

Athens, 07-21-2021 Prot. No.: 1761 DECISION 30/2021 (Department) of the President of the Authority Constantinos Menoudakos, The Personal Data Protection Authority met as a Department by teleconference on 02-17-2021 at the invitation of the President of, in order to examine the case referred to in the history of the present. Georgios Batzalexis, Deputy President, was present, as the substitute member Grigorios Tsolias was unable to attend, as rapporteur, in place of the regular member Charalambos Anthopoulos, who, although legally summoned in writing, did not attend due to being unable to attend, and the alternate member Evangelos Papakonstantinou, in place of the regular member, Konstantinos Lambrinoudakis, who, although legally summoned in writing, did not attend due to disability. The meeting was attended by order of the President, Kyriaki Karakasi, legal auditor - lawyer, 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/7757/11-11-2020 was submitted to the Authority by A, according to which the complainant states that the Chamber of Magnesia notified the . First ... his letter to the Federation of Professional Craftsmen and Merchants of the Prefecture of Magnesia as well as to 1 Kifisias Avenue 1-3, 11523 Athens T: 210 6475 600 E: [contact@dpa.gr](mailto:contact@dpa.gr) [www.dpa.gr](http://www.dpa.gr) primary unions - members of of the above Federation with no. ... report - complaint against him, which was allegedly filed before the First Instance Prosecutor's Office [region] P. In fact, according to the complainant's claims, the above notification took place even to persons who no longer participate in the composition of the relevant administrative boards as and to members of the said Federation, i.e. unions, which no longer exist in the legal world while linking the said sending of the document with the relevant reference made to it, during the 28.07.2020 meeting of the Board of Directors of the above Federation, the minutes of which he submitted after his complaint. In addition, the complainant claimed that with no. Prot. ... /... document of the Chamber was not answered by the latter essentially his request from 15.10.2020 regarding the procedural basis and the reasons for further transmission of the petition against him. The Authority, in the context of examining the above complaint, with no. prot.

C//EΞ/7757-1/23-11-2020 her document, requested the complained Chamber to provide clarifications regarding the allegations of the complainant. In particular, the Authority requested clarifications on the type of legal relationship between the Chamber of Magnesia and the complainant, if the latter addressed the said Chamber regarding the matter in question as well as if and in what way the latter responded to the complainant requesting to be attached the possible relevant answer and giving as many clarifications as possible on it. In addition, the Authority requested clarifications as to how the report-complaint against the complainant came within the knowledge sphere of the Chamber, as well as on what legal basis it proceeded with the further

notification as an act of processing the latter's personal data. Following the above document of the Authority, the Chamber responded with the no. Prot. C/EIS/8571/14.12.2020 document after the corresponding relevant documents. With the aforementioned response document, the complained-about Chamber maintains that the complaint-report that was recorded at the Chamber on 03.06.2019 and was directed against the already complainant, did not refer to the 2 function and the competence of the Chamber for this and was forwarded on 30.07.2020 ( i.e. approximately one year and 2 months after its first protocol) in the Federation and in the primary unions. With regard to the complaints regarding the complainant's relationship with the Chamber, they reply that the latter did not participate in the Chamber's elections - as having a commercial status and therefore as a member of the latter - while the commercial company in which it appears that the complainant participated was resolved on 02/01/2020 (providing the relevant evidence of the above documents, i.e. the decision no. ... /... of the ... Court of First Instance Ψ on the sanctioning of nominations of the Chamber and the announcement of successful candidates as well as the no. Prot. ... /... notification document to GE.MH of the dissolution of the company in which the complainant allegedly participated according to the claims of the Chamber). Subsequently, the Chamber invokes as the controller the provision of article 6 par. 1 para. c of the GDPR for the transmission in question stating that it lacked jurisdiction regarding the alleged allegations against the complainant. In addition, the Chamber in its above response also invokes article 26 par. 1-2 of Law 4624/2019 as a justification for the transfer it made. It also underlines that the report against the complainant that was further forwarded and received by mail to the complainant, is not a file of the Chamber itself, it did not come from the collection and recording of data that the Chamber itself does in the context of its activities and that it keeps in its file as well as that it was not processed within the scope of the purpose and method of processing determined for the Chamber. Following this, the complained Chamber denies that it carried out an act that constitutes processing of personal data, concluding that there is no violation of the principles of protection of the complainant's personal data. It is further argued that the accused forwarded the contested report, which had already been sent to the public prosecutor's office, in addition to those who had a legitimate interest in being informed about it, as it concerned complaints that were in the public interest in view of the fact that they touched on the issue of legality formation of collective trade union bodies and 3 management of economic programs implemented with state grants, for which the above Federation had to respond. It is mentioned in this regard that the non-transmission of the petition in question could be considered an attempt to cover up the matter, while among the provisions he invokes in support of his claims are, in addition to the above, those of articles 5 and 9 par. 2 item. e' of the GDPR as well as

