

GREEK REPUBLIC PERSONAL DATA PROTECTION AUTHORITY Athens, 16-05-2019 Prot. No.: G/EX/3528/16-05-2019 A
P O F A S I NO. 13/2019 (Department) The Authority for Personnel Data Protection Charaktira met as a Department
composition at its headquarters on Wednesday, April 3, 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 Menoudakos, and the alternate members Panagiotis Rontogiannis as rapporteur and Evangelos
Papakonstantinou, to replace the regular members Antonios Symvonis and Konstantinos Lambrinoudakis, who, although
legally summoned in writing, did not attend due to obstacle. Regular member Charalambos Anthopoulos and his deputy
Grigorios Tsolias, although they were legally summoned in writing, did not attend due to disability. Georgios Rousopoulos,
expert scientist - auditor, attended the meeting as an assistant rapporteur. 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: Two complaints were submitted regarding the reception of telephone calls with the purpose of promoting
products or services of the company "RANEOSI PRIVATE MEDICINE, MEDICAL SOLE INDIVIDUAL LIMITED LIABILITY
COMPANY" and d.t. "RENEOSI MONOPROSOPI E.P.E." (hereinafter RENEWAL LTD). Specifically: a) 1-3 Kifisias St., 11523
Athens, Tel.: 210-6475600, Fax: 210-6475628, contact@dpa.gr, www.dpa.gr With the number of Prot. C/EIS/ 5307/14-06-2018
his complaint, A stated that he was called for the purpose of promoting medical services by the number 2182189627, on July
19, 2018 at 10:08 a.m., to a number registered in the register of no. 11 of Law 3471/2006 of its provider. The complaint states
that "multiple practices" were advertised and that the company's name was not provided when requested by the complainant.
The Authority sent a question (with reference no. C/EX/6336-1/13-09-2018) to the telephony service provider Voiceland IKE,
which informed (with reference no. C/EIS/7503/ 20-09-2018 document) that the subscriber for the number 2182189627 is
ANANEOSI EPE. b) With case No. C/EIS/5340/14-06-2018, B reported to the Authority that he was called for the purpose of
promoting medical services by the number 2182189627, on September 19, 2018, to a number registered in the register of no.
11 of Law 3471/2006 of its provider. In the complaint it is stated that they are advertising "Multiple Clinics". The Authority
informed ANANEOSI EPE with its documents No. G/EX/6336-2/01-10-2018 and G/EX/7533-1/08-11-2018 about the
complaints, asking for the opinions her on them. The company responded with its documents No. C/EIS/8675/02-11-2018 and
C/EIS/9646/03-12-2018. The Authority, with the call No. C/EX/277/15-01-2019, invited ANANEOSI EPE to a hearing initially for
the meeting of the Authority's department on 13-02-2019 and after accepting an oral request postponement, for the meeting of

02/27/2019. The company was represented at this meeting by Ioannis Pierrou, lawyer, Maria Pierrou, lawyer, and C, Director of Medical Affairs. During the hearing, the company filed with its document No. C/EIS/1557/27-02-2019, additional information, while, after the hearing, it submitted, within the deadline, No. C/EIS/ 1875/12-03-2019 memorandum. ANANEOSI EPE briefly supports the following: The company has been established since July 2010 as a one-man medical company with the purpose of providing Primary Medical Health Care services and has the required operating certificate from the Athens Medical Association. Its services include, among other things, the prevention of diseases or health disorders. The call was made in a random and automated way for the "purpose of informing and raising awareness of the public in the context of the social corporate responsibility of the medical company" while the goal was, primarily, obesity prevention. Therefore, this action was not aimed at advertising (ie the commercial promotion of products and services). Furthermore, as soon as the complainants informed that they are written in the register of Article 11 of Law 2 3471/2006, the company stated that they would not call again. This was done during the call in the first case, while in the second case the initial call was unanswered and the complainant called the company's number at which point they were informed. In support of the argument that the calls made were not advertising, the company states that actions with the sole purpose of raising public awareness, with a random phone call, cannot be considered as advertising. In support, reference is made to secondary EU law on unfair competition. According to the company, an advertisement is an announcement made by any means, solely with the aim of promoting the availability of goods or services, while in this case the calls were actions without compensation or any other burden on the part of the complainant. Therefore, she considers that her action was not advertising and was legal. In the memorandum it filed after the hearing with the Authority, it cites more evidence to support its argument that the telephone calls made were solely in the context of action to prevent the disease of obesity and cannot be considered as advertising. In summary, it states the following:

- a) That the company has three licensed by the I.S.A. departments, b) Lists elements to highlight the social work of the company, such as many actions to inform and raise awareness about health issues. c) It states that the company is certified for information security (ISO 27001:2013) and for quality assurance and quality business management (ISO 9001:2015). d) It states that the company has posted a Protection Policy and a Cookies Policy on the website, while in its daily operation it applies the current framework of the legislation on personal data. With regard to the term "Multiple Practices", the company states that the first complainant incorrectly stated this term, as the company has three licensed practices and not a multipurpose practice. The company also submitted part of the record of activities that it maintains (based on Article 30 of

