

Athens, 31-12-2021 Prot. No.: 3036 DECISION 57/2021 The Personal Data Protection Authority met, at the invitation of its President, in a meeting via video conference on 12-07-2021 in continuation of the one from 23-04- 2021 meeting and by postponing the meeting from 3/31/2021, in order to consider the case mentioned in the history of the present. Konstantinos Menudakos, President of the Authority, regular members Spyridon Vlachopoulos, Konstantinos Lambrinoudakis, as rapporteur, and Charalambos Anthopoulos were present. At the meeting, without the right to vote, the auditors Konstantinos Limniotis and Ioannis Lykotrafitis, specialist IT scientists, attended the meeting, as assistant rapporteurs, and Irini Papageorgopoulou, an employee of the Department of Administrative Affairs, as secretary. The Authority took into account the following: A's complaint No. C/EIS/5585/11-08-2020 was submitted to the Authority, as supplemented by No. C/EIS/5914/01- 09-2020 document. According to it, the complainant received, on ...2020... and time ... a phone call to his phone number ... from a phone number unknown to him ..., and in response he heard the following recorded message: "You won 680 euros. Please wait while we connect you with a representative to collect your gift." After 20 seconds he heard a voice (with a natural speaker and not through an automated message) informing him that he had won 680 euros in gift vouchers and should contact another 1-3 Kifisias Ave., 11523 Athens T: 210 6475 600 E: contact @dpa.gr www.dpa.gr 1 number and give them the code that will be heard in this active call, in order to declare in this way that he accepts the gift. Indeed, he was given a code (...) and was also dictated to him the telephone number ... that he should call in order to accept the gift. Then the complainant, as he states, asked if the specific telephone number is a subscription or only has a charge, receiving the answer that it has a charge of three (3) euros once and the call was terminated. Then, on ... the complainant called the above number, where he heard a recorded message saying that he had won a huge gift, he was also told the cost of the call (€6.45 per minute) and after being on hold for about 40 seconds, he heard message that all lines are busy and he had to call later. The complainant tried to call again, during which, again with a delay of 56 seconds, a girl answered, the dialogue with which he cites in his complaint, and from which it appears that he was initially informed that he had been drawn to receive gift vouchers of 680 euros, which according to basically, as the discussion showed, they were discount coupons in case he made some purchases – which were on high-cost products. Finally, the complainant mentions information he obtained from various sources on the Internet, regarding these calls which are characterized on these websites, by citizens who received such calls, as fraud. The Authority sent the companies Microbase Advanced Communications and Informatics Services (hereafter Microbase) and Lexitel MEPE (hereafter Lexitel), to whose network the telephone numbers ... and ... respectively, belonged -1/18-08-2020 and Γ/Εξ/5585-2/18-08-2020

documents respectively, asking them to provide the necessary subscriber information for the respective numbers (name, surname or surname, address and/or other contact details). Microbase replied<sup>2</sup> that the owner of the first number is the company PLUS REAL ADVERTISING ADVERTISING - PROMOTIONAL - COMMERCIAL - RESEARCH AND 1 According to the website [www.foritotita.gr](http://www.foritotita.gr) of E.E.T.T. 2 With document No. G/EIS/5873/31-08-2020 2 SINGLE-PERSON POLLS IKE (hereinafter, PLUS REAL). Lexitel initially responded, with its document No. G/EIS/5663/18-08-2020, that it is not possible to make outgoing calls from the number ... since it is a number that only accepts calls. After further clarification by the Authority's auditor (by telephone) that, in any case, the details of the holder of the number in question must be disclosed to the Authority, and after sending two reminder electronic messages (e-mails) to the company due to non-response of it, Lexitel finally informed the Authority with reference number C/EIS/6297/16-09-2020 that the company PLUS REAL is the owner of the number in question. The Authority, in the context of examining the above complaint, sent to PLUS REAL the document No. C/EX/5585-3/21-09-2020, requesting its opinions on the complainants, while also requesting that they be provided information on the general procedures that the company follows for the realization of telephone actions such as the above, i.e. if it is active in the field of telephone promotional actions on its own behalf and/or on behalf of others, how the selection of called numbers is made, what information exactly provides called subscribers about its identity and processing purposes, as well as whether all calls it makes are automated (without human intervention). PLUS REAL responded to the Authority with document No. G/EIS/8895/28-12-2020, in which it states the following: A. The company with the name "PLUS REAL ADVERTISMENT - ADVERTISING - PROMOTIONAL - RESEARCH AND PUBLIC SURVEYING SINGLE PERSONAL IKE", has as its activity, among other things, the carrying out, at certain time intervals, of promotional actions by telephone, with clear terms of participation, which were communicated in detail to the participants. The promotional actions in question are carried out in accordance with the published written conditions of participation, which are filed with a notary public and posted on the company's website for the purpose of informing the public, for the entire duration of each promotional action. The terms of the promotions state in 3 rules, among others, the following: "Participation in the Promotion is carried out by submitting valid contact information, in one of the following ways: (1) through registrations/postings on the internet, on sites that promote consumerism or non-products, where there is a relevant post by the Organizing Company, or (2) through the special participation forms, which bear the name of the Organizing Company and are distributed by its representatives, or (3) through the special telephone number \_\_\_\_, with a local charge. Specifically, for the validity of their participation, the participants must

