

Athens, 12-05-2021 Prot. No.: 1208 DECISION 17/2021 (Department) The Personal Data Protection Authority met as a Department via video conference on 04-07-2021 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 opposition to the President of the Authority, Constantinos Menoudakos, and the members Charalambos Anthopoulos, as rapporteur, Spyridon Vlachopoulos and Konstantinos Lambrinoudakis, were present. 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: A's complaint No. C/EIS/2252/22-03-2019 was submitted to the Authority, as supplemented by No. C/EIS/3028/22 -04-2019 email. The complainant reports that he received a promotional message to his email address from the corporate address of IEK ALFA, without having given his details to the school in question. Via e-mail, he asked the company "A. CHOICE PRIVATE CAPITAL COMPANY" (the company that operates IIEK ALFA - hereinafter also the controller) to inform him in relation to whether he has the consent Kifisias Avenue 1-3, 11523 Athens T: 210 6475 600 E: contact@dpa. gr www.dpa.gr 1 for the use of his data for promotional actions and to proceed with the deletion of these data. After a month had passed, the complainant had not received a response. The complainant disputes the legality of the company's retention of his personal data and states that he had previously studied at the school, when it had the name "IIEK XYNI", requested deletion, transferred to another school..., but assumes that they are still using his data. He also mentions that he was harassed by phone, calling the student at the school. The complainant exercised his rights on 21/03/2019, via email, while he did not receive a response until 22/04/2019, when he completed the complaint. The complained-about company was informed of the complaint with the Authority's document No. C/EX/2252-1/16-05-2019, with which it was requested to submit its views. The company responded with its document No. G/EIS/3728/24-05-2019, stating that the e-mail address of the complainant had been given by him during his registration in the school's study program, so that to be informed about actions and offers and for this reason alone they contacted him electronically. He also states that, when he was informed on 21-03-2019 that the complainant no longer wishes to be contacted, he deleted his email address and now none of his personal information is kept or processed in any way. Following this response, the complainant informed the Authority by e-mail No. C/EIS/3825/29-05-2019, that he considers that IIEK ALFA is not authorized to use his data, as it was not student in it, but at IIEK XYNI. Subsequently, the Authority sent the document No. C/EX/3922-1/03-09-2019 to the company, stating that with its response it does not provide evidence in relation to the way

in which they came the information of the complainant at her disposal and that both in the original complaint and in his latest document, the complainant states that he did not have a contract with IIEK ALFA, but with IIEK XYNI, between which the relationship is not obvious. Furthermore, it does not appear that the company has 2 correctly informed the complainant and that it has responded to him regarding his rights, as required by Article 12 of the GDPR, but only that it has provided clarifications to the Authority. The Authority invited the company to respond specifically, in relation to how it found the data of the complainant, whether he had given consent to use it for promotional purposes or on what legal basis the processing took place, providing any required information, such as an application or contract or study program registration form. The company responded, to the Authority (with delay and after a reminder with the document no. prot. C/EX/481/21-01-2020, even though the Authority's document was served by registered letter on 4/9/2019 ) with its document No. C/EIS/998/06-02-2020. In it, he briefly mentions the following: The complainant was a student of IIEK Xini ... in the .. semester of study, when on September 6, 2016, the license of the said IEK was revoked. Considering that IEK ALFA has his student file at IEK Xyni, he came to the facilities of IEK ALFA ..., in December 2016, January and February 2017. During these visits, he left his phone number and e-mail, with the aim of supporting communication with him, responding to his requests, informing and informing him. The particular e-mail the complainant is complaining about was about a seminar in his specialty, which was sent to him in the good faith belief that he might be interested. **When on 21-03-2019 the complainant informed, for the first time, that he does not wish to receive further communications, all his information was immediately deleted.** Until 03-21-2019, the company was not aware that it prohibits them from sending update e-mails. Following the above, the Authority proceeded to summon the company "A Epilogi IKE" for the department meeting on 07-15-2020, with its document No. C/EX/4488/29-06-2020. With the call, the company was informed that during the examination of the case, A's complaint will be discussed, as it has been completed with the other documents in the file. During the meeting an adjournment was given and the Authority proceeded with a new call for the meeting of 14/10/2020 while during this meeting an adjournment was given for the meeting of the department of 04/11/2020. At this meeting, the company was present through the lawyers of Petros 3 Tsantilas and Nikolaos Anastopoulos and [...] B, and after that it filed the memorandum No. C/EIS/7956/19-11-2020. In it he succinctly argues the following: The incident is minor and was caused by the complainant's unwarranted and inexplicable obstinacy. The complainant came to the offices of IIEK ALFA demanding to receive the enrollment file at IIEK XYNI. He received a negative answer but insisted on asking for the file, coming to the facilities of IEK ALFA. He, on his own initiative, left his phone number and e-mail, in order to

