

No. Fac.: 11.17.003.012.001 BY HAND December 10, 2021 Subject: Unsolicited marketing call to official telephone

DECISION number Based on the duties and powers conferred on me by articles 33(5) and 55(1) of the Regulation (EU) 2016/679, hereinafter "the General Data Protection Regulation - GDPR", I issue the following decision: 1. Background 1.1. A complaint was submitted to my Office on February 18, 2021, by XXXXXX (hereinafter the "complainant"), regarding an unsolicited call to market services / policies of Universal Life Insurance Public Co. Ltd (hereafter "Professor"). 1.2. As stated in the complaint, the complainant works at XXXXXX and on February 18, 2021 at 12:05 PM, he received a call on his work phone XXXXXX, from the phone number XXXXXX. The call was made by XXXXX (hereinafter the "caller"), to promote the services / contracts of the Lady. The caller asked for the complainant by name and informed him that this particular approach is the policy of the Defendant. 1.3. On March 12, 2021, based on my duty to examine complaints, pursuant to Article 57(1)(f) of the Regulation, an electronic message was sent on my behalf to the Defendant, informing her of the complaint in question and called upon, until March 29, 2021, to answer questions regarding the legal basis of the communication with the complainant, the manner of possession of the complainant's work number, and the process of promoting services / contracts to work / business telephone numbers. 1.4. The Defendant, in a letter dated March 29, 2021, stated, among other things, the following: (a) the communication with the complainant was carried out by the appellant, in her capacity as an associate insurance intermediary of the Defendant, which operates as a freelancer, (b) the communication took place in the context of investigating the complainant's interest in arranging a possible meeting with the aim of analyzing his insurance needs and presenting various insurance solutions, (c) at the start of the phone call, the caller revealed to the complainant the name and her status, the purpose of the call, the source of obtaining the details of the complainant, and "finally also asked his permission to continue the conversation or not". The complainant appeared annoyed by the telephone communication, he again demanded the details of the caller, who provided them to him and who apologized for the possible inconvenience. (d) the details of the complainant were obtained from the official website of XXXXXX, on which they are posted, (e) the Defendant does not directly market its products/services through telephone conversations or otherwise, therefore it does not maintain a specific procedure for communications to professional numbers, (f) regarding communication with prospective clients, which is done exclusively for the purpose of investigating the arrangement of a possible meeting for the analysis of their insurance needs and the presentation of various insurance solutions, the Client provides specialized training its associate insurance intermediaries on how to communicate. In particular, in telephone communications of the Client's associates with prospective clients, the name

and status of the associates, the purpose of the communication, where the information of the prospective client has been obtained, must be disclosed and his consent sought for continuation of the conversation, thus providing the possibility of consent or refusal in an easy way, (g) the direct commercial actions of the Defendant are of an informational nature and are addressed only to its existing customers who have consented to receive information on telephone numbers or email addresses provided by them. Therefore, the Company does not maintain a direct marketing policy. 1.5. On August 24, 2021, my Office sent a letter to her, in which questions were raised again, since contradictions were found in her letter dated March 29, 2021. More specifically, the Defendant was called upon, until September 10, 2021, to clarify the following: "(a) is there a contractual relationship with the complainant? If so, did the complainant provide relevant consent to receive calls in the context of direct marketing of the Defendant's products / services? If so, why was the communication in question not made to a telephone number provided by the complainant, but made to a telephone number found on the internet? (b) taking into account paragraph 5 of the letter dated March 29, 2021, does the Company carry out direct commercial promotion to natural persons with whom there is no contractual relationship or not? (c) the communication with prospective clients, which is done exclusively and solely for the purpose of investigating the arrangement of a possible meeting for the analysis of their insurance needs and the presentation of various insurance solutions, as referred to in paragraph 3(c) of the Defendant's response, does it count as direct marketing or not? (d) does the said communication with the complainant count as direct marketing or not? (e) what is the role of the caller in relation to the Defendant and the personal data of the Defendant's customers (controller, joint controller or processor)? If the caller is a controller or a joint controller, the Court is requested to send the contact details of the caller." 1.6. On September 10, 2021, my Office received by email a response letter, dated the same date, from the Defendant, in which, among other things, the following is stated: (a) After an investigation by the Defendant, it was found that, the only an element that the Defendant has in her possession is the name of the complainant. It does not appear that the Client maintains a contractual relationship with the complainant. 2 (b) The Defendant does not carry out direct commercial promotion to natural persons with whom there is no contractual relationship. It clarifies that, the reference made in the letter dated March 29, 2021, regarding the provision of specialized training to partner insurance intermediaries, regarding the way of communication they must follow with prospective clients, "refers to their way of communication in terms of the disclosure of their details, the purpose of the phone call and obtaining the consent of the called person, essentially to investigate their interest in such a meeting." (c) As for the existing customers, the Court considers that it is a separate matter, because in this case, the contact