respectively for each of the above-mentioned ways: (1) complete the special Participation Form in the respective Promotion, which is available from time to time on various sites that promote consumer or non-consumer products , stating the following information in a complete and true manner: name, surname and telephone number, or (2) to state in a complete and true manner the following information: name, surname and telephone number in the relevant participation form (voucher), which will be given to them by a representative of the Organizing company and will be filled in by the Participant himself or by the representative of the Organizer, at the discretion of the Participant, or (3) to report compulsorily and in full and the following information is true: first name, last name and their telephone number on the answering machine of the Organizing company, which will be available 24 hours a day on phone calls to a landline number." (...) "The Organizer considers that each participant is the owner and has exclusive control of the e-mail address he declares as well as the telephone number he declares".

"During the Promotion, all valid, in accordance with the above mentioned, Declarations of Participation, will be collected in a special file (Excel) of the Organizing Company and will receive a serial number, and Beneficiaries will be informed about the next stages of the Promotion energy. This file will be destroyed after the Promotion has ended." 4 "Each Beneficiary will be informed free of charge, through a call from the telephone center of the Organizing Company to the mobile or landline number that he has declared during his participation under Article 4, that he is a Beneficiary of the promotional gift vouchers and must confirm that desires and accepts any gifts to which he is entitled. If he accepts his participation, he will be informed during the same communication about the number he will call to be informed about the method of collection (...). "All participants acknowledge, declare and expressly and unconditionally accept that: (a) their personal information in this promotion cannot belong to a third natural or legal person, but to themselves, (b) they are over 18 years of age and have legal capacity, (c) their personality is not insulted or diminished in any way by their participation in the promotion in question of the Organizer, in which they will participate with their personal data, (d) they do not infringe personal data or the right the personality of any third party, (e) do not infringe the intellectual property rights of any third party, (f) expressly consent to the Organizer using and processing their personal information (name, phone, email address) for the sole purpose of serving the Promotion, (g) provide their consent and authorization , to the Organizer for the promotion of the Promotion and its results through print and electronic media and the internet throughout its duration. The Organizing Company reserves the right to use and publish any news item related to the conduct of the Promotion." "Privacy. By participating in the Promotion, each participant expressly declares and accepts that his/her personal data will be collected and used by the Organizer for their processing through automated or