support communication with him, to respond to his requests and to inform and update him. The complainant wrongly considered that IIEK ALFA is a continuation of IIEK XYNI. IIEK ALFA accepted his information in good faith, so that the complainant could be served. In the context of this contact the complainant provided information about his study programme. However, the complainant filed a complaint with the Ministry of Education for non-delivery of his student file. Regarding the sending of the message, it took place in the context of a single message, on the initiative of an employee. The employee thought, by mistake, that consent had been given on his part and after the complaint she was fired, as she took an action for which she was not authorized. **After receiving the objection message, the complainant's data was deleted and no further communication followed.** The company reports that the complainant did not appear before the Authority although he was summoned and considers his absence to be deliberate, methodical and with bad intent. 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 LAW 4 1. It follows 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) 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 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 in sector of electronic communications, which incorporated Directive 2002/58/EC into the national legal order. According to this article, such communication is allowed only if the subscriber expressly consents in advance. As an exception, 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 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 this

during the collection of the contact details, as well as in each message, in case the user had not initially objected to this use. In any case based on article 11 par. 4 of Law 3471/2006, the message must, among other things, include a valid address to which the recipient of the message can request the termination of the communication. 4. Pursuant to Article 17 para. 1 of the GDPR, the data subject has the right to receive from the data controller confirmation as to whether or not the personal data concerning him are being processed and, if this is the case, the right of access to personal data and a range of information. 5. According to article 17 par. 1 of the GDPR, "The data subject has the right to request from the controller the deletion of personal data concerning him without undue delay and the controller is obliged to delete personal data without undue 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 21 para. 2 of the GDPR states that "If personal data is processed for the purposes of direct marketing, the data subject has the right to object at any time to the processing of personal data concerning him for said marketing promotion, including profiling, if related to such direct marketing." 6. In article 12 paragraph 3 of the GDPR it is defined that "The data 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. (...)". 7. Article 5 of the GDPR sets out the processing principles governing the processing of personal data. Specifically, in paragraph 1 it is defined that personal data, among others: "a) are processed lawfully and legitimately in a transparent manner in relation to the data subject 6 ("legality, objectivity and transparency"), b) are collected for specified, express and legitimate purposes and are not further processed in a manner incompatible with these purposes (...) ("limitation of purpose") (...)" In addition, based on the principle of accountability (par. 2 of the same article) "The controller bears the responsibility and is able to demonstrate compliance with paragraph 1." 8. In article 6 par. 1 of the GDPR it is defined that "Processing is lawful only if and as long as at least one of the following conditions applies: a) the data subject has consented to the processing of his personal data for one or more specific purposes, (...) f) the processing is necessary for the purposes of the legitimate interests pursued by the controller or a third party, unless these interests are overridden by the interest or the fundamental rights and freedoms of the data subject that require data protection of a personal nature, especially

