Athens, 04-07-2021 Prot. No.: 1024 DECISION 13/2021 (Department) The Personal Data Protection Authority met as a Department via video conference on 02-17-2021 at 10:00, following the invitation of its President , in order to examine the case referred to in the present history. Georgios Batzalexis, Deputy President, in the absence of the President of the Authority, Constantinos Menoudakos, and the alternate members Grigorios Tsolias and Evangelos Papakonstantinou, as rapporteur, in place of the regular members Charalambos Anthopoulos and Konstantinos Lambrinoudakis respectively, who, although legally summoned in writing, did not appear attended due to disability. Regular member Spyridon Vlachopoulos, although legally summoned in writing, did not attend due to disability. The meeting was attended, by order of the President, by George Roussopoulos, expert scientist - auditor as assistant rapporteur and Irini Papageorgopoulou, employee of the Authority's administrative affairs department, as secretary. The Authority took into account the following: Complaint No. C/EIS/4863/10-07-2019 was submitted to the Authority in which A complained that on 07/09/2019 he received an SMS message of an advertising nature from the company "MZN HELLAS ANONYMI ATHLITIKI EMPORIKI 1-3 Kifisias Ave., 11523 Athens T: 210 6475 600 E: contact@dpa.gr www.dpa.gr 1 COMPANY" with distinctive title "MZN HELLAS A.E." (hereinafter "Data Controller"), while he had explicitly expressed his objection. Attached to the complaint is a copy of an email from which it appears that, following a dispute arising from an order he placed with the company, he had objected to receiving any information about the company's products and offers. The message had the option to delete it via a hyperlink. The complained-about company was informed of the complaint with the Authority's document No. C/EX/4863-1/09-08-2019, in which it was requested to submit its views on the complaint. The company responded with its document No. G/EIS/5868/27-08-2019, stating, among other things, that the prior approval of the complainant had been requested due to his previous transaction and that the messages are sent en masse and automatically by partner company software, which they cannot immediately intervene. However, after investigation, the complainant's email was found. The company believes that it was the employee's negligence that the phone was not deleted from the list at the time and assures that they have deleted his mobile phone and email address and have taken the necessary actions so that it does not happen again in the future for any other customer. Finally, they state that the complainant disputes the receipt of the order and is acting intentionally and fraudulently as he had the ability to stop receiving the messages through the advertising message. However, following this response, the complainant returned to the Authority with complaint No. C/EIS/7689/07-11-2019, in which he states that he received, again, a message on his mobile phone number for purposes of promoting the products and services of the MZN

company on 06-11-2019, despite the company's statement that his phone number was deleted from the list. The Authority sent the document No. C/EX/7689-1/13-12-2019 to the company, asking for its opinions on the new related complaint. The complained-about company responded to the Authority with its document No. C/EIS/394/17-01-2020. In it he argues that the complaint is inadmissible, bad faith and baseless. 2 It again states that there was initial consent from the complainant, who did not use the SMS opt-out feature, but sent an email to the customer service email address. The complainant just received a new promotional message on 06-11-2019. He further states that he activated the opt-out option later on 11-12-2019 to permanently remove himself from the company's contact list based on his own actions. Further, the company argues that the complainant incorrectly states that he was not given the opportunity to object, and that he did not object. In relation to the deletion that should have been made, as mentioned in the company's previous memorandum, it claims that there was an error/omission by the employee in handling the electronic platform, as a result of which the deletion of the complainant's number was not finally validated, while the error did not was noticed neither by said employee nor by the management of the company. The company claims that the third-party company that has developed and manages the platform, which is not named, disclosed the reasons for the non-deletion. The company also says that it is not quoting the details of the employee as there is no substantial reason, but if its explanations are not found to be valid, it will invoke and provide its full testimony. Following the above, the Authority proceeded to summon the company for the department meeting on 07-15-2020, with its document No. C/EX/4491/29-06-2020. With the call, the company was informed that during the examination of the case, the above two complaints will be discussed. The company attended the meeting through the lawyer of Aristides Karabeazis and, after receiving a deadline, submitted its memorandum No. C/EIS/5315/29-07-2020. In it he briefly mentions the following: The complainant did not appear and therefore his tacit resignation and the pretense of his complaints are presumed. Complaints are inadmissible for formal reasons. In particular, the complainant incorrectly states both that he was not given the opportunity to object to each message and that he objected to the sending of messages. Further, the complainant provided consent to send informational/promotional SMS 3 upon completion of his transaction. In any case, he had the possibility to “opt-out” with one click, so it would not be possible to accidentally re-register. He activated this option after his termination (11/12/2019) to be removed from the list. In essence, the company maintains that while the complainant's details were requested to be deleted, there was a subsequent error/omission of the employee in handling the online platform as a result of which he remained registered in its contact list. The error was not noticed and made known to the company until after the second complaint, which