non-automated means, either by the Organizer or through any other person appointed by the Organizer to carry out the as above processing by order and on its behalf in the context of this. The 5 personal details of the winners in the Promotion, in this capacity, will be retained by the Organizer and will be used exclusively for the purposes of the Promotion. In any case, the personal data of the participants will be kept in accordance with the current Greek legislation, Law 4624/2019 on the Personal Data Protection Authority and the General Regulation for the Protection of Personal Data - Regulation (EU) 2016/679 of European Parliament (GDPR). The participants will have the right to confirm, modify or correct, limit or even delete all their personal data kept on file at any time and without charge in accordance with the terms of the current Greek legislation, Law 4624/2019 on the Data Protection Authority of a Personal Nature and the General Regulation for the Protection of Personal Data-Regulation (EU) 2016/679 of the European Parliament (GDPR) as applicable by contacting the Organizer's data controller, at the email [plusrealadvertisement@gmail.com](mailto:plusrealadvertisement@gmail.com) or by telephone via a landline telephone number which is communicated to the participants with each promotional action. The exercise of the rights of limitation, opposition and/or the right of deletion, if they concern data that is necessary for the implementation and/or continuation of this promotional action, implies either the non-possibility of participation, if exercised before the implementation of the Promotional Action, or the automatic cancellation of participation in it if exercised at any stage of the Promotion. The Organizer expressly declares and undertakes that it follows the principle of minimum personal data processing and the above data collected are processed exclusively and only for certain above purposes herein. Furthermore, it declares that it has taken all the necessary measures, technical, organizational, legal, in order to ensure the protection of this data (...)" As PLUS REAL reports, from the above basic terms, the following briefly emerge, according to its claims :

1. Participation in the promotion was done at the initiative of the participant, in one of the ways expressly provided for. Therefore, the participant voluntarily declared his information by filling in a relevant form, in which, among other things, he indicated the desired contact phone number. In order for an entry to be considered valid, all the 2. minimum required information, namely name, surname and telephone number, should be mentioned, so that if necessary the owner can be identified.
3. Valid entries were collected in an electronic file so that communication could take place, with which participants were informed about the next stages of the promotion. The above records are kept only for as long as the 4. respective promotional activity in the participation to which the participant has consented. Then they are destroyed.
5. The communication is made to the number that the participant himself had declared, giving his consent to said communication for the purpose of the promotion. A special telephone number is defined for each

promotional action, so that complaints can be 6. expressed. Each participant declares that he consents to the processing of his personal 7. data, including the telephone, for the purpose of serving the promotion. 8. A special toll-free telephone number is designated for the purpose of serving the exercise of the right of objection. The participants could confirm, modify or correct, limit or even delete all their personal data at any time and without charge by contacting the Organizer's data controller, at a certain e-mail or phone number. 9. Each participant becomes aware of the conditions before submitting his participation, at which point he declares that he voluntarily participates in the promotional 7 action and unconditionally accepts the conditions under which it is carried out, i.e. the telephone communication. B. Regarding the above complaint, PLUS REAL states that the complainant admitted that he had wrongly reported the company and proceeded to a written withdrawal of his complaint and a relevant information to the Authority about it. In particular, the complainant in question contacted an employee of the company at the end of ... 2020 and then the company contacted him in which, after hearing his lengthy protests, withheld his contact details. Following his investigation, it was established that the complainant had filled out a competition participation form in which he stated his personal and contact details. He then called him and informed him about it, where he accepted his mistake and attributed the misunderstanding to the fact that during that period he had repeatedly received calls from various numbers, which caused him irritation and annoyance as a result of which he made the specific complaint forgetting but that, in the case of the company in question, the call was made after his express consent. After this admission, he himself sent the statement of revocation of the complainants from ...2020, which the company attaches to its response to the Authority. However, this statement of the complainant has not been submitted to the Authority by him. With regard to the content of the complaint, PLUS REAL points out that the complainant, being registered in the participants' file, was called by its employee from a civil call which has no charge for the person called. This call is always made in order to confirm the participation of the called party. In this call, the complainant did not answer and he himself, calling back, heard the recorded message of our call center (welcome message), which informs the participant that he will be connected with a representative of the company. Then, after speaking with a representative, she was informed that she had won an amount corresponding to discount gift certificates corresponding to specific products. The complainant was advised that if he wished to receive the discount gift certificates he would have to call a toll free number to accept the gift certificates and indicate where the gift certificates would be sent. The claim of the complainant that he was not informed of the exact amount of the cost of the toll telephone number is, according to the company's claims, untrue and inaccurate, since everyone who chooses to call is informed of the exact amount of the cost

of the call. In addition, in addition to the above information provided by the company employee, when the interested parties called the phone number on which the charge was made, to receive the discounted gift vouchers, before their charge began, a free recorded message was given which told them the brand of the service provider and reminded them of the charge for the call that would follow, so that even at this stage anyone who did not wish to charge their phone could end the call without being charged. According to the company, the complainant confirms this fact in the continuation of his complaint where he states that when he called he heard a recorded message informing him of the charge for the upcoming call. for which telephone charges

