

Correct repetition due to an error in the composition Athens, 16-04-2021 Prot. No.: 1042 DECISION 16/2021 (Department)

The Personal Data Protection Authority met in a composition of the Department via teleconference on 17-02-2021 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 Evangelos Papakonstantinou and Grigorios Tsolias, as rapporteur, in place of the regular members Konstantinos Lambrinoudakis and Charalambos Anthopoulos respectively, who, although legally summoned in writing, were present 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, Ioannis Lykotrafitis, 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/2727/16-04-2020 was submitted to the Authority, which concerned the sending of unsolicited communication (e-mail) by A. The complainant states that he received an email without having given his consent for such communication, while he states that 1 Kifisias Ave. 1-3, 11523 Athens T: 210 6475 600 E: contact@dpa.gr www.dpa.gr in the past had receive messages from the complainant. The content of the last message attached to the complaint was as follows: "Dear Friends & Friends, ...! Happy Resurrection & Happy Easter! A" The message was sent from the email address ... to The Authority, in the context of examining the complaint in question, sent the complainant the letter No. C/EX/2727-1/06-05-2020 in which he requested her opinions on the complainants, taking into account the guidelines lines issued by the Authority for Political Communication. The complainant replied regarding the case number C/EIS/4241/19-06-2020 memorandum in which he mentions, among other things, the following briefly mentioned: 1. He has a long public presence and political career in the Local Government of his city - initially Municipality F and from ... Municipality F-X- and has been repeatedly promoted ..., while has been assigned a position of responsibility ... with extensive responsibilities in critical areas such as ... and 2. Through her involvement with the above two objects, but also her..., she is constantly in daily contact and communication with many of her fellow citizens, in order for them to point out problems and weaknesses that she was responsible for dealing with, or suggest measures or make proposals. Also, she often became the recipient of comments and suggestions from her fellow citizens regarding the ... and ... activities of their city. 3. Due to personal interests as well as municipal involvement in the past, she had a long "tenure" in the organization of ... and/or actions of a ..., ... or ... nature in which her fellow citizens always participated in large numbers. 4. In the context of all the above, she has met thousands of her

fellow citizens, has become the recipient of thousands of their requests, has answered most of them in writing (by e-mail) or by phone or even in person and of course 2 has sent thousands of notifications/information about the ... and actions which he organized. 5. Etiquette, as she had started this habit even before the electronic era with greeting cards, every year she sends her fellow citizens cards with her wishes for Easter, Christmas and the New Year. 6. Such a case concerns the present complaint of the complainant, who, from the information available to her, and given that all his family are citizens, had communicated with her in the past via e-mail, with the object of some complaint or request related to the services for which he was responsible as ... and so there was his e-mail address, as early as the year ... in her file. No informational e-mails to the complainant were found from ... onwards. 7. Apparently from ... and until ... she will have sent him more than one e-mail. In a related investigation he found some of these emails to the current complainant, but he never reacted to them in any way nor objected to the information/invitation to municipal activities that were the content of said emails. 8. With the entry into force of the GDPR, she sent all her fellow citizens with whom she communicated by e-mail, such as the complainant, a group e-mail asking them to inform her whether or not they wish to continue receiving their e-mails on her behalf. The current complainant never responded negatively. 9. The complainant was also a recipient of e-mails from her in the pre-election period of the municipal elections of ..., without expressing dissatisfaction or asking to stop sending the messages. 10. The communication with the complainant was legal because: a. An e-mail address that he had previously provided in the context of his municipal activity was used in order to respond to his request or information, 3 b. He himself had for many years received a series of messages with varied content without ever objecting or asking to stop sending them in the future, c. He did not react to the alleged sending of e-mails, nor even when, after the entry into force of the Regulation, he sent a relevant group message with exactly this content. The Authority notified the complainant by e-mail of the complainant's response and the complainant replied with document No. C/EIS/4310/22-06-2020, in which, among other things, he states the following: 1. The complainant did not she offers no evidence of her previous communication with him. 2. Non-response to her email after the entry into force of the GDPR cannot be taken as consent. Subsequently, the Authority, with document No. C/EX/2727/26-11-2020, invited the complainant A to a hearing via video conference at the meeting of 02-12-2020, in order to discuss the above complaint as and the general practice that followed for communication of a political nature by electronic means. At the meeting of 02-12-2020, the complainant and the lawyer Gerasimos-Alexandros Mazarakis with AMDSA ... attended via video conference, who presented their views orally. Subsequently, the complainant received a deadline and submitted the memorandum No.

