate regarding the deletion of XXXX's personal data (the recording of the phone call that took place in XXXX). On 21.09.2021, the inspection made the following inquiry to XXXX, a member of the board of 1Maaler Ehituse OÜ, in order to find out whether XXXX may still have any legal grounds for keeping the voice recording. In the inquiry, the inspectorate also explained that XXXX has not proven that he had a legitimate interest in recording the call, he would have prepared an assessment of the legitimate interest, or he would have had the consent of the complainant. Therefore, the inspectorate continues to be of the opinion that the collection of personal data through call recording took place illegally. At the same time, the inspectorate pointed out in the inquiry that the only basis arising from the General Regulation on the Protection of Personal Data, which XXXX could rely on to prevent the deletion of the call recording, is Article 17 paragraph 3 point e of the General Regulation on the Protection of Personal Data, according to which the data controller has the possibility to further process personal data for the preparation, submission and defense of legal claims . Due to this, the inspectorate wanted answers to the following questions: 1. Who is the responsible processor of the personal data of XXXX through call recording? Is it 1Maaler Ehitus OÜ or XXXX? 2. Submit an analysis of the need to store personal data (call recording), which shows that it is necessary to store XXXX's personal data for the

preparation, submission or defense of legal claims. 3. On the basis of which claim and which legal provision do you plan to file a claim or may a claim be filed against you? 4. What specifically do you prove when preparing or defending the mentioned legal claim with a voice recording? How much weight does the disputed speech recording have as evidence in preparing, presenting or defending a legal claim? 5. Is it possible to prove this fact with other relevant documents (contracts, invoices, acts or other documents)? 6. Please submit all the documents on which the claim is based to the inspection for evaluation. 7. Presumably, it is a claim that expires within 3 years, so please explain what is the probability of a lawsuit during the limitation period and what does it depend on? 8. When exactly do you plan to file a lawsuit against Tycoon OÜ? How realistic is your desire to file a lawsuit against Tycoon OÜ? The deadline for answering the inquiry was 30.09.2021. XXXX did not respond to the inspection's inquiry by the deadline. On 01.10.2021, the inspectorate contacted XXXX by phone (number XXXX) and reminded him of the obligation to respond to the inquiry. During the call, it became clear that XXXX expects to be represented by his lawyer in this procedure. XXXX's lawyer has submitted an authorization to represent XXXX at the beginning of the supervision procedure, but according to the inspection, the submitted authorization does not include representation of XXXX in this supervision procedure. Although the inspection has accepted the answers to inquiries sent earlier during the supervision procedure of XXXX, which have been forwarded by its representative, the inspection will only forward the documents of the procedure to XXXX. The inspectorate also explained this fact to XXXX. Despite the reminder, XXXX has not responded to the inspection's inquiry on 21.09.2021, nor has it asked for an additional deadline to respond. On 19.10.2021, the inspection issued an injunction-warning to the member of the management board of 1Maaler Ehitus OÜ XXXX for answering the inquiry. For the time being, XXXX has not responded to the inspection nor has it asked for an extension of time to respond. The inspectorate has given XXXX a reasonable deadline to respond to the inquiry, and has also reminded of the arrival of the response deadline by phone. Thus, the inspectorate has fulfilled the obligation of § 40 (1) of the Administrative Procedure Act to give the party to the procedure the opportunity to present their opinion and objections on the matter before issuing the administrative act. EXPLANATION OF THE PERSONAL DATA PROCESSOR: XXXX's representative presented the following arguments in his 14.06.2021 response to the inspection: "1. In the episode you referred to, processing of personal data by XXXX took place on the basis of § 10, paragraph 1 of the Personal Data Protection Act (IKS), which allows the processing and transfer of personal data to third parties in connection with the breach of a debt relationship. 2. The recorded telephone call did not contain - or the telephone call did not involve processing of personal data within the meaning of Article 9(1) of Regulation