those of articles 2 and 4a of Law 4624/2019. According to the Chamber, one of the legal grounds for the transmission is Article 4 of the Code of Administrative Procedure on the transmission of applications to the competent bodies. Finally, it is argued that the complainant's trade union qualities had been made public in the press (two related publications are also provided in this regard) as well as by him in social media and therefore the said personal data contained in the report that was transmitted had already with the Subject's consent made public. The Authority called with no. Prot. C/EXE/431/20.01.2021 and C/EXE/432/20.01.2021 calls both parties to a hearing via teleconference, so that they can be heard in the context of the meeting of the competent Department from 27.01.2021, giving a ten-day deadline for the submission of any Memoranda in further support of their claims, which were presented by the complainant after his lawyer, Anastasia Plastara with AM Bar Association Ψ ... and the complainant by his Legal Counsel, Georgios Pliatsikas. The Chamber's Data Protection Officer was also present at the teleconference in question, in case there was a need for further clarification. Subsequently, the complainant timely submitted the no. Prot. C/EIS/875/04.02.2021 Memorandum after the relevant documents. He supports with his above Memorandum what is referred to in the judgment under no. Prot. C/EIS/7757/11.11.2020 his complaint sticking to his position regarding the illegality of the transmission to third parties to the detriment of the petitioner. In particular, in the context of the above Memorandum, the complainant repeats the allegations of his complaint, pointing out, among other things, that on 13.06.2019 he was informed by the Magnesia Chamber of Commerce Development Company with 4 e-mails, which were presented before the Authority, that he had been knowledge of the latest complaint filed against him as well as the fact that the Company's legal advisor, Georgios Pliatsikas, would communicate with him regarding this issue. The complainant states in his above-mentioned Memorandum that the communication in question took place in the context of which George Pliatsikas stated that the complaint in question does not concern the competence of the Development Company of the Chamber of Magnesia, confirming that the Public Prosecutor's Office is responsible for its fate , before which it was pending. The complainant emphasizes that from 13.06.2019 onwards, no harassment has taken place on the part of the Chamber regarding the complaint in question and that after he was called in the summer of 2019 to testify in the preliminary examination conducted against him, the case that concerning him was archived, according to the document presented to the Authority A.V.M.: C/...-... with no. first ... /... act of the First Instance Prosecutor Ψ, which was approved by the Appellate Prosecutor Ω, on 31.10.2019. Following these, the complainant reiterates the sequence of events that he mentions in his complaint before the Authority, underlining that the reason for restarting the issue through the further forwarding of the report to the detriment of the complaint