information provided by the customer himself is used exclusively for communication purposes for the execution of his contract. Therefore, Ms. disagrees with the finding of my Office, that conflicting positions have been formulated in the letter dated March 29, 2021. (d) Ms. does not consider that the communication with prospective clients that is "exclusively and only to explore a possible meeting in order to analyze their insurance needs and present various insurance solutions", is direct marketing. He bases this view on the method of telephone communication with the prospective client to be followed, as described in point (b), and the purpose of the communication. (e) The Defendant clarifies that, the appellant has the role of Performer of the Defendant's Processing, which is the Processing Manager with regard to the personal data of the Defendant's customers. B. Legal Framework 2.1. Article 4(1) of the Regulation defines that "personal data" is "any information concerning an identified or identifiable natural person (data subject)". 2.2. In Article 4(2), processing is defined as "any act or series of acts carried out with or without the use of automated means, on personal data or sets of personal data, such as the collection, registration, organization, structuring, the storage, adaptation or alteration, retrieval, retrieval of information, use, disclosure by transmission, dissemination or any other form of disposal, association or combination, limitation, deletion or destruction". 2.3. Further, in Article 4(7), a data controller is defined as anyone (the natural or legal person, public authority, agency or other body) who, "alone or jointly with another, determine the purposes and manner of data processing of a personal nature". 2.4. Article 4(11) provides that consent means "any indication of will, free, specific, explicit and fully informed, by which the data subject expresses that he agrees, by statement or by a clear positive action, to be the subject of processing personal data concerning it". 2.5. The Principles governing the processing of personal data are defined in Article 5(1) of the Regulation. In subsection (a) of this Article it is provided that personal data must be "submitted to a lawful and legitimate

3

processing in a transparent manner in relation to the data subject ("lawfulness, objectivity and transparency)". Also, in subsection (b) of the same Article it is stated that, personal data must be «) collected for specified, express and legitimate purposes and are not further processed in any way incompatible with those purposes ("purpose limitation"). 2.6. Article 6(1) of the Regulation, which concerns the legality of the processing, provides that the processing is lawful, "only if and as long as at least one

of the following conditions:

a) the data subject has consented to the processing of the data

of his personal nature for one or more specific purposes,

b) the processing is necessary for the performance of a contract of which the subject of

data is a contracting party or to take measures at the request of the subject

of pre-contractual data,

c) processing is necessary to comply with a legal obligation

controller, d) the processing is necessary for the preservation of life

interest of the data subject or other natural person,

e) the processing is necessary for the fulfillment of a task performed towards

public interest or in the exercise of public authority delegated to the person in charge

processing,

f) the processing is necessary for the purposes of the legal interests that

sought by the controller or a third party, unless against these interests

the interest or the fundamental rights and freedoms of the subject prevails

of data that require the protection of personal data, in particular

if the data subject is a child.

Item f) of the first paragraph does not apply to the processing carried out

by public authorities in the exercise of their duties."

2.7. Further, recital (47) of the preamble of the GDPR clarifies that, "The

legitimate interests of the controller, including those of a

controller to whom the personal data may be disclosed

character or of third parties, may provide the legal basis for the processing, provided

that they do not override his interests or fundamental rights and freedoms

data subject, taking into account the legitimate expectations of the subjects

of the data based on their relationship with the controller. Such a law

interest could for example exist when there is a relevant and appropriate relationship between the data subject and the controller, as if the data subject is a customer of the controller or located in service of..."

