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Judgment in Joined Cases E-11/19 and E-12/19 *Adpublisher AG* v *J and Adpublisher AG v K*

ADVISORY OPINION ON THE INTERPRETATION OF THE GDPR

In a judgment delivered today, the Court answered questions referred by the Liechtenstein Board of Appeal for Administrative Matters (*Beschwerdekommission für Verwaltungsangelegenheiten*) ("the Board of Appeal") regarding the interpretation of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) ("GDPR").

The case concerned the appeals brought by Adpublisher against decisions of the Liechtenstein Data Protection Authority in response to complaints brought by the data subject J for alleged infringement of Articles 5, 6, and 15 of the GDPR and the data subject K for alleged infringement of Article 15 of the GDPR. Both complaints questioned the sourcing and subsequent processing of personal data by Adpublisher as a data controller pursuant to Article 4(7) of the GDPR, in the context of online marketing.

The questions referred concern an adversarial general procedure to hear a complaint under the GDPR and further national appellate proceedings. In the present case, the supervisory authority has already granted "anonymisation" of the complainants during proceedings under Article 77 of the GDPR, and "anonymisation" is also sought in the proceedings within the scope of Article 78 of the GDPR.

By its first question, the Court was asked whether it follows from the provisions of the GDPR or any other provision of EEA law, that the proceedings under Articles 77 and 78(1) of the GDPR may be carried out without disclosing the identity of a complainant; and whether any grounds should be provided for not disclosing the identity of the complainant. The Court found that disclosure of a complainant's personal data during proceedings based on a complaint lodged under Article 77 of the GDPR, or proceedings based on Article 78(1) of the GDPR, is not precluded by the GDPR or any other provision of EEA law. The question of non-disclosure of a complainant's personal data must be examined in the light of the principles for processing personal data under Articles 5 and 6 of the GDPR. Non-disclosure should not be granted if it would inhibit the performance of the obligations provided in the GDPR, or the exercise of the right to effective judicial remedy and due process as set out in Article 58(4) of the GDPR and under the fundamental right to an effective judicial remedy.

By its second question, the Court was asked whether the free of charge nature of the complaint procedure under Article 77 of the GDPR extends to subsequent proceedings before appellate bodies or has an impact on the liability of the data subject to be ordered to pay costs. The Court found that it follows from Articles 77(1) and 57(3) of the GDPR that where a data subject becomes a party to proceedings under Article 78(1) of the GDPR as a result of a data controller appealing against a supervisory authority's decision, and where national law imposes this status on a data subject automatically, the data subject may not be made responsible for any costs incurred in relation to those proceedings.

The full text of the judgment may be found on the Court's website: www.eftacourt.int.