by the complained Chamber in the summer of 2020 was the quarrels that occurred in context of the 28.07.2020 meeting of the Board of the Federation of Professionals, Craftsmen and Merchants of Magnesia. It also reinstates the allegation regarding the transmission to the detriment of the contested reference to natural and legal persons who no longer had any participation in the primary and secondary trade union bodies. He also emphasizes that he was asked about the complaint against him by some of those on the transmission that took place from the Chamber of Magnesia. The complainant with his Memorandum demonstrates the contradiction of the long-term inaction of the complainant regarding the disputed complaint with the immediate transmission of it to third parties immediately after it was reported by a member of the Board of the aforementioned Federation in the context of a related argument with the complainant. The complainant notes that the complainant's response to the request addressed to him regarding the transfer, according to the already mentioned above 5, was not clear for this reason and appealed to the Data Protection Authority. In conclusion, the complainant concludes in his memorandum filed before the Authority that he complains about the transmission of the report to third parties at the expense of the complainant and indeed after inactivity that exceeded one year and without sufficient justification in his reply to the complainant dated 26.10.2020 , which, in any case, contradicts the direct telephone assurance from 13.06.2019 of Georgios Pliatsikas regarding the extrapolated issue of competence. The above telephone communication was announced in the informative e-mail from 13.06.2019 provided by the complainant. In addition, the complainant criticizes the reasoning of the above response of the Chamber and regarding the part of it that refers to the invocation of the pandemic as a reason for the delay in the transmission to third parties that took place. The complainant also underlines the contradiction of the complainant's claim regarding the one-year examination of the possibility of forwarding the complaint without having time to update the list of reasons for the forwarding. He also emphasizes that his publications on social media, as invoked by the Chamber, have nothing to do with the transfer in question to third parties. He points out the fact that it does not appear that an ad hoc decision was issued by any competent Board of Directors regarding the transfer in question. Finally, it states that in the teleconference before the Department of the Authority, the legal advisor of the complainant mentioned for the first time that there were questions about the relevant complaint against him and therefore 20 days later they proceeded to the transmission, also emphasizing the contradiction between the speed with which moved in response to the last questions as opposed to taking a decision after one year on whether to forward the complaint further or not, according to the reasoning put forward by the Chamber. The complained Chamber with no. prot. C/EIS/925/05.02.2021 his timely submitted Memorandum after the relevant documents

briefly asserts, among other things, the following. First of all, he refers to his written opinions from 14.12.2020, as these 6 were mentioned above, claiming that the complaint in question is vague due to the fact that it does not appear that the document they forwarded to third parties was read by the recipients nor was it used or invoked in a subsequent Board of Directors of the Federation, so that the data subject's rights are violated. He then claims that the complaint is unfounded in law as the processing is based on case e of paragraph 2 of article 9 of the GDPR since the document transmitted to third parties contained information related only to the trade union activity of the complainant. Next, the complainant states that the processing was carried out in the context of a legal obligation of the Chamber and in particular for the sake of checking the legal participation of the complainant in the Board of Directors of the above Federation due to the management by the latter of subsidies that the Chamber had available to it. Article 26 paragraph 2 paragraph b of Law 4624/2019 is also invoked as a justification for the transfer in question, while reference is also made to paragraph e of paragraph 1 of article 6 of the GDPR as, according to the claims of the complainant, the processing was deemed necessary "for the fulfillment of a project of public interest". In addition, it analyzes the sums allocated by the Chamber to the Federation from 2010 to 2018, providing the relevant expense tabs, stating that the report they forwarded to third parties concerned the legality of the complainant's participation in the boards of directors of primary and secondary professional collective bodies, as well as the aforementioned Federation, which also managed financial programs. The Chamber concludes, in order to justify the disputed transfer to third parties, that there was a question of the complainant's legal participation in the Board of Directors of the Federation and by extension its legal composition, presuming issues of invalidity or annulment of its decisions. As it is not completed, the said decisions also included those related to the financial management of the subsidies that came from the Chamber and therefore in the event of an irregularity it could take legal action within the framework of the obligation to control the correct use of the amounts in question, much less from the moment the Chamber conducts a de facto implementation control of the actions it finances. In addition, he reiterates his already presented 7 claim regarding the possibility that the non-further transmission was considered an attempt to cover up on the part of the complainant, pointing out that the Secretary of the Federation had been requested to send the report in question during the time period before the transmission to third parties took place . It is emphasized that the transmission in question was carried out in fulfillment of a legal obligation of the Chamber since it concerned the legality of the formation and operation of the above Federation, while the only way to inform the complainant what was really true was to transmit the report in question to third parties in order for the latter to check the charges against A.

