

GREEK REPUBLIC PERSONAL DATA PROTECTION AUTHORITY Athens, 09-06-2020 Prot. No.: G/EX/3975/09-06-2020 A
P O F A S I NO. 12/2020 (Department) The Personnel Data Protection Authority Haraktira met as a Department composition at
its headquarters on 29-01-2020 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 Grigorios Tsolias and Emmanuel Dimogerontakis, as rapporteur, in place of the regular members
Charalambos Anthopoulos and Eleni Martsoukos respectively, who, although legally summoned in writing, were present
attended due to disability. They did not attend due to disability, although regular member Konstantinos Lambrinoudakis and his
deputy Evangelos Papakonstantinou were legally summoned in writing. Konstantinos Limniotis and Georgia Panagopoulou,
expert scientists and auditors, attended the meeting as assistant rapporteurs and Irini Papageorgopoulou, an employee of the
Authority's administrative affairs department, as secretary. The Authority took into account the following: The following were
submitted to the Authority: a) with no. prot. C/EIS/2627/05-04-2019 complaint b) with no. prot. C/EIS/3042/22-04-2019
complaint concerning the receipt of unsolicited political communication by A (hereinafter "complainant") for the promotion of his
candidacy in the European elections. 1-3 Kifisias St., 11523 Athens, Tel: 210 6475600, Fax: 210 6475628, contact@dpa.gr /
www.dpa.gr In the above complaints it is stated that the complainants received short text messages (SMS) from the
complainant, which were of a political nature with the aim of promoting his candidacy for the upcoming European elections of
26 May 2019, during the disputed period. In the first relevant complaint, the complainant states that she has no previous
relationship with the complainant, that she has repeatedly tried to contact him by phone to be removed from the list of
recipients of the messages by calling the phone number from which the SMS messages were sent, but without success, since
he continued to receive messages. In the second relevant complaint, the complainant states that he has no previous
relationship with the complainant, that he has tried to delete himself by replying to the sender of the SMS message, but without
success, since he continued to receive messages. The Authority, in the context of examining the complaints in question, sent
the complainant the no. prot. C/EX/2627-1/21-05-2019, C/EX/3042-1/11-06-2019 documents with which he requested his
opinions on the complainants in the first and second complaints respectively, setting taking into account the guidelines issued
by the Authority for political communication. The complainant did not respond to these documents. Then the Authority called
with no. prot. C/Eξ/6198/12-09-2019 document the complainant in a hearing in order to discuss the above a' and b' complaints
as well as the general practice followed by the candidate for communication of a political nature by electronic means. The

complainant did not attend the meeting of 09-25-2019, due to an obstacle, and sent the letter no. prot. G/EIS/6866/10-10-2019 memorandum. In the memorandum, the complainant states that he maintains a large record of contacts due to his long-term presence in political life. With telephone communication it was possible to delete the subjects from this file. In the case of the above complaints a and b, due to human error, it was not possible to delete them. He also points out that in the next mass sending of SMS messages of a political nature, in the context of parliamentary elections, he included in the SMS message a link through which it is possible to be deleted from the list of recipients. 2 The Authority, after examining the elements of the file, the hearing process and after hearing the rapporteur and the assistant rapporteurs, who left after the discussion of the case and before the conference and decision-making, after a thorough discussion, THINKS AGREE BY LAW 1. According to art. 4 pc. 7 of the General Regulation (EU) 2016/679 for the protection of natural persons against the processing of personal data and for the free movement of such data (hereinafter, the Regulation), which is in force since May 25, 2018, as controller is defined as "the natural or legal person, public authority, agency or other entity that, alone or jointly with others, determines the purposes and manner of processing personal data". 2. 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 in article 11 of Law 3471/2006 on the protection of personal data in field of electronic communications. According to this article, such communication is permitted only if the subscriber expressly consents in advance. Exceptionally, according to art. 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 to directly promote 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 manner with the possibility to object, in an easy way and free of charge, to the collection and use of his electronic data and that during the collection of the contact details, as well as in each message, in case the user had not initially objected to this use. 3. Especially for political communication through electronic means without human intervention and in accordance with the Authority's guidelines regarding the 3 processing of personal data for the purpose of political communication, taking into account both article 11 of Law 3471/2006, and the Directive 1/2010 of the Authority for political communication as well as the General Regulation (EU) 2016/679 for the protection of natural persons against the processing of personal data which has been in force since May 25, 2018, the following apply: political communication¹ is of interest from the point of view of the protection of personal data, carried out in any period of time,