The company also states that for these promotional actions it is subject to administrative and operational costs, which it covers from the above-mentioned repeatedly and clearly informs the participants. Also, while the complainant in the second paragraph of his complaint states that the company representative informed him that he won 680.00 euros in gift vouchers then, completely contradicting the company, he states: "I was not told what I won other than amount of the amount, i.e. it was not explained to me that they are discount checks, they clearly told me a check". This, according to the claims of company, is completely false as from the beginning it is clarified to the participants that the gifts consist of discount gift vouchers for specific products and not a sum of money or a cheque. Also, the complainant's statement that he did research on the internet about the company is vague, unclear, unproven and unsubstantiated as no evidence is provided to show that what the complainant mentions concerns our company. Finally, PLUS REAL, regarding the more specific questions raised by the Authority with its document, states the following: calls are made to a) Telephones of the company "PLUS REAL ADVERTISING - ADVERTISING - PROMOTIONAL - RESEARCH AND PUBLISHING SOLELY INDIVIDUAL IKE", in the context of its business activity. account b) The telephone numbers that the company calls come from the registrations made by the owners of the said telephone numbers themselves, declaring participation in the respective promotional actions, based on the relevant conditions, mentioned above under A. Therefore with the participation the owner of the number also grants his express written consent for communication with him according to article 11 par. 1 of Law 3471/2006. Having said consent, the company communicates with him exclusively and only for the purpose for which it was given. c) The call made to the registered number is not automated (robocall) but is made by employees of the company. The called party can either declare to the employee that he will leave the call or that he wishes to proceed, that is, he declares that he now expressly wishes and consents to the communication and then, after being informed both verbally and by recorded message about the cost of the call, he is connected if he so chooses (the company notes that no fee is imposed on the participant in the promotion until this point) with

a representative of the company, who reminds him of the necessary information, such as company name, purpose of call, possibility to express objections/complaints, how to exercise right of access and right objection, method of receiving the gift, which he already knows having accepted the terms of the promotion. d) Communications are made exclusively to people who have expressly consented, participating and declaring their details in the relevant form, based on the terms of each promotion. Therefore, no violation 10 of article 11 of Law 3471/2006 occurs, according to the claims of the company, as according to article 11 paragraph 1 of the law it is required that "the subscriber has not expressly consented in advance", an element that does not occur in case of the company. On the contrary, the consent is explicit as the participant himself declares his telephone number in the special participation form, free as it is a voluntary action, and specific as, as follows from the conditions he accepts, he has previously been informed that he is giving his telephone number for the specific purpose and that the data is subject to processing in the context of said purpose. It is thus ensured multiple times, according to the company's claims, that the participant acts with full consciousness and awareness of the consequences of his statement. e) All participants are given the opportunity to object in a clear and certain way, both with the terms of the promotion and at the start of the conversation with the company representative. If the recipient declares that he does not want to receive communications, despite his initial express consent to them, he is automatically removed from the relevant list. f) The files of the participants and the called - a file of outgoing calls are kept for as long as the promotion lasts, i.e. until the gifts are received, and then they are deleted, as the purpose of keeping the file has been fulfilled. No use other than that covered by the purpose of the promotion is made. g) Given that the calls by the employees are made mechanically, after registering the number of the participants in the electronic database, it is possible that among the numerous registered calls, an error in the number will appear, due to a wrong entry of the number in the electronic database, i.e. human error. Subsequently, a newer complaint was submitted to the Authority with no. prot. C/EIS/1640/09-03-2021 from B, according to which he received on ...2021... and time ... an automated telephone call to his telephone number ..., which was additionally registered in the register of article 11 of n 11 3471/2006, from the number .... The complainant states that he was notified by automated message of his alleged winning of a contest with a cash prize, without withholding the company's name. The Authority sent the Microbase company, to whose network the above telephone number belongs<sup>3</sup>, the document No. Γ/ΕΖΕ/871/18-03-2021, requesting it to provide the necessary subscriber information (name, surname, address and/or other contact details). Microbase replied<sup>4</sup> that the owner of the first number is the company PLUS REAL ADVERTISING ADVERTISING - PROMOTIONAL - COMMERCIAL