was the only time such an error occurred. The company says it asked the partner company to provide it with any "electronic traces" but received a response that no such information is kept on the server. The company maintains that this is an incidental issue, which is evidenced by the relevant correspondence of its operator with its partner (which, although it is stated that it is attached, is not contained in the relevant memorandum) and invokes the principle of leniency. It also argues that the complainant is not alleging damage or permanent nuisance while it considers the complainant's motives to be to dispute past dealings. The Authority, after examining the elements of the file, after hearing the rapporteur and the clarifications from the assistant rapporteur, who was present without the right to vote and left after the discussion of the case and before the conference and decision-making, following a thorough discussion , CONSIDERED IN ACCORDANCE WITH 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. 4 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 issue of making 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 regulated by article 11 of Law 3471/2006 on the protection of personal data data in the field of electronic communications, which incorporated Directive 2002/58/EC into the national legal order. According to this article, such communication is permitted only if the subscriber expressly consents in advance. Exceptionally, according to article 11 par. 3 of Law 3471/2006, e-mail contact details obtained legally, in the context of the sale of products or services or other transaction, may be used for the direct promotion of similar products or services of the supplier or to serve similar purposes, even when the recipient of the message has not given his consent in advance, provided that he is provided in a clear and distinct way with the possibility to object, in an easy way and free of charge, in the collection and use of his electronic data and this during the collection of contact data, as well as in every message, in case the user had not initially objected to this use. 4. According to article 17 par. 1 of the GDPR, "The data subject has the right to request from the data controller the deletion of personal data concerning him without undue delay and the data controller is obliged to delete personal data without undue delay delay if one of the following reasons applies: (…) c) the data subject

objects to the processing in accordance with Article 21(1) and there are no compelling and legitimate grounds for the processing or the data subject objects to the processing in accordance with article 21 paragraph 2". Furthermore, Article 5 21 para. 2 of the GDPR states that "If personal data are processed for direct marketing purposes, the data subject has the right to object at any time to the processing of personal data concerning him for the said purpose marketing, including profiling, if related to such direct marketing.' 5. In article 12 par. 2 and 3 of the GDPR it is defined that "2. The data controller facilitates the exercise of the rights of the data subjects provided for in articles 15 to 22. (…)" and "3. The controller shall provide the data subject with information on the action taken upon request pursuant to articles 15 to 22 without delay and in any case within one month of receipt of the request. This deadline may be extended by a further two months if necessary, taking into account the complexity of the request and the number of requests. The data controller shall inform the data subject of said extension within one month of receipt of the request, as well as of the reasons for the delay. (…)". 6. Article 25 of the GDPR states that "Taking into account the latest developments, the costs of implementation and the nature, scope, context and purposes of the processing, as well as the risks of different probability of occurrence and severity to the rights and freedoms of natural persons from the processing, the controller effectively implements, both at the time of determining the means of processing and at the time of processing, appropriate technical and organizational measures, such as pseudonymization, designed to implement data protection principles such as the minimization of the data, and the incorporation of the necessary guarantees in the processing in such a way as to meet the requirements of this regulation and to protect the rights of the data subjects." 7. The Authority does not accept the arguments of the controller and considers that the complaint is admissible. The complainant was not summoned, as his presence in person is not necessary for the examination of the complaint. 6 Further, although the company correctly argues that the complainant incorrectly states that he was not given the opportunity to object to every message, the fact that some of the complainant's allegation is unverified does not render the whole of the complainant's allegation inadmissible. These claims are examined below. 8. In this particular case, the personal data of the complainant was processed by the controller, for the purposes of promoting products and services. The legality of the initial collection is not judged here, as the complainant accepts that there was a previous transactional relationship, in the context of which he had provided his data to the company. 9. The complainant, as it appears from the original complaint, objected to the sending of messages for the purpose of promoting products and services by email on 06/05/2019. The complainant did not use the automatic deletion feature built into the promotional SMS, but this does not affect the fact that he correctly exercised the right