(EU) 2016/679 of the European Parliament and of the Council, nor did the processing of personal data contradict the provisions of the General Regulation on the Protection of Personal Data (GPR) and the IKS with the principles of personal data protection processing. 3. According to Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016, preamble p 14, the protection provided by the regulation is not applied in connection with the processing of such data concerning legal entities, in particular companies established as legal entities, including the name of the legal entity and form and contact details. 4. The processing and transmission of the data in the complaint referred to by you took place in connection with the debt-related dispute between the XXX company Tycoon OÜ and 1maaler OÜ, so the protection rights of XXX arising from the cited legislation do not apply and the supervision procedure is subject to termination. " On 26.08.2021, XXXX's representative submitted the following arguments to the inspection's proposal to delete XXXX's personal data (the recording of the phone call made by XXXX): XXXX is still of the opinion that the referred episode does not involve the processing of personal data in a private legal relationship, and Regulation (EU) 2016 of the European Parliament and of the Council does not apply to this situation /679, the requirements stated in paragraph 1 of Article 9. According to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, preamble p 14, the protection provided by the regulation is not applied in relation to the processing of such data concerning legal entities, in particular companies established as legal entities, including the name and form of the legal entity and contact details. The later contesting of conversations between legal entities and oral declarations of intent, the legal implementation of the prevention of collection and use of evidence for this purpose with the requirements of personal data protection is not in accordance with the law and blurs the legal principles set forth by the legislator. The application of the legal principles arising from the requirements of personal data protection in the manner requested by you would lead to a situation where it becomes essentially impossible to present oral evidence in a legal dispute. To the extent that 1Maaler Ehitus OÜ or its legal successor intends to use the recording of this conversation as evidence in the planned legal dispute in a financial claim against Tycoon Eesti OÜ, it is not possible to fulfill your proposal to delete the recording. GROUNDS OF THE DATA PROTECTION INSPECTION: I Processing of the personal data of a natural person XXXX's representative has taken the position in his responses to the inspection on 10.06.2021 and 26.08.2021 that the disputed voice recording did not contain the personal data of a natural person, but it is the processing of data of legal entities and therefore the protection arising from the IKÜM does not apply . We explain that, as a result of the complaint, the recording of the call also involves the processing of personal data of a natural person, XXXX (voice, name). The term IKÜM includes any

information about an identified or identifiable natural person (Article 4 point 1 of IKÜM). Processing of personal data also includes any automated operation performed with personal data or their collections, such as collection, storage, transmission, distribution or making available in any other way (Article 4 point 2 of the General Data Protection Regulation). When recording a telephone call, it must be taken into account that in addition to the personal data mentioned during the conversation, the voices of the people participating in the conversation are also personal data, as it is possible to identify a person by their voice. At the same time, it does not matter that it was a telephone conversation related to the company's activities, since the recording of the voice and the transmission of the recording are in any case the processing of the personal data of a natural person (interlocutor). Storing and transmitting a recording containing personal data is processing personal data within the meaning of Article 4, Clause 2 of the GDPR. Therefore, the inspection is of the opinion that XXXX has processed XXXX's personal data when recording the phone call and transmitting the recording. According to article 5 paragraph 2 of the GDPR, the data processor must prove the legality of data processing. Article 6 of the GDPR defines the legality of personal data processing. The processing of personal data is legal only if at least one of the grounds stated in Article 6, paragraph 1 of IKÜM is fulfilled. Therefore, the member of the board of 1Maaler Ehitus OÜ, XXXX, has the obligation to prove to the inspection that he processed the personal data of XXXX in accordance with the IKÜM. The inspection is of the opinion that 1Maaler Ehitus OÜ board member XXXX has not proven during the supervision procedure that he processed XXXX's personal data legally. II

Transfer of personal data related to breach of debt relationship (ICS § 10) In his 10.06.2021 response to the inspection, XXXX's representative stated that when recording the disputed telephone call, personal data was processed on the basis of § 10 subsection 1 of IKS, which allows the processing and transmission of personal data to third parties in connection with breach of debt relationship. It follows from paragraph 1 of IKS § 10 that the transmission of personal data related to the breach of debt relationship to a third party and the processing of the transmitted data by a third party is permitted for the purpose of assessing the creditworthiness of the data subject or for other similar purposes and only if the responsible or authorized processor has (i) checked the correctness of the transmitted data and (ii) a legal basis for the transfer of personal data and has (iii) registered the data transfer. However, the processing of debt data is not permitted if it excessively damages the rights and freedoms of the data subject (ICS § 10 pt. 2 p. 3). The purpose of the regulation of IKS § 10 is to ensure the possibility of assessing the financial reliability, or creditworthiness, of individuals. In particular, the regulation is intended so that financial institutions and business enterprises can assess the reliability of the other party to the contract in the performance of