- RESEARCH AND PUBLISHING MONOPROSPYI KE (hereinafter, PLUS REAL). Subsequently, the Authority invited PLUS REAL ADVERTISEMENT - ADVERTISING - PROMOTIONAL - RESEARCH AND PUBLISHING SOLE REPRESENTATIVE KE to a hearing at the meeting, via video conference, of the Plenary Session of 31-03-2021 (see call with prot. no. C/EXE/851/16-03-2021). Given that when the said call was sent, the above response from Microbase about the owner of the number was not yet known to the Authority, the Authority sent a few days later the letter No. C/EXE/888/19-03-2021 document to the controller, with which he forwarded to him the above complaint No. C/EIS/1640/09-03-2021, informing that during the above hearing the said complaint will also be discussed, requesting written opinions on it have been provided by then or, at the very least, be able to present his views on it at the hearing as well. The data controller did not, until the date of his hearing, submit any views on the said complaint. During the meeting of 31-03-2021, Mr. Nikos Petropoulos, lawyer (AMDSA ...) was present as a representative of the data controller, who submitted a request to postpone the discussion, which was accepted, with a new date for the discussion of the case being set on the 23-4-2021. The meeting of 4-23-2021 was attended by Ms. Ioanna Kamarinopoulou, lawyer (AMDSA ...), as representative of the responsible 3 According to the website [www.foritotita.gr](http://www.foritotita.gr) of E.E.T.T. 4 With processing document No. C/EIS/1942/18-03-2021 document 12. After the meeting, the data controller was given a deadline to submit a memorandum, which he submitted, within the set deadline, with document No. G/EIS/3393/24-05-2021. Already before the end of the deadline for submitting the memorandum, and three days after the aforementioned hearing of the controller where it was said that the complainant Mr. A has not submitted to the Authority a revocation of his complaint, the aforementioned complainant submitted to the Authority the no. .prot. C/EIS/2824/26-04-2021 document stating that he withdraws his complaint because his partner had given his own information, declaring participation in a specific promotional action. In the memorandum submitted by the data controller after his hearing, the following is stated: a) The data controller started its activity in the summer of 2019, which consists, among other things, of carrying out promotional actions by telephone at certain intervals, with clear conditions of participation that were communicated in advance to the participants. Said promotions are carried out in accordance with the published written conditions of participation, filed with a notary public and posted online for the purpose of informing the public for the duration of each promotion. Indicatively, the terms of the two most recent actions, as filed before a Notary, are provided with the memorandum. b) During the hearing of the controller, the question of his possible relationship with the company INFO COMMUNICATION SERVICES was raised, given that according to a search in the General Commercial Register (GEMI), the two companies show the same natural person as



Management, have similar activities, while the representative of the data controller during his hearing before the Authority also represented the company INFO COMMUNICATION SERVICES at the same meeting and for another case. Both at the hearing and with the subsequent memorandum of the controller, it was stated that the two companies in question have different headquarters, different facilities, numbers and infrastructure, and with regard to the specific activity carried out independently by each of them, they were presented with the 13 responsible refers to processing memorandum VAT declarations of both companies for September 2019, from which it follows that they operated in parallel and not consecutively. c) The data controller repeats in his memorandum that he conducts the promotional actions exclusively and only to people who have previously declared participation, having recorded in a special form or coupon the telephone number and other contact details, thus consenting to the communication with them. After the end of each promotion, the details of the participants - which were not disclosed to any third party - are deleted. Further, the controller states that in the calls to each participant two options are given, either to contact a representative by selecting the button with the number "1" or to request deletion of their details from the lists by selecting the button with the number "2". The link <https://tagnews.gr/συμμετεχω-και-κερδιζω>, where the terms of the most recent, now completed, promotional actions are posted, along with the participation form. From the Authority's examination of the above web link, it appears that the conditions of participation are generally equivalent to those described in the original document numbered prot. C/EIS/8895/28-12-2020 of the controller, but with those of the two most recent actions which are attached as attached documents to the controller's memorandum. Specifically, in the above web link<sup>5</sup>, the visitor types, in appropriate forms, first name, last name and telephone number, while he is asked to select the check box that he accepts the terms of participation. In the conditions it is stated, among other things, that "The Organizing Company considers that each Beneficiary of the Promotion, who will call the telephone number of the Service, Multimedia Information with an increased charge, is the owner of the SIM card, which corresponds to the mobile phone number or, respectively, the subscriber of the landline from which he called (...)' also in 5 Date of last access: 2/7/2021 14 d) Regarding the individual complaints, for Mr. A's first complaint it is stated again that the complaint has been expressly withdrawn by him. The data controller states that the complainant informed him that he had not withdrawn his complaint to the Authority, because he had submitted another complaint to the Authority against another data controller and - as stated in the data controller's memorandum - "it was not possible to withdraw the complaint partly". Regarding the second complaint, the controller only states the following: "(...) it is most likely due to either a typo or an incorrect phone number in the entry form. We have nothing