2.8. Based on Article 58(2), the Commissioner has all the following remedies powers:

"a) to send warnings to the person in charge of the processing or to the executor thereof processing that intended processing operations are likely to violate provisions of this regulation,

b) address reprimands to the controller or processor when processing operations have violated the provisions of this regulation,

4

c) to instruct the controller or processor to complies with the data subject's requests for the exercise of his rights under this regulation,

d) to instruct the controller or processor to make processing operations comply with the provisions of this regulation, if necessary, in a specific manner and within a certain period,

e) instruct the data controller to notify the data breach of a personal nature to the data subject,

f) to impose a temporary or definitive restriction, including prohibition of processing, g) to instruct correction or deletion of personnel data nature or restriction of processing pursuant to articles 16, 17 and 18 and order notification of these actions to recipients to whom the personnel data nature were disclosed pursuant to Article 17(2) and Article 19,

h) withdraw the certification or order the certification body to withdraw one

certificate issued under sections 42 and 43 or order the agency

certification not to issue a certification if the certification requirements do not

fulfilled or no longer fulfilled,

i) to impose an administrative fine pursuant to article 83, in addition to or instead of the measures

referred to in this paragraph, depending on the circumstances of each individual

case,

j) to order the suspension of data circulation to a recipient in a third country or to

international organization."

C. Rationale

3.1. First of all, it must be clarified that, although the caller, at the beginning of the

call, disclosed to the complainant her name, her status, her purpose

call, the source of receiving the information of the complainant and requested consent for the

continuation of the call, however, said call was intended to create

contractual relationship with the complainant. Therefore, the claim of Ms.

that this call is not a direct commercial promotion.

3.2. In addition, the details of the complainant are posted on the official website

of XXXXX in his professional capacity. The said call was made with a purpose

"the investigation of a possible meeting in order to analyze his insurance needs

and the presentation of various insurance solutions" at an individual level. Therefore, the

the complainant's data was used for a purpose other than that for which it was intended

were originally published.

3.3. Based on Article 6(1)(a) of the GDPR, the data controller, in this

in this case, she can make calls or send messages to people who

have given their prior consent to the processing / use of

their personal data (phone number) to make calls and/or

promotion of products and services.

3.4. Furthermore, based on subsection (1)(f) of the same Article, the processing is lawful when it is necessary for the purposes of the legal interests pursued by controller, unless these interests prevail interest or the fundamental rights and freedoms of the data subject

5

which impose the protection of personal data. Based on recital (47) of the preamble, the controller could invoke such legal interest when there is a relevant and appropriate relationship between of the data subject and the controller, such as if the data subject is a customer of the controller. In this case, there is an admission by the Defendant that there is no contractual agreement relationship between her and the complainant.

3.5. I would like to point out that the practice followed is not considered legal and legitimate considering that telephone calls are made, without preceding the obtaining the corresponding consent from the data subject and without it any contractual relationship. Therefore, as far as reference to its legality processing of the complainant's data, none of the conditions are met of Article 6(1) of the GDPR.

D. Conclusion – Conclusion

4.1. Article 58 par. 2(b) of the GDPR gives me the authority as the Protection Commissioner Personal Data, among other things, to address reprimands to controller or to the processor when processing operations have violated the provisions of this Regulation.

4.2. Bearing in mind the above facts, the legal aspect on which the this decision and the analysis as explained above, below powers granted to me by Article 58 para. 2(b) of the GDPR, I address a Reprimand to

Universal Life Insurance Public Co. Ltd, as a controller, as, at
future, refrains from any direct commercial promotion, without any legal
basis, and follows all procedures to comply with the GDPR.

4.3. In the event that it is established that Universal Life Insurance Public Co. Ltd, proceed
in a similar nature violation of the GDPR, this Reprimand will be measured in
possible imposition of an administrative sanction against it.

Irini Loizidou Nikolaidou

Data Protection Commissioner

Personal Character

/A.D.