

GREEK REPUBLIC PERSONAL DATA PROTECTION AUTHORITY Athens, 27-09-2019 Prot. No.: C/EX/6515/27-09-2019 A  
P OF FA S I NO. 35/2019 (Department) The Personnel Data Protection Authority Haraktira met as a Department composition at its headquarters on Wednesday, March 6, 2019 at 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 Panagiotis Rontogiannis as rapporteur and Evangelos Papakonstantinou, to replace the regular members Antonios Symvonis and Konstantinos Lambrinoudakis, who, although legally summoned in writing, did not attend due to obstacle. Regular member Charalambos Anthopoulos and his deputy Grigorios Tsolias, although they were legally summoned in writing, did not attend due to disability. The meeting was attended by order of the President, Ioannis Lykotrafitis, expert scientist - auditor as assistant rapporteur, and Irini Papageorgopoulou, employee of the Administrative Department of the Authority, as secretary. The Authority took into account the following: With the complaint No. C/EIS/4314/30-05-2018, A complained to the Authority that the Cosmote company has repeatedly refused to stop promotional actions via email, which he has granted to her as her client. Specifically, since August 2017, he has informed the company by e-mail that he does not wish 1-3 Kifisias St., 11523 Athens, Tel.: 210-6475600, Fax: 210-6475628, contact@dpa.gr, www.dpa.gr to receive such messages. He complains that he did the same thing later, while he also unsubscribed from the company's mailing list. Also, through his account, he has requested that no profile be created for him to be used when promoting products and services. However, despite the above actions, he continues to receive promotional/advertising emails. The Authority, then, in the context of investigating the above complaint, sent the complained company the document No. C/EX/4314/30-05-2018. In it, the Authority recalled the provisions of article 11 of Law 3471/2006 regarding the making of unsolicited communications for the purposes of direct commercial promotion of products or services and for any kind of advertising purposes, stressing that it must provide in a clear and distinct manner the possibility for the recipient of advertising messages to object, in an easy way and free of charge, to the collection and use of his electronic data, and this in every message. Finally, the Authority called on the company to respond to the complaints. With document No. C/EIS/6425/24-07-2018, OTE Group informed the Authority that the contact details of the subscriber/complainant in question were collected legally during the conclusion of the contract (see condition 20) . Then, the subscriber refers to the Group's response, he submitted a request to object to the sending of advertising messages initially on the 8th of 2017, which due to a misunderstanding was not properly excluded from the sending of advertising messages (following the company's request to

send it his telephone number for identification, he sent a mobile phone number, while he was a landline subscriber), and then on the 1st of 2018. In the 2nd case, the process of adding him to the exclusion list was not followed correctly (no reason given). Also, the group states that due to a technical problem it was found that the "unsubscribe" mechanism was not working properly for subscribers whose data was collected when signing the subscriber contract, while adding that since then the mechanism has been corrected, everyone has been excluded from the mailing list subscribers who had previously objected through that mechanism, and a redesign of the relevant process is underway. With documents No. C/EX/8685/02-11-2018 and C/EX/8690/02-11-2018, the companies of the Group, Cosmote and OTE respectively, were legally summoned to a hearing before the Authority at the meeting of 21-11-2018, as data controllers, to provide further clarifications and to present their views on the complaint in detail. 2 OTE was represented at this meeting by Eleni Gerutsi, lawyer with AMDSA ..., Panagiota Kourtis, lawyer with AMDSA ... and B, ... CRM, while C, the Group's Data Protection Officer, was also present. After receiving a deadline, OTE submitted the memorandum No. C/EIS/9913/10-12-2018, in which it is stated that from 2013 onwards due to a technical error, the deletion from the recipient lists of advertising messages for those recipients who exercised this right through the "unsubscribe" link. It is noted that the alternative mechanisms for exercising this right, i.e. by telephone and by sending an e-mail message, worked. Since 2013, 694 subscribers have successfully removed themselves from the lists by telephone. Once realized, the error was corrected and OTE proceeded to delete approximately 8,000 subscribers who had unsuccessfully attempted to be removed from the recipient lists. The Authority, after examining all the elements of the file, after hearing the rapporteur and the clarifications of the assistant rapporteur, who left after the debate and before the conference and decision-making, and after a thorough discussion, THINKS IN ACCORDANCE WITH THE LAW 1 Article 2 of Law 2472/1997 defines that "personal data" is "any information that refers to the data subject". "Data subject" is "the natural person to whom the data refer, and whose identity is known or can be ascertained, i.e. can be identified immediately or indirectly, in particular on the basis of an identification number or on the basis of one or more specific elements characterizing the his physical, biological, mental, economic, cultural, political or social status". In this context, the telephone number of a natural person is personal data, since it can function as an element of indirect identification of its owner, allowing communication with him. It should be noted that, according to Opinion 4/2007 of the working group of Article 29 of the E.U. regarding the concept of personal data, especially in the operation of electronic services, indirect identification elements can in some cases sufficiently distinguish a person from others in the context of a certain set, even if his name has not been 3 verified. 2. According to article

2 par. g) Law 2472/1997, "controller" is defined as any natural or legal person who determines the purpose and method of processing personal data. Corresponding definitions for both personal data and the data controller are provided for in article 4 par. 1 and par. 7 of Regulation (EU) 2016/679 (General Data Protection Regulation - GDPR) which has been implemented from 25/5/2018. 3. In accordance with article 11 of Law 3471/2006 on the protection of personal data in the field of electronic communications, 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 type of advertising purposes, is only allowed if the subscriber expressly consents in advance. When e-mail contact information lawfully obtained, in the context of the sale of products or services or other transaction, may be used to directly promote similar products or services of the supplier or to serve similar purposes, even when the recipient of the message has not give his consent in advance, provided that he is provided in a clear and distinct manner with the possibility to object, in an easy way and free of charge, to the collection and use of his electronic data and this during the collection of the contact data, as well as in each message, in case the user had not initially objected to this use. 4. Taking into account that the examination of the said complaint resulted in a wider issue of the non-functioning of the option to delete from the list of accepted e-mail messages as a consequence of a technical error, according to what is mentioned in the OTE memorandum, the Authority considers that the said complaint should to be considered in the context of the wider incident and to invite the company to a hearing again. FOR THESE REASONS The Authority for the Protection of Personal Data: Accepts the validity of the complaint which is mentioned in the present history and refers the case for a comprehensive examination with a new call, in which the issue of the technical problem of the "unsubscribe" mechanism in advertisements will be examined email to opt-out of your subscribers from sending future ones advertising messages.

The Deputy President

The Secretary

George Batzalexis

Irini Papageorgopoulou