to declare." The Authority, after examining all the elements of the file and those discussed in the 23-04-2021 meeting, after hearing the rapporteur and the clarifications of the assistant rapporteurs, who (assistants) left after the discussion and before the conference and the taking a decision, and after thorough discussion, CONSIDERED ACCORDING TO THE LAW 1. From the provisions of articles 51 and 55 of the General Data Protection Regulation (Regulation (EU) 2016/679 – hereinafter, GDPR) and article 9 of law 4624/2019 (Government Gazette A' 137) 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 the individual from the processing of personal data. 2. According to article 4 par. 7 of the GDPR, which has been in force since May 25, 2018, the controller is defined as "the natural or legal person, public authority, agency or other body that, alone or jointly with others, determines the purposes and the way of the processing of personal data". 3. The data controller, in the context of compliance with the principle of legitimate and lawful processing of personal data (Article 5 para. 1 of the GDPR), must, in accordance with Article 12 para. 1 of the GDPR, receive the appropriate measures to provide the data subject with any 15 information referred to in Articles 13 and 14 of the GDPR, in order to inform the data subject that it is going to process its data in a legal and transparent manner, while in addition it must be in a position per at any time to prove his compliance with these principles (principle of accountability according to article 5 par. 2 of the GDPR). The obligation to inform the data controller is analyzed in articles 13 (regarding the information provided if the personal data is collected from the data subject) and 14 (regarding the information provided if the personal data has not collected from the data subject) of the GDPR. 4. The issue of telephone calls, for the purposes of direct promotion of products or services and for any kind of advertising purposes, is regulated in article 11 of Law 3471/2006, which defines the relevant unsolicited communications (see par. 1 and 2 ). It is noted that, for the issue in question, the rule of prior consent was initially chosen (see the previously enforced form of Article 11 of Law 3471/2006). However, with the provisions of article 16 par. 1 and 2 of law 3917/2011, par. 1 and 2 of article 11 of law 3471/2006 were amended, so that with article 11 par. 1 of law 3471/2006 is now defined as: "The use of automatic dialing systems, in particular using facsimile (fax) or e-mail devices, and in general the making of unsolicited communications by any means of electronic communication, without human intervention, for the purposes of direct commercial promotion of products or services and for any kind of advertising purposes, is allowed only if the subscriber expressly consents in advance", while paragraph 2 of the same article states that: "It is not allowed to make unsolicited communications with human intervention (calls) for the above purposes, as long as the subscriber has declared to the provider of the service available to the public, that