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 the decision-making, after a thorough discussion, WAS CONSIDERED IN ACCORDANCE WITH THE LAW 1. Because according to article 5 par. 1 of the General Regulation (EU) 2016/679 for the protection of natural persons against the processing of personal data (hereinafter GDPR) the principles that should govern a treatment are set out. In particular, in accordance with elements a'-c' of paragraph 1 of the same above-mentioned article, it is provided that personal data are processed lawfully and legitimately in a transparent manner in relation to the subject of the data ("legality, objectivity and transparency" ), are collected for specified, explicit and legitimate purposes and are not further processed in a manner incompatible with those purposes; further processing for archiving purposes in the public interest or for scientific or historical research or statistical purposes is not considered incompatible with the original purposes in accordance with Article 89(1) ("purpose limitation") and are appropriate, relevant and limited to what is necessary for the purposes for which they are processed ("data minimization"). And according to the principle of accountability introduced by paragraph 8 paragraph 2 of the said article, it is expressly defined that the data controller "bears the responsibility and is able to demonstrate compliance with paragraph 1 ("accountability")". This principle, which is a cornerstone of the GDPR, implies that the controller can and should be able to demonstrate compliance. In addition, it enables the controller to check and legally document a processing that he carries out in accordance with the legal bases provided by the GDPR and national data protection law. 2. Because according to article 6 of the GDPR, the provisions of which provide the legal bases for the processing of personal data, it is provided in accordance with elements c' and e' of the first paragraph thereof, as a condition in one case that it is necessary for the compliance with a legal obligation of the controller, while in the other, it is necessary for the fulfillment of a duty performed in the public interest or exercise of public authority delegated to the Controller. 3. Because Article 9 of the GDPR, cited by the accused Chamber in its allegations, states in paragraphs 1 and 2 f. e' that "The processing of personal data revealing the racial or ethnic origin, political opinions, religious or philosophical beliefs or trade union membership, as well as the processing of genetic data, biometric data for the purpose of indisputable identification of a person, data concerning health or data concerning a natural person's sexual life or sexual orientation. 2. Paragraph 1 does not apply in the following cases... e) the processing concerns personal data which have been manifestly made public by the data subject". 4. Because, in addition, according to paragraph 4 of article 14 of the GDPR it is provided that: "When the data controller intends to further process the

personal data for a purpose other than that for which the personal data was collected, the data controller should provide the data subject, before such further processing, with information for this purpose and any other necessary information, as referred to in paragraph 2", while paragraph 1 of article 12 of the GDPR provides that: "The controller shall take appropriate measures to provide the data subject with any information referred to in Articles 13 and 14 and any communication under Articles 15 to 22 and Article 34 regarding the processing in a concise, transparent, comprehensible and easily accessible form, using clear and simple wording, especially when it comes to information aimed specifically at children. The information is provided in writing or by other means, including, if appropriate, electronically. When requested by the data subject, the information may be given orally, provided that the identity of the data subject is proven by other means.' 5. Because the following provisions are also crucial for the disputed case, namely those of paragraphs 1 and 3 of article 22 of Law 4624/2019, according to which: "1. By way of derogation from Article 9(1) of the GDPR, the processing of special categories of personal data within the meaning of Article 9(1) of the GDPR by public and private bodies is permitted, as long as it is necessary: a) for the exercise of rights deriving from the right to social insurance and social protection and for the fulfillment of related obligations b) for reasons of preventive medicine, for the assessment of the employee's ability to work, for medical diagnosis, for the provision of health or social care or for the management of health or social care systems and services of care or by virtue of a contract with a healthcare professional or other person bound by professional confidentiality or under his supervision; or c) for reasons of public interest in the field of public health, such as serious cross-border threats to health or to ensure high quality and safety specifications of medical devices, in addition to the measures referred to in the second paragraph of paragraph 3, the provisions ensuring professional confidentiality provided for by law or code of ethics must be observed in particular. ... 3. In the cases of the previous paragraphs, all appropriate and specific measures are taken to safeguard the interests of the data subject of the health care of medicines or 10 of a personal nature. Taking into account the state of the technology, the costs of implementation and the nature, extent, context and purposes of the processing, as well as the risks posed, depending on their severity, to the rights and freedoms of natural persons by this processing, in these measures may include in particular: a) technical and organizational measures to ensure that the processing is GDPR compliant; b) measures to ensure that it is possible to verify afterwards and determine whether and by whom they have been entered, modified or removed the personal data; c) measures to strengthen the awareness of the personnel involved in the processing; d) access restrictions by the controllers and processors; e) the pseudonymization of the personal data; f) the