pre-election or not, by political parties, MPs, MEPs, factions and holders of elected positions in local government or candidates in parliamentary elections, European Parliament elections and local government elections. These persons become data controllers, in accordance with Regulation (EU) 2016/679, article 4, item 7) as long as they define the purpose and method of processing. For example, when MPs or candidate MPs receive data from political parties and process it for their personal political communication, they also become data controllers. In this capacity and based on the principle of accountability² they must be able to demonstrate compliance with their obligations and processing rules.

4. When political communication is carried out using electronic means of communication, without human intervention, through public communication networks, as is the case of electronic messages (e-mail), the communication requires, according to article 11 par. 1 law 3471 /2006, as applicable, the prior consent of the data subject, subject to paragraph 3 of the same article, as applicable. It is also pointed out that short text messages (SMS) are also e-mails according to the definitions of Law 3471/2006 and Directive 2002/58/EC.

5. Political communication using electronic means is permitted without human intervention and without the consent of the data subject only if the following conditions are cumulatively met: (a) The contact information has been legally obtained in the context of previous, similar contact with the data subjects; and the subject during the collection

1 See definition in article 1 par. 2 of Directive 1/2010 of the Authority

2 As defined in article 5 par. 2 of the GDPR

4 of the data was informed about its use for the purpose of political communication, he was given the possibility to object to this use but did not. The previous contact need not be purely political in nature, e.g. it is legal to send messages when the e-mail data was collected in the context of a previous invitation to participate in an event or action, regardless of its political nature. In contrast, it is not

it is considered similar contact and it is not legal to use electronics

contact information for the purpose of the communication policy when the information

these were acquired in the context of a professional relationship, such as, for example, using

of the customer file by a candidate for parliament.

(b) The data controller must provide the data subject with

possibility to exercise the right to object in an easy and clear way, and this in

any policy communication message. In every communication it is required to be mentioned

clearly and clearly the identity of the sender or the person for his benefit

to whom the message is sent, as well as a valid address to which the

recipient of the message may request termination of the communication.

6. In this particular case, the complainant, as controller

carried out political communication by sending short text messages

(SMS). The legality of the shipment is ensured if the above has been observed

in the above Thoughts 4, 5. From the responses of the data controller they arise

The following:

7. The controller did not provide evidence that it had

ensure the required prior consent of the recipients of

SMS messages, or that there had been a previous similar contact/communication.

It is also noted that, in addition to the specific two complaints, the person in charge

processing did not provide relevant data nor for other persons to whom

sent political communication messages.

8. The data controller did not provide the Authority with information regarding the exact

number of recipients of these messages.

9. The controller did not provide the data subject with the possibility to

exercises the right to object in an easy and clear way, to every SMS message

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political communication.

10. The controller was aware of the applicable legal framework for the policy

communication of a political nature and the guidelines of the Authority they had

published and sent to political parties already at the beginning of April 2019.

11. The controller did not cooperate satisfactorily with the Authority since he did not

responded to the documents for clarification, only filing a memorandum after the summons

in hearing.

12. No administrative sanction has been imposed by the Authority on the person in charge in the past

processing.

Taking into account the above, the Authority considers that, taking into account the article 13 of Law 3471/2006, the conditions for enforcement against him according to Article 21 par. 1 item b' of Law 2472/1997 on administrative sanction, referred to in its operative part present, which is considered proportional to the gravity of the violation.

FOR THOSE REASONS

The Personal Data Protection Authority:

Enforces, based on articles 19 par. 1 item. f and 21 of Law 2472/1997 and 13 par. 1 and 4 of Law 3471/2006, in A the effective, proportionate and dissuasive administrative monetary fine that is appropriate in the specific case according to the special ones circumstances thereof, amounting to four thousand euros (4,000.00) euros, for the above established violations of Article 11 of Law 3471/2006.

The Deputy President

The Secretary

George Batzalexis

Irini Papageorgopoulou