he generally does not wish to receive such calls. The body is obliged to register these statements free of charge in a special list of subscribers, which is available to anyone interested". Consequently, after 01-09-2011, when the amended - to the 16 more favorable for data controllers - provision came into force, telephone calls with human intervention, in view of the above purposes, are allowed, unless the called party has declared that does not wish them ("opt-out" system). Advertisers, as long as they carry out telephone promotions with human intervention, must receive from all providers updated copies of the Registers of article 11 of Law 3471/2006 and ensure that they have available the subscribers' statements made up to thirty days before the making of the telephone call (see also Decisions no. 62-67/2016 of the Authority). Moreover, according to article 13 of the above Law 3471/2006, the control of compliance with the provisions of this law belongs to the Authority. 5. In any case, it is noted that calls without human intervention (automated calls) require, as expressly required by article 11 par. 1 of Law 3471/2006, the prior consent of the subscribers - even if these numbers do not have registered in their provider's opt-out register. It should be noted that the provision for automated calls, pursuant to Directive 2002/58/EC, has been in force since the start of application of Law 3471/2006 and the earlier Law 2774/1999, i.e. it was not affected by the subsequent amendment of Law n. 3471/2006. After all, automated calls are a fairly invasive means of promoting products and services, as by their nature, the recipient of the communication does not easily have the possibility to be informed and exercise his rights, as in the case where the communication is carried out by human intervention. 6. Furthermore, the controller must satisfy the other rights of the data subjects, in particular the rights of information (Article 13 of the GDPR regarding information provided if personal data is collected from the data subject and Article 14 of the GDPR regarding information provided if the personal data has not been collected from the data subject), access (Article 15 GDPR) and objection (Article 21 GDPR). This means, with regard to the obligation to inform, that when making a 17 telephone call, the data controller must inform about his identity and the identity of his representative, not conceal or falsify the caller's number and inform about the purpose processing and for the possibility of exercising the above rights. Also, with regard to the right to object provided for in Article 21 of the GDPR, the controller must, in order to comply with the obligation deriving from said provision, take care, if a called subscriber expresses his objection to receiving calls by the specific data controller (and/or its representative), to follow a clearly defined procedure to ensure that this number is excluded from any telephone promotional/advertising action of the data controller in the future (see Decisions no. 62-67/2016 of the Authority, but also Decision no. 127/2017 of the Authority). 7. In the specific cases, based on the above, it appears that the complained company, as a controller, carried out automated telephone promotional actions.

Therefore, the legality of carrying out said promotional actions is ensured if the above considerations have been observed. 8.

From the examination of the elements of the case file, it emerges in particular that the controller makes automated calls to promote products and services without the prior specific consent of the data subjects. And this, because the main claim of the data controller that the calls are made only to those who have given express prior consent to this, as well as that the calls are not automated, is unfounded because it is not confirmed by the data it cites, for the following reasons: a) For none of the complaints, the data controller did not provide evidence demonstrating that he had received the prior consent of the called subscriber. Even in the case of the first complaint for which the complainant submits a document to the company with which he allegedly revokes his complaint (and which revocation he submitted to the Authority after 18 hearing the controller, and while he had not responded in an email sent to him in order to confirm the withdrawal of his complaint relied on by the controller), he does not provide evidence that he actually received his prior consent (which evidence he should have, since he claims that based on those of the complainant). For the second complaint, he did not actually investigate whether he had received the complainant's consent, since he considers it equally possible that either a typing error was made when making the call or that the complainant had entered an incorrect telephone number. due to prior consent identified the In It should also be noted that, as the Authority has already prescribed in this regard (see for example Decision no. 66/2016), in order for the data controller to be able to investigate any complaints of the data subjects , should take care to keep information necessary for the investigation of any complaint. In this particular case, the consents of the data subjects should be kept for a reasonable period of time to serve the above purpose – much more so in the present case, in which the controller knew, from the Authority's documents, of the existence of complaints submitted to the Authority. Therefore, the deletion of the data of the participants, which the data controller claims to carry out after the end of the respective promotion, cannot justify his inability to prove that the calls were actually made to users for whom he had received a special this consent. Further, despite the controller's claims that the calls were not automated, both complainants (including the first complainant who revoked the consent part) detail that the 19 calls were made in an automated manner – while making of automated calls is also described in the general information text on the processing provided by the controller. As the Authority has already judged, and in fact before the entry into force of the GDPR (see, for example, the already mentioned Decision No. 66/2016 of the Authority), when the called subscriber is the recipient of nuisance that he has not requested, the only what he can do to prove this in case he wants to make a complaint, is to limit himself to external elements of the call and to a reference to its content (phone number of call, time and day of calls, advertiser