contractual relations. Thus, the regulation of § 10 of the IKS gives the possibility to transmit information related to the debt relationship to a third party so that the third party can assess the creditworthiness of the data subject. As a result of this complaint, XXXX has forwarded the recording of a telephone conversation containing the personal data of a natural person, XXXX, to third parties (XXXX and XXXX). According to the complaint, the third parties are employees of Tycoon OÜ (XXXX). It also follows from the explanations provided by XXXX that the dispute related to the violation of the debt relationship exists between the business enterprises Tycoon OÜ and 1Maaler Ehitus OÜ. Therefore, based on the available information, the inspectorate does not find that the recording of the telephone conversation was transmitted to the company's employees for the purpose of enabling the company's employees to assess the creditworthiness of the natural person XXXX. Also, based on the information provided, there is no debt relationship in this case for a natural person. However, when the recording of the phone call was transmitted, the personal data (voice and name) of the natural person was transmitted. In addition, as stated in paragraph 1 of § 10 of the IKS, for the provision to apply, the processor of personal data must make sure that there is a legal basis. § 10 of the IKS is therefore based on the legal basis mentioned in Article 6(1)(f) of the IKÜM, according to which the processing of personal data is permitted on the basis of a legitimate interest, unless such an interest is outweighed by the interests or fundamental rights and freedoms of the data subject. Therefore, the data processor must also consider the existence of the legal basis mentioned in Article 6(1)(f) of the IKÜM based on IKS § 10 and carry out a legitimate interest assessment. Assessment of legitimate interest The data processor is obliged to assess and document the assessment if there is a legitimate interest before processing personal data. Since the right to process data arising from a legitimate interest exists only if the interests of the data processor (or a third party) are more important than the rights and interests of the data subject, the systematic assessment of the legitimate interest and the description of its existence must include at least the following: - the interests of the personal data processor or third parties and their weight; - the rights and interests of the data subject and their importance; - consideration of conflicting interests (additional protective measures to be introduced if necessary) and a final assessment of the existence of a legitimate interest. Both positive and negative consequences must be taken into account when assessing the impact of processing. These may include possible future decisions or actions taken by third parties and situations where the processing may result in the exclusion or discrimination of individuals, damage to reputation or, more generally, situations where there is a risk of damage to reputation, bargaining power or autonomy. In addition to the harmful consequences that can be specifically foreseen, the broader emotional impact, such as irritation, fear and worry, which may

result from the data subject no longer having control over his or her personal data, or from being informed that they are or have been may be abused or compromised. Having described the interests of the parties, it is necessary to assess whether the impact caused by the processing of personal data on the data subject is proportional to the requested purpose. The encroachment of fundamental rights and freedoms is excessive if, for example, there is another tool that helps to achieve the set goal just as well, but does not encroach on the rights of the person as strongly. Processing is proportionate only if it is suitable (suitable), necessary and moderate to achieve the stated goal. Processing is appropriate if it facilitates the achievement of the specified purpose. Processing is necessary if the purpose cannot be achieved in another, less burdensome way for the person. In order to assess moderation, the importance of the interests of the data subject and the extent of the infringement of rights must be considered on the one hand, and the importance of the purpose of the processing on the other hand. According to information known to the Data Protection Inspectorate, data processing did not take place for the reason that third parties to whom personal data were transferred could check the creditworthiness of XXXX. It also follows from the information provided to the inspectorate that the debt relationship did not exist for the natural person (XXXX) whose personal data (voice, name) was processed. Therefore, the data processing could not be based on § 10 of the Personal Data Protection Act.