Regulation (EU) 2016/679) which includes the activity "Informing the public to raise awareness on issues related to Health, in the context of Corporate Social Responsibility actions (Only at the request of the person invited anonymously and randomly to participate in the action, i.e. to come for a free medical check-up, such as e.g. Free Gynecological Check-up or BMR Measurement etc)". The Authority, after examining all the elements of the file, after hearing the 3 rapporteur and the clarifications of the assistant rapporteur, who left after the discussion and before the conference and decision-making, and after a thorough discussion, THINKS IN ACCORDANCE WITH THE LAW 1. The issue of telephone calls, for the purposes of direct promotion of products or services and for any kind of advertising purposes, is regulated in article 11 of Law 3471/2006, which defines the relevant unsolicited communications (see par. 1 and 2). It is noted that, with the provisions of article 16 par. 1 and 2 of law 3917/2011, par. 1 and 2 of article 11 of law 3471/2006 were amended, so that with article 11 par. 1 of law 3471/2006 is now defined as: "The use of automatic dialing systems, in particular using facsimile (fax) or e-mail devices, and more generally 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 kind of advertising purposes, it is allowed only if the subscriber expressly consents in advance", while paragraph 2 of the same article states that: "It is not allowed to make unsolicited communications with human intervention (calls) for the above purposes, as long as the subscriber has declared to the provider of the service available to the public, that he generally does not wish to receive such calls. The body is obliged to register these statements free of charge in a special list of subscribers, which is available to anyone interested". Consequently, after 01-09-2011, the date on which the amended provision entered into force, telephone calls with human intervention, in view of the above purposes, are permitted, unless the called party has declared that he does not wish them ("opt-in" system -out'). The "opt-out" system has the consequence that natural or legal persons can direct their objections, regarding the processing of their data, either specifically directly to the controller (i.e. the advertiser) by exercising the right to object to the processing personal data based on article 13 of Law 2472/1997 or generally through their registration in the provider's special list of subscribers provided for in the article 11 par. 2 of Law 3471/2006. The law provides for the creation of registers ("opt-out") in each provider and the subscriber can register free of charge, to his own service provider

electronic communications, that he does not wish to receive telephone calls for direct marketing. Each provider has, with the aforementioned provision, the obligation to keep, with these declarations, a Public Registry that performs one public purpose and accessible to anyone interested in using it for direct marketing.

2. Further, the telephone number of a natural person is personal given, since it can function as an element of indirect identification of the owner of (cf. article 4 par. 1 of Regulation (EU) 2016/679 hereinafter GDPR), allowing the communication with him. It should be noted that, according to its Opinion 4/2007 working group of article 29 of the E.U. about the concept of personal data, especially in the operation of electronic services, elements of indirectness identification, can sufficiently in some cases distinguish a person from others in the context of a specific set, even if it has not been done verification of his name.

3. Based on the principle of accountability as defined in no. 5 par. 2 of the GDPR "O controller bears responsibility and is able to demonstrate compliance with paragraph 1 ('accountability')." Furthermore, in article 24 par. 1 and 2 of the GDPR it states "1. Considering the nature, scope, context and purposes of the processing, as well as the risks of different probability of occurrence and seriousness for the rights and freedoms of natural persons, o controller applies appropriate technical and organizational measures in order to ensure and be able to demonstrate that the processing is carried out in accordance with this regulation. These measures are reviewed and updated when it is considered necessary. 2. When justified in relation to the processing activities, the measures referred to in paragraph 1 include the implementation of appropriate data protection policies from the controller."

4. Regarding informing the called user, its provisions apply of article 14 GDPR and the controller must provide the subject of given a range of information, including identity and contact details.

5. From the examination of the facts of the case, the following emerges: ANANEOSI EPE accepts making the calls. Her main argument is that energy was not advertising, but informative, in the context of the "Corporate - Social Responsibility". This statement contradicts what they both state

5 complainants, who even point out that they were advertised as "Versatile Clinic". The company's argument that one complainant incorrectly states that the three dispensaries are versatile, it cannot be accepted as exactly the same

the second complainant also mentions, without there seeming to be any connection between the two complainants. After all, and from the evidence filed by data controller (see in particular ISO27001:2013 certificates and licenses from the I.S.A.) it follows that the main activity of the business is the Supply

Medical Services for the purposes of Aesthetics - Medical Cosmetology. Therefore, the services provided by the controller are of a medical nature but not concern the promotion of public health par excellence. Further actions

"Corporate - Social Responsibility" are a modern form of advertising. As the provision of no. 11 of Law 3471/2006 refers to "... direct commercial purposes promotion of products or services and for any kind of advertising purposes" o

controller owes even in cases of corporate social action

responsibility to respect this provision. Therefore, it cannot be accepted the person in charge's argument about the nature of the telephone calls.

Regarding the unsatisfactory information during the call such as

emerges from the complaints, the company was referred to as "Multiple Medical Practice" while even when requested, her details were not provided. It should also be appreciated that both complainants had no other identification of the caller company, except the phone number. Therefore, it follows that the person in charge processing, did not correctly update his data.

6. Taking into account the above two violations found, namely calls to subscriber numbers registered in the register of Article 11 Law 3471/2006, the fact that the controller did not correctly inform about the its elements, making it difficult to exercise the rights of its subjects data and the fact that the controller intended with the above actions to make a profit, the Authority considers that it should be imposed on the person responsible processing or provided for in article 21 par. 1 item b' of Law 2472/1997 sanction referred to in the operative part of the present, which is considered proportional to the gravity of violations.

FOR THOSE REASONS

6

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 the RENEWAL OF PRIVATE MEDICINE, MEDICINE SOLE INDIVIDUAL LIMITED LIABILITY COMPANY fine of 5,000 Euros for the above established violations of Article 11 of Law 3471/2006.

The Deputy President

The Secretary

George Batzalexis

Irini Papageorgopoulou

7