and additionally, person with whom he spoke , if it has been stated to him, or other elements of the oral conversation). Where the complainant provides full details, as in the present cases, including the fully automated nature of the call, the advertiser (controller) should be able to demonstrate that it did not make the call or that it was made in accordance with the conditions lawful processing (ie, in this case, to prove that he had received the previous consents). This is also fully in line with the principle of accountability (Article 5 para. 2 of the GDPR), according to which the controller bears the responsibility and is able to demonstrate compliance with the principles of lawful processing of personal data. In the present case the controller did not submit any evidence to prove his claims. b) The very process described by the data controller regarding the general way of obtaining consent of the data subjects does not ensure that the consents obtained are valid. And this is because no check is made as to whether the person who registers his details in the consent form is really who he claims to be, both when filling out paper forms and when filling out electronic forms (see also in this regard Directive 2/ 2011 of the Electronic Consent Authority, which specifies the conditions for obtaining valid electronic consent). Moreover, in the information text on the processing of personal data that takes place, it is expressly stated that the company considers that each participant is the owner and has the exclusive control of the e-mail address he declares (that is, in other words, it does not carry out any accuracy control of the data declared). This is also confirmed by all the informational texts about the recent tenders which the data controller cites in his memorandum, as described in the present history, but also by the case for which the complainant withdrew his complaint, since he states that another person close to him filled in the form with the data of the complainant – in which case the data controller called the complainant, without his consent (the factual incident in question is not changed by the fact that the complainant withdrew his complaint). Therefore, even if it is accepted that the controller obtains consents according to the process he describes (for which he did not provide any evidence), these consents cannot be valid according to what is described above. 9. The data controller did not adequately inform the data subjects of his identity, since – as can be seen from the complaints – none of the complainants was able to name the company that called him because there was no such information. 10. In addition to the lack of fulfillment of the conditions for legal processing in terms of carrying out promotional actions, the data controller does not have, as can be seen from the data in the case file, complaints examination procedures, since he did not - as mentioned above - in substance examination of complaints. In particular, he did not carry out any checks for the second complaint, while for the first he did contact the complainant, but he did not provide the Authority with any proof that he had actually received - even with the improper procedure that follows - his consent . 11. The controller reports that the

number of complaints is small. However, it must be taken into account that according to common experience not all those who receive such calls in violation of the provisions of Article 11 of Law 3471/2006 submit a complaint to the Authority. In any case, the number of complaints cannot in itself, for the case in question, be a criterion for assessing the extent of the violation since, as mentioned above, the data controller in no case obtains valid consents in the context of its activities . 12. The controller clearly intended to obtain a financial benefit from said processing. 13. The Authority, taking into account the above established violations of Articles 13 and 14 of the GDPR and Article 11 of Law 3471/2006, and taking into account on the one hand that: the data controller i) intends to obtain financial benefit from said processing since there is a charge for the users if they make the appropriate button selection to proceed further, ii) it does not have a procedure for examining / satisfying complaints of the data subjects and, on the other hand, the fact that two complaints have been submitted to the Authority by the date of the hearing of the controller, it considers that the conditions of enforcement against him withbased on article 58 par. 2 i) of the GDPR on administrative sanctions, as well as the article 21 par. 1 item b' of Law 2472/1997 (which remains in force according to article 84 of Law 4624/2019) the administrative fine sanction referred to in dispositive of the present, which in any case is judged - by virtue of it of Article 83 of the GDPR - effective, proportionate and dissuasive.

#### FOR THOSE REASONS

The beginning,

22

It imposes on PLUS REAL ADVERTISING - ADVERTISING - PROMOTIONAL - RESEARCH AND PUBLISHING SOLE REPRESENTATIVE IKE, as controller, the effective, proportionate and dissuasive administrative fine which appropriate in the specific case according to the special circumstances thereof, in the amount of twenty-five thousand euros (25,000.00) euros, for the above established violations of articles 13 and 14 of Regulation (EU) 2016/679 and Article 11 of Law 3471/2006, in accordance with Article 58 para. 2 i) of the GDPR in combination with article 83 par. 5 of the Civil Code, and with article 21 par. 1 item b' of

Law 2472/1997, in conjunction with Article 13 par. 4 of Law 3471/2006 and Article

84 of Law 4624/2019.

The president

Konstantinos Menudakos

The Secretary

Irini Papageorgopoulou

23