G/EIS/8505/10-12-2020 within the deadline. In said memorandum, in addition to the previous relevant document of the complainant, the following are briefly mentioned: 1. In her political communication, the complainant observes the provisions of the General Regulation on the Protection of Personal Data. 2. Having served for a long time in positions of responsibility ... with extensive responsibilities in critical - and extroverted - areas such as ..., ... and ..., she had daily contact and communication with numerous fellow citizens, who either 4 made complaints/remarks to her areas of its competence, or requested information on issues of its competence. He considers that he had an obligation and responsibility to provide them with the requested information on matters of everyday life and quality of life, small and large. This information on municipal matters was provided either in person, by telephone, or in writing by e-mail. And the recipients of her fellow citizens expressed themselves positively for her consistency in informing them and monitoring the resolution of the problems they brought to her attention. 3. On a purely personal level, she maintained a social habit of the past (which she had started before the electronic age) of mailing ... greeting cards, which she sends to her fellow citizens with her wishes for Easter, Christmas and New Year, even signing with her name and without reference to capacity (... or other), with the difference that now the cards are electronic. Among them he sent the "disputed" greeting card for Easter ... and to the complainant, whose e-mail address he legally possessed since the year More generally, sending greeting cards for Christmas and Easter constitutes a clear display of social modesty and decency that does not even constitute communication in the sense of the GDPR, much less politics. The Authority, after examining the elements of the file, the hearing procedure and after hearing the rapporteur and 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, after a thorough debate, THOUGHT ACCORDING TO LAW 1. According to article 4 par. 7 of the General Regulation (EU) 2016/679 for the protection of natural persons against the processing of personal data and for the free circulation of such data 5 (hereinafter, Regulation), which is in force since May 25, 2018, as responsible processing is defined as "the natural or legal person, the public authority, agency or other body which, alone or jointly with others, determine the purposes and manner of personal data processing character".

2. The issue of making unsolicited communications with anyone means of electronic communication, without human intervention, for purposes direct commercial promotion of products or services and for any kind

advertising purposes, regulated by article 11 of Law 3471/2006 on

personal data protection in the field of electronic communications.

According to this article, such communication is allowed only if the

subscriber expressly consents in advance. Exceptionally, according to

article 11 par. 3 of Law 3471/2006, the electronic contact details

mail 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 for

serving similar purposes, even when its recipient

message has not given his consent in advance, under

provided that he is provided with the opportunity in a clear and distinct manner

to object, in an easy way and free of charge, to the collection and use

of his electronic details and this during the collection of the details

contact, as well as in each message, in case the user initially did not have one

disagree with this usage. Moreover, according to paragraphs 1 and 4

of article 13 of the same law 3471/2006, regarding compliance with this law, the

Personal Data Protection Authority has its responsibilities

Law 2472/1997, as applicable from time to time, and imposes the provisions of

this last law sanctions in case of violation of its provisions

above Law 3471/2006.

3. Especially for political communication through electronic media without human

intervention and in accordance with the Authority's guidelines regarding the

processing of personal data for the purpose of political communication

character, taking into account both article 11 of Law 3471/2006, and the

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Directive 1/2010 of the Authority for political communication and the General

Regulation (EU) 2016/679 for the protection of natural persons against

personal data processing which is in place

from 25 May 2018, the following applies:

Political communication¹ is of interest from the point of view of the protection of

of personal data, takes place at any time,

pre-election or not, by political parties,

MPs, MEPs,

factions and holders of elected positions in local government or

candidates in the parliamentary elections, the European Parliament elections

and local government elections. These persons become responsible

processing, in accordance with Regulation (EU) 2016/679, article 4, item 7)

since they define the purpose and method of processing. For example, when

MPs or candidate MPs receive political data

parties and process them for their personal political communication,

they also become data controllers. In this capacity and based

the principle of accountability² must be able to demonstrate compliance

of their obligations and processing rules.

4. When political communication is carried out using electronic means

communication, without human intervention, through public networks

communication, such as e-mails

(e-mail), the communication requires, according to article 11 par. 1 n.

3471/2006, as applicable, the prior consent of the subject of

data, subject to paragraph 3 of the same article, as applicable.

5. Political communication using electronic media is allowed without

human intervention and without the subject's consent

data only if the following conditions are met cumulatively:

(a) Contact Information has been lawfully obtained in the context of previous, similar contact with the data subjects, and the subject during the collection of the data informed about their use with for the purpose of political communication, he was given the opportunity to express

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

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electronic data

objected to this use but did not express it. The previous contact did not

it is necessary to have a purely political character, e.g. is it legal

send messages when

mail

collected in the context of a previous invitation to participate in some

event or action, regardless of its political character. On the contrary, no

is considered to constitute similar contact and is not legal to use

electronic contact information for the purpose of political communication

when such information was obtained in the context of a professional relationship, such as

for example the use of the client file by a candidate for parliament.

(b) The controller must provide the subject of

given the possibility to exercise the right to object in an easy and

clear, and this in every political communication message. In every communication

is required to clearly and clearly state the identity of the sender or

of the person for whose benefit the message is sent, as well as

and a valid address to which the recipient of the message can

requests termination of communication. Consent must be provided with

clear positive action which constitutes free, specific, express and art

full informed consent of the data subject in favor

of the processing of the data concerning it.

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

claims that sending a congratulatory email

content does not constitute purely political communication, even if the data

of the recipient were acquired in the context of the self-administrative tasks which

he had in a self-governing organization, to which he had been elected.

7. Following this, pursuant to the provision of article 5a par. 1 of

Regulation of Operation of the Authority, the case must be referred to

Plenary due to importance in order to decide whether communication

with content of an electronic message, relevant to the dispute it does not concern

at least directly and directly political communication, falls under the relevant

legislation on the processing of personal data for policy purposes

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communication.

FOR THOSE REASONS

The Personal Data Protection Authority refers the defendant

case as a whole in the Plenary, which will rule on the issues

mentioned in the rationale.

The Deputy President

George Batzalexis

The Secretary

Irini Papageorgopoulou

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