if the subject of the data is a child (...)” 9. In this particular case, the personal data of the complainant was processed by the company “A Epilogi IKE” as controller, for the purposes of promoting products and services. The information that was processed includes the e-mail address of the complainant and information related to the specialty he had during his studies at IEK. As it appears from the evidence of the case, the processing was not based on the consent of the data subject, so the only legal basis that could be applicable is Article 6 para. 1 f of the GDPR. The purpose of data processing is not related to the communications and contacts that the complainant had with the controller, therefore the data is used for another purpose (specifically for the promotion of products and services). Furthermore, the controller uses the information of the complainant's specialty, enriching the information that was necessary for communication purposes to respond to his requests with information that is used in targeted promotional actions (based on the specialty of studies). As the purpose of the 7 said targeted promotion of services is not related to the purpose of communication to respond to requests in relation to studies, a violation of the principle of purpose limitation (no. 5 para. 1 b GDPR) occurs. Furthermore, it is clear that the complainant was not informed in relation to the use of his data for another, and even unrelated and illegal purpose, therefore also from this fact there is a violation of the principle of legality, objectivity and transparency (no. 5 para. 1 a GDPR). It is also pointed out that the data controller did not provide any evidence, such as documents or policies, on the basis of which it would substantiate its compliance with the principles of no. 5. par. 1 of the GDPR, as it must be based on the principle of accountability. 10. The complainant, as it appears from the initial complaint, asking the data controller to inform him in relation to whether he has consented to the use of his data for promotional actions and to proceed with the deletion of these data, exercised the right of access and the right to erasure. It should be noted that the message received by the complainant did not contain a valid address to stop further messages, but the provision of article 11 par. 4 of Law 3471/2006 is mandatory. The controller, according to his statement, acted to delete the complainant's data. This is not in dispute as the complainant does not mention a newer message from the controller. However, the controller did not provide the complainant with information regarding the origin of his data and the legality of the processing, until after the intervention of the Authority. In fact, in this case too, the person in charge replied to the Authority, without informing the complainant. Therefore, the complaint results in a violation of Article 15 for failure to satisfy the right of access and a violation of Article 12, paragraph 3 of the GDPR, both in relation to the right of access (non-response to the request) and in relation to the right to erasure (non informing the complainant). 11. The complainant was not invited by the Authority to attend its meetings, as his presence in person is not necessary for the

examination of the complaint, therefore from this fact his complaint cannot be considered deliberate or methodical, as the complainant claims company. 8 12. The Authority takes into account aggravatingly that there are more than one violations that concern both the basic principles governing the processing and the exercise of the rights of the data subject, in particular that the data processing was carried out in a non-transparent manner in relation to the data subject. It also takes into account aggravatingly that with the processing the person in charge intended to make a profit, that he did not provide documents in relation to the documentation of the legality of his actions nor a process for responding to requests for the exercise of rights (including that he should have taken care of the inclusion valid address to terminate the communication) and that he was excessively late in responding to the Authority. Furthermore, according to publicly available data in GEMI<sup>1</sup>, the company in the year 2018 had a turnover of €5,643,043.71 and profits after taxes of €796,128.36. As mitigating factors, it takes into account that after the complaint the data of the complainant was deleted, 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 unfavorable financial situation due to the Covid-19 pandemic. 13. Based on the above, the Authority unanimously judges that according to article 5 par.1 a' and b' of the GDPR, article 15 of the GDPR and article 12 par. 3 in conjunction with Article 17 of the GDPR, the conditions for enforcement against him are met data controller, based on article 58 par. 2 i) of the GDPR and taking taking into account the criteria of article 83 par. 2 of the GDPR, of the administrative sanction, which referred to in the operative part of the present, which is judged to be proportional to the gravity of the violation.

#### FOR THOSE REASONS

The Authority imposes, in "A. CHOICE PRIVATE CAPITAL COMPANY" the effective, proportionate and dissuasive administrative fine which appropriate in the specific case according to the special circumstances of this, in the amount of five thousand euros (5,000.00) euros, for the above established

<sup>1</sup> <https://www.businessregistry.gr/publicity/show/125613901000>

of article 12 par. 3 in conjunction with article 17 of the GDPR.

The Deputy President

George Batzalexis

The Secretary

Irini Papageorgopoulou