encryption of the data of a personal nature; g) measures to ensure the competence, confidentiality, integrity, international reliability and resilience of processing systems and services related to the processing of personal data, including the ability to quickly restore availability and access in the event of a physical or technical incident; h) procedures for regularly testing, assessing and evaluating the effectiveness of techniques and organizational measures to ensure the security of the processing; i) special rules for ensuring compliance with this law and the GDPR in case of transfer or processing for other purposes; j) the definition of DPO". 6. Because, according to article 24 of the same above law: " 1. The processing of personal data by public bodies for a purpose other than that for which they have been collected, is permitted when this processing is necessary for the fulfillment of the tasks have been assigned to them and if it is: a) necessary to check the information provided by the data subject, because there are reasonable indications that this information is incorrect; b) necessary to prevent risks to national security, national defense or public safety or to secure tax and customs revenues; c) necessary for the prosecution of criminal offences; d) necessary to prevent serious damage to the rights of another 11 person; e) necessary for the production of official statistics. 2. The processing of special categories of personal data, as referred to in article 9 paragraph 1 of the GDPR, for a purpose other than that for which they were collected, is permitted, as long as the conditions of the previous paragraph are met and one of those provided for in article 9 applies paragraph 2 of the GDPR exceptions or article 22 hereof". 7. Because article 26 of Law 4624/2019 provides the following: "1. The transmission of personal data from a public body to a public body is permitted, as long as it is necessary for the performance of the tasks of the transmitting body or of the third party to whom the data is transmitted and if the conditions that allow the processing in accordance with article 24 are met. The third party to which the data is transmitted processes it only for the purpose for which it was transmitted. Processing for other purposes is permitted only if the conditions of article 24 are met. 2. Public entities are permitted to transmit personal data to private entities if: a) the transmission is necessary for the performance of the tasks of the transmitting entity and are further fulfilled and the conditions of article 24; b) the third party to whom they are transmitted has a legitimate interest in being aware of the transmission and the data subject does not have a legitimate interest in not having the data concerning him transmitted; or c) the processing is necessary for the establishment , exercising or supporting legal claims and the third party committed to the public body that transmitted the data to him that he will process them only for the purpose for which they were transmitted. Processing for other purposes is permitted if the transfer is permitted in accordance with paragraph 1 and the transferee has given consent to the transfer. 3. The transfer of special categories of personal data within



