

GREEK REPUBLIC PERSONAL DATA PROTECTION AUTHORITY Athens, 30-09-2019 Prot. No.: C/EX/6549/30-09-2019 A
P O F A S I NO. 34/2019 (Department) The Personnel Data Protection Authority Charaktira met as a Department composition at its headquarters on Wednesday, July 24, 2019 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 Menoudakou, the regular members Konstantinos Lambrinoudakis and Charalambos Anthopoulos and the alternate member Panagiotis Rontogiannis were present as the rapporteur and to replace the regular member Antonios Symvonis who, although legally summoned in writing, did not attended due to disability. Georgia Panagopoulou and Ioannis Lykotrafitis, expert scientists and auditors, attended the meeting as assistants to the rapporteur, by order of the President. Irini Papageorgopoulou, an employee of the Administrative Department of the Authority, was also present, by order of the President, as secretary. The Authority took into account the following: The Authority was submitted with no. prot. C/EIS/4314/30-05-2018 and C/EIS/5605/25-06-2018 complaints of natural persons subscribers of the Hellenic Telecommunications Organization S.A. (hereafter OTE). During the investigation of these complaints at the meeting of the Authority's department on 6/3/2019 and from the data submitted with OTE's memorandum No. C/EIS/9913/10-12-2018 it emerged that from 2013 and then, due to a technical error, unsubscribing from the recipient lists of advertising content messages did not work for those recipients who exercised this right via the "unsubscribe" link. The alternative mechanisms, i.e. by phone and 1-3 Kifisias St., 11523 Athens, Tel.: 210-6475600, Fax: 210-6475628, contact@dpa.gr, www.dpa.gr by sending an e-mail message, worked. In particular, from 2013 onwards 694 subscribers succeeded in being removed from the lists through telephone communication. Once noticed, following the intervention of the Authority, the error was corrected and OTE proceeded to delete approximately 8,000 subscribers, who had unsuccessfully tried to be removed from the acceptance lists since 2013. Considering that there was a wider issue of the deletion not working from the list of accepted e-mail messages as a consequence of a technical error, according to what is mentioned in the OTE memorandum, the Authority decided that it should examine the wider issue of the technical problem of the "unsubscribe" mechanism in promotional emails to exclude subscribers from sending future advertisements messages and to invite the company to a hearing again. With its document No. C/EX/2246/22-03-2019, the Authority invited OTE to attend the meeting of its department on 10/04/2019 in relation to the case in question. OTE was represented at this meeting by Eleni Gerutsi, lawyer, Panagiota Kourtis, lawyer, A and B, employees of the ... department, while C, the Group's Data Protection Officer, was also present. OTE, although given a

deadline, did not submit a memorandum, as its representatives pointed out that its views had been detailed in its document No. C/EIS/9913/10-12-2018. The Authority, after examining all the elements of the file, after hearing the rapporteur and the clarifications of the assistant rapporteurs, who left after the debate and before the conference and decision-making, and after a thorough discussion, CONSIDERED ACCORDING TO THE LAW 1 Article 2 of Law 2472/1997 defines that "personal data" is "any information that refers to the data subject". "Data subject" is "the natural person to whom the data refer, and whose identity is known or can be ascertained, i.e. can be identified immediately or indirectly, in particular on the basis of an identification number or on the basis of one or more specific elements characterizing the his physical, biological, mental, economic, cultural, political or social status". In this context, the telephone number of a natural person is personal 2 data, since it can function as an element of indirect identification of its owner, allowing communication with him. It should be noted that, according to Opinion 4/2007 of the working group of Article 29 of the E.U. regarding the concept of personal data, especially in the operation of electronic services, indirect identification elements can in some cases sufficiently distinguish a person from others within a certain set, even if his name has not been verified. According to article 2 par. g) Law 2472/1997, "controller" is defined as any natural or legal person who determines the purpose and method of processing personal data. Corresponding definitions for both personal data and the data controller are provided for in article 4 par. 1 and par. 7 of Regulation (EU) 2016/679 (General Data Protection Regulation - GDPR) which has been implemented from 25/5/2018. 2. In accordance with article 11 of Law 3471/2006 on the protection of personal data in the field of electronic communications, the making of 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 type of advertising purposes, is only allowed if the subscriber expressly consents in advance. When e-mail contact information lawfully obtained, 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 give his consent in advance, provided that he is provided in a clear and distinct way 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 data, as well as in every message , in case the user had not initially objected to this use. 3. In accordance with Article 21 para. 3 of the GDPR, when the data subjects object to the processing for direct marketing purposes, the personal data are no longer processed for these purposes. 4. From the data in the file it appears that, while OTE provided the recipient of the advertising message with the possibility to object to each message through the 3 relevant link,