III Processing of personal data for the preparation, presentation and protection of legal claims. In the response sent to the inspection by XXXX's representative on 26.08.2021, XXXX has said that 1Maaler Ehituse OÜ wants to use the disputed voice recording as evidence in the planned litigation against Tycoon Eesti OÜ. Pursuant to Article 17(1)(d) of the IKÜM, the data subject has the right to demand that the controller delete personal data concerning him without undue delay, and the controller is obliged to delete personal data without undue delay if the personal data has been collected illegally. The complainant has submitted a request to delete his personal data. According to article 17 paragraph 3 point e of IKÜM, the controller has the possibility to further process personal data for the preparation, submission and defense of legal claims. Theoretically, in this case, 1Maaler Ehitus OÜ board member XXXX can rely on article 17 paragraph 3 point e of IKÜM to prevent the deletion of the call recording, according to which the data controller has the possibility to further process personal data for the preparation, presentation and defense of legal claims. At the same time, Article 17 paragraph 3 point e of IKÜM does not mean that personal data processors have the opportunity to always indicate that personal data is processed because they want to file a legal claim against a person in the uncertain future. It is also important to keep in mind that article 17 paragraph 3 of the IKÜM stipulates that the processing of personal data is permitted only to the extent that it is necessary. There must be a clear

connection and necessity between the processing of personal data and the preparation and protection of claims. The desire to prepare, present or defend a legal claim should be purposeful and realistic. When storing personal data on this basis, the statute of limitations for filing claims provided for in the general part of the Civil Code must also be followed, personal data could only be stored until the claim's statute of limitations. At the same time, it does not give the data processor the automatic right and basis to retain personal data during the term of the right to claim. In a situation where the storage of personal data is necessary for the preparation of legal claims, the controller must prove that it is actually necessary to further process such personal data for the purpose of filing, preparing or defending legal claims. When processing personal data, the probability of a dispute must be taken into account, the weight of claims and the interests of the data subject must be taken into account and evaluated. The interests of both parties must be balanced. When processing personal data for the purpose of preparing, submitting or defending legal claims, the use of data for other purposes is not permitted. During the supervision procedure, 1Maaler Ehitus OÜ's board member XXXX has not provided the inspection with information that 1Maaler Ehitus OÜ's desire to file a legal claim against Tycoon OÜ would be realistic and that the disputed voice recording is a significant piece of evidence when preparing, presenting and defending the legal claim. IV Summary Based on the above, the inspection is of the opinion that XXXX has processed XXXX's personal data (voice, name) when recording the phone call and transmitting the recording. 1Maaler Ehitus OÜ board member XXXX has not proven during the supervision procedure that he processed XXX's personal data legally. According to the information known to the inspection, data processing did not take place for the reason that third parties to whom the personal data were transferred could check the creditworthiness of XXXX. It also follows from the information provided to the inspectorate that the debt relationship did not exist with the natural person (XXXX), whose personal data (voice, name) was processed, but with Tycoon OÜ, XXXX. Therefore, data processing cannot be based on IKS § 10. During the supervision procedure, 1Maaler Ehitus OÜ board member XXXX has not provided the inspection with information that 1Maaler Ehitus OÜ's will to file a legal claim against Tycoon OÜ would be realistic and that the disputed voice recording is a significant piece of evidence when preparing, presenting and defending the legal claim. If the processing of personal data does not comply with the principles set forth in Article 5 of the IKÜM, the processing of personal data is prohibited. IKÜM is responsible for fulfilling the principles set forth in Article 5, and their fulfillment must be proven by the data processor. 1 Maaler Ehitus OÜ board member XXXX has been given the opportunity to present his views and justify the legal basis of the voice recording during the supervision procedure. Collecting personal data by recording a phone call was illegal. Also, no other

justifications have been presented to the inspectorate that would provide a legal basis for the preservation of the voice recording and the further processing of personal data. Therefore, the inspection is of the opinion that 1Maaler Ehitus OÜ has not been able to prove to the inspection that the principles set forth in Article 5 of the IKÜM have been met. 1Maaler Ehitus OÜ board member XXXX has violated ALL requirements. 1 Maaler Ehitus OÜ board member XXXX must stop illegal data processing and the disputed call recording must be deleted. According to IKS § 58 paragraph 1 and IKÜM article 58 paragraph 2 point g, the inspection has the right to order that the personal data of the data processor be deleted. Taking into account the factual circumstances, including the fact that 1Maaler Ehitus OÜ board member XXXX has not proven to the inspection the legality of the voice recording (IKÜM article 5) nor that it is necessary to further process the recording in order to prepare, transmit and protect legal claims (Article 17, paragraph 3, point e of IKÜM), the inspection considers that issuing a mandatory injunction in this matter is necessary. /signed digitally/ Virve Lans lawyer under the authority of the director general