to deletion by contacting the company's customer service. And this if it is taken into account that the GDPR does not set a requirement for a specific way of exercising a right, but states that the controller must facilitate the exercise of the rights of the data subjects. The complainant's request was clearly worded, with specific reference to the GDPR, so there is no doubt that the controller should have had the appropriate procedures in place to respond, regardless of other differences with the complainant. The controller did not act to stop the sending of the advertising messages, as he should have, since objection and deletion in the case of direct marketing must be respected. This happened only after the Authority's first intervention. In fact, in this case too, the person in charge replied to the Authority, without informing the complainant. Consequently, the original complaint results in a violation of Article 17 in conjunction with Article 21 para. 2 and Article 12 para. 3 of the GDPR. 10. With his first memorandum, the data controller assured the Authority that he has deleted the complainant's mobile phone and e-mail address and that they have taken all the necessary actions to prevent it from happening again in the future for any other customer. It turns out that the above statement was not accurate. Even if the company's argument about a single error by employees is accepted, which is not based on electronic or other evidence that cannot be disputed, but only on written statements of the employees involved, it follows that the data controller did not take actions to that a similar incident does not happen again in the future to another customer. Therefore, with the sending of the second message on 6/11/2019, it is established that the company did not have in practice the necessary procedures to ensure the deletion of the data, to meet the requirements of the GDPR and to protect the rights of the data subjects . Therefore, there is a violation of article 25 paragraph 1 of the GDPR. It is pointed out that based on the principle of accountability (Article 5 para. 2 GDPR) the data controller bears the responsibility and is able to prove his compliance with the basic principles of legal processing. It should be noted that the argument of not using the delete function built into the SMS and using it after 6/11/2019, specifically on 11/12/2019, is not accepted. The complainant, as explained, was not obliged to exercise his right in this specific way, while it is not proven that he was the one who activated the erasure process, as during this period the details of the complaint were also known to other persons (e.g. e. to the Authority). 11. The Authority takes into account aggravatingly, that the data controller did not file documentation of the deletion procedures, that the violation is related to the exercise of rights of the data subject, that the company declared to the Authority that it took the appropriate measures and in fact for all customers of her, while in practice this had not happened with regard to the complainant, that the controller has an online store and uses electronic communication techniques, therefore he should have taken care of the correct response to the requests to exercise rights.

Furthermore, according to the 8 publicly available figures in GEMI[1], the company in the year 2019 had a turnover of €1,343,513.99 and profits after taxes of €50,151.92. As mitigating factors, it takes into account that while there was a nuisance, there was no financial loss to the data subject from the non-satisfaction of the right, that it is the first violation for the specific company and finally, the adverse financial situation due to the Covid-19 pandemic. 12. Based on the above, the Authority unanimously judges that according to article 17 in combination with article 21 par. 3 and article 12 par. 3 of the GDPR and article 25 para. 1 of the GDPR the conditions for enforcement against the data controller, based on article 58 para. 2 i' of the GDPR and taking into account the criteria of article 83 para. 2 of the GDPR, the administrative sanction referred to in the operative part of this document, which is considered proportional to the gravity of the violation. FOR THOSE REASONS The Authority imposes, on "MZN HELLAS ANONYMI ATHLITIKI EMPORIKI ETEIRIA" with distinctive title "MZN HELLAS A.E." the effective, proportional and dissuasive administrative monetary fine appropriate to the specific case according to its special circumstances, amounting to twenty thousand euros (20,000.00) euros, for the above-found violations of article 17 in conjunction with article 21 par. 3 and Article 12 para. 3 of the GDPR and Article 25 para. 1 of the GDPR. The Deputy President Georgios Batzalexis The Secretary Irini Papageorgopoulou 1 https://www.businessregistry.gr/publicity/show/91782010009