

Athens, 02-04-2021 Prot. No.: 988 DECISION 11/2021 (Department) The Personal Data Protection Authority met in a composition of the Department via teleconference on 11-11-2020 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 the absence of the President of the Authority, Constantinos Menoudakos, and the alternate members Grigorios Tsolias and Evangelos Papakonstantinou, as rapporteur, in place of the regular members Charalambos Anthopoulos and Konstantinos Lambrinoudakis respectively, who, although legally summoned in writing, did not appear 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, Georgia Panagopoulou, 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: Submitted to the Authority with no. prot. C/EIS/6150/11-09-2019 complaint against the company "A KE SIA EE" with the distinctive title "...", regarding sending emails with advertising content to the complainant while he had requested the deletion of the account that Leof Kifisias 1-3, 11523 Athens T: 210 6475 600 E: contact@dpa.gr www.dpa.gr 1 kept as its client. Specifically, according to document C/EIS/6150/11-09-2019, the complainant requested via email on ... the deletion of his account and received on the same day from ... an email confirming the deletion. But he continued to receive promotional emails. The Authority with no. prot. C/EX/6150-1/09-10-2019 document informed her about the complaint and asked for her opinions. The ... answered with no. prot: C/EIS/7933/18-11-2019 document in which it states that the sending of advertising messages after the deletion of the complainant's account is legal because based on article 11, par. 3 of Law 3471/2006 the complainant was customer and did not specifically exercise the right to be deleted from the list of recipients of the newsletters. Then the Authority sent the no. prot. C/EX/G/EX/931/05-02-2020 document in which he requested the following clarifications: a) How was the possibility to object during the stage of collecting the complainant's e-mail address, b) With how are customers and those interested in receiving promotional content emails informed about the processing of their personal data and c) how are they informed and submit requests to exercise their rights. The ... answered with no. prot. C/EIS/1765/06-03-2020 document in which it states, among other things, the following: The user has the possibility to express his objections both at the stage of registering on the website to create an account, and later as a registered user user. The operation of the newsletters is clearly explained in the Terms of Use and the Privacy Policy. After registration, the now registered user has the permanent and seamless possibility to explicitly express his objections both to the sending of newsletters and to the maintenance of his account. Specifically, in the

event that the buyer wishes to be removed from the list of informative emails (newsletters), he can request his removal by sending his request by email or perform his removal automatically in the special field located at the end of each page 2 newsletter that takes. In the event that the buyer wishes to delete his account (profile), he should contact the Company, sending his request by email. From the above, it is easily understood by the user that there is a clear distinction between a) his deletion from sending newsletters, which is done either by sending an email or automatically by selecting the special field at the end of each newsletter sent to him, and b) deletion of his account (profile), which is done by sending an email. Therefore, if a user sends an email, as in this case, only requesting the deletion of his account as a registered user (profile), this does not automatically mean that he is also deleted from sending informational emails (newsletters). And this is because he has not explicitly expressed his objections to this. Of course, he has the permanent and unhindered possibility to express his objections to the sending of newsletters at any time in the aforementioned easy and simple ways, for which he has already been informed in an understandable way both with the Privacy Policy and with the Terms of Use. Following the above, the Authority proceeded to discuss the case during the departmental meeting on 11-11-2020. 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 THE LAW 1. 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) it follows 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 is in force from 3 to 25 May 2018, the 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 way of processing 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 data in the field of electronic communications, which incorporated Directive 2002/58/EC into the national legal order. According to this article, such communication is permitted only if the subscriber expressly consents in advance. Exceptionally, 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 for

the direct promotion of 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 using his electronic data and this during the collection of contact data, as well as in every message, in case the user had not initially objected to this use. 4. According to article 17 par. 1 of the GDPR, "The data subject has the right to request from the data controller the deletion of personal data concerning him without undue delay and the data 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 direct marketing purposes, the data subject has the right to object at any time to the processing of personal data concerning him for the said purpose marketing, including profiling, if related to such direct marketing." 5. According to article 5, par. 1 a) of the GDPR, personal data are processed lawfully and legitimately in a transparent manner in relation to the data subject ("lawfulness, objectivity and transparency"). According to Article 6 of the GDPR, the processing of personal data is lawful when some of the conditions mentioned in the article apply, i.e. a specific legal basis for processing is applied, including consent (paragraph a) or legitimate interest (paragraph f). 6. In this particular case, the complainant's personal data was processed for the purposes of promoting products and services by the company ..., which is the controller. The complainant has not given specific consent for the processing of his data for the purposes of promoting products and services, but, pursuant to article 11 par. 3 of Law 3471/2006, the processing has a legal basis on article 6 par. 1 of the GDPR, i.e. the processing is necessary for them purposes of the legitimate interests pursued by the controller and these override interests or fundamental rights and freedoms of the data subject. The legal interest of the controller processing exists as a legal basis as long as the customer relationship exists. The complainant exercised the right of erasure based on article 17 par. 1 of GDPR for data held by the data controller for the customer relationship. The data controller, if he has satisfied his right to deletion subject as a customer, ceases to be based on legal interest as a legal one

basis of processing for the purpose of promoting products and services and shall
to remove him from the lists of acceptable promotions as well.

Therefore, the processing of his data for the sending of promotional material
message was made in violation of the principle of legality, objectivity and

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transparency of article 5 par. 1 a' of the GDPR. To be able to continue her
processing of his data for promotional purposes, the person in charge
processing must seek another legal basis, such as consent.

The Authority considers that as the violation in question is an isolated one
incident, but may be repeated for other customers of the controller
processing, an appropriate corrective measure is the pursuant to article 58, par.
2 pcs. d' of the GDPR, an order to the data controller to render the acts
processing in accordance with the provisions of the GDPR within a certain period.

FOR THOSE REASONS

The Authority, by virtue of article 58 par. 2 item d of the GDPR, calls the company "A KE
SIA EE" with the distinctive title "..." to adapt its procedures within
six months so that the deletion of its customer details that it has not provided specifically
consent to the processing of his data for the purpose of promotion
products and services, to ensure the deletion of its data from the
lists of acceptable messages for the purpose of promoting products and services.

The Deputy President

George Batzalexis

The Secretary

Irini Papageorgopoulou

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