pursuant to the requirement of article 11 par. 3 of Law 3471/2006, it was not possible to satisfy the subject's right to object provided by article 21 of the GDPR, since the subscriber's email remained in the OTE file. 5. Furthermore, Article 25 para. 1 of the GDPR defines the concept of data protection by design and provides that the data controller "Taking into account the latest developments, the cost of implementation and the nature, scope, context and the purposes of the processing, as well as the risks of different probability of occurrence and severity to the rights and freedoms of natural persons from the processing, the controller effectively implements, both at the time of determining the means of processing and at the time of processing, appropriate technical and organizational measures, such as pseudonymisation, designed to implement data protection principles, such as data minimisation, and to incorporate the necessary guarantees in the processing in such a way as to meet the requirements of this Regulation and to protect the rights of the subjects of the data". From the data in the file, it appears that OTE did not have the appropriate organizational measure, that is, a defined procedure through which to detect that the subject's right to object could not be satisfied. This arises after, and following a report by the data subject that, despite submitting an opt-out request, he continues to receive promotional messages, he did not take any relevant action to remedy the issue. 6. The duration of the event in which OTE natural person subscribers were deprived of their right was particularly long, since since 2013 approximately 8,000 subscribers had unsuccessfully tried to unsubscribe. 7. The controller is a company operating as a provider of electronic communication services, which is generally required to ensure a high level of security for the personal data of its subscribers, including natural persons. According to the data publicly available at G.E.M.H., the revenues of the OTE group for the year 2018 were 2,887.6 million euros¹.

The Authority has previously established that OTE was responsible for an incident

1 Prot. No. 1585114/05-07-2018 announcement of the G.G. of Trade and Consumer Protection

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personal data breach, imposing its sanction

fine with decision 1/2015.

8. The Authority accepts that the incident is not due to fraud on the part of the controller and

that as soon as the controller was informed by the Authority, he acted for it

remedying the breach by cooperating with her.

9. The Authority, taking into account the above established violation of articles 21 and

25 par. 1 of the GDPR and the elements of the file, considers that it must impose the sanction of the administrative fine provided for in article 58 par. 1 i' of the GDPR.

Pursuant to article 83 of the Regulation and in order for the sanction to be effective, proportionate and dissuasive, taking into account the aggravating factors elements referred to in clauses 6 and 7 hereof and mitigating circumstances elements referred to in paragraph 8 hereof, the amount of the fine determined at two hundred thousand (200,000) euros.

10. Regarding the two complaints of natural persons of OTE subscribers who are mentioned at the beginning of the present, as accepted by the controller, the incident in question also affected their own data, therefore, the Authority notes that the complaints are well founded. The corrective measure of the administrative fine, such as this was analyzed in the previous consideration, it is imposed for the entire offense, in which are included both the cases of the complainants, who are recipients of the decision.

The Personal Data Protection Authority:

FOR THOSE REASONS

It imposes on the "Telecommunications Organization of Greece S.A." the effective, proportionate and dissuasive administrative fine appropriate to the particular case according to its special circumstances, amounting to two hundred thousand (200,000.00) euros.

The Deputy President

The Secretary

George Batzalexis

Irini Papageorgopoulou