the meaning of article 9 paragraph 1 of the GDPR is permitted if the conditions of paragraph 1 or paragraph 2 are met and one of the exceptions of article 9 paragraph 2 of the GDPR applies or in accordance with the article 22 hereof". It is noted that the Authority with no. 1/2020 Its opinion has been placed on the aforementioned 12 provisions of Law 4624/2019 in relation to their compatibility with EU law. and the provisions of the GDPR. 8. Because regarding the legal nature of Federations and unions, the provision of paragraph 3 of article 1 of Law 1712/1987 is noted according to which: "Professional organizations are unions governed by the provisions of this law and additionally by the provisions of the A.K. and its introductory law. These organizations do not pursue a profit-making activity. However, they are allowed to encourage the establishment by their members of productive, consumer, supply or credit cooperatives, to establish funeral homes and libraries and to organize training programs for their members". 9. Because as far as the purpose of the Chambers is concerned, it follows from the provisions of article 62 of Law 4497/2017 that: "Purpose of the Chambers, within the limits of spatial unit where they exercise their powers, are: a. the protection and development of trade, industry, crafts, professions, the service sector, exports and every branch of the economy, in accordance with the interests and objectives of the national economy for its development and progress, b. the provision to the State of documented proposals for every economic issue, always with a view to the economic development of the territorial unit where they exercise their responsibilities and to serve the general interest of the national economy, c. providing their members and all interested parties with advice and information on every financial issue, d. providing support services for the activities of their members, as well as the delegated exercise of public law responsibilities regarding the establishment, licensing and operation of businesses .». Whereas in paragraph 1 of article 65 of the aforementioned law it is provided that: "The Chambers exercise all powers relevant to their purpose, as well as delegated public law powers related to entrepreneurship. They also contribute to the procedures for a unified and simplified exercise of economic activity and undertake education and training initiatives for technical professions, as well as the promotion of new 13 production processes". Whereas in paragraph 2 of the aforementioned article some of the competences of the Chambers are listed indicatively. 10. Because, in par. 1a) of article 4 of the Code of Administrative Procedure on the processing of cases by the Administration it is provided that: "a. Public services, local government organizations and legal entities under public law, when applications are submitted, must process the cases of the interested parties and decide on their requests within a period of fifty (50) days, as long as special provisions do not provide for shorter periods . The deadline starts from the submission of the application to the competent agency and the submission or collection of all the required supporting documents, certificates

or data. If the application is submitted to a non-competent agency, this agency must, within three (3) days, forward it to the competent agency and notify the interested party. In this case, the deadline begins when the application was received by the competent service. For cases involving the competence of several services, the deadline of the first paragraph is extended by another ten (10) days". 11. In this case, the complainant complains in accordance with the above about the transmission by the Chamber of Magnesia of the complaint - reference that concerned him to the above Federation and its individual primary associations. In response to A's complaint, the complainant claims in principle that he did not carry out a processing act and that the transfer in question does not fall within the scope of the GDPR, as he did not act according to the usual purpose provided for the Chamber according to the detailed above . However, the case in question does not escape the scope of the GDPR and 4624/2019 because it was a document that included the complainant's personal data and was recorded by the Chamber thus entering its filing system. Therefore, the Chamber of Magnesia became the Data Controller and proceeded with the disputed further transmission in a processing act<sup>1</sup>, which in fact avoided the usual purpose that it defined itself as Data Controller 1 See indicatively the one with no. 4/2019 APD. 14 of Processing, as, after all, he accepts in his reply letter, and especially without relying on another legal basis, as will be shown below. 12. Because subsequently, with a second claim, the accused invokes as the legal basis of the transmission in question that case c of paragraph 1 of article 6 of the GDPR and subsequently also article 9 par. 2 item. e' of the GDPR. Regarding the first part of the claim, it is established that from no provision of the law, nor especially from the provisions of the aforementioned articles 62 and 65 of Law 4497/2017 on the purpose and respective powers of the Chambers, it does not appear that the Chamber of Magnesia on the one hand had a legal obligation to carry out said processing, on the other hand, that it would fail to fulfill its purpose if it did not notify said reference<sup>2</sup>. Therefore, the Chamber proceeded with the said processing without the existence of a legal basis and therefore in violation of article 5 par. 1 sec. 1 GDPR. Even if it concerned a legality check of the election of a member of the Chamber itself, there was still no legal basis for the further notification. After all, the Federation and through it and the primary unions as its members, would receive knowledge of the report if they were called by the Prosecutor of First Instance to testify in the context of a preliminary examination. Therefore, the claim in question, which is also repeated in the Complainant's Memorandum of 05.02.2021, is rejected. In addition, as regards the second part of the claim regarding the invocation of Article 9 para. 2 para. e of the GDPR regarding the explicit disclosure of personal data by the subject himself, it appears that the conditions for the application of the provision in question are not met given that in this case, the processing concerns the

further transmission of a complaint that contains personal data and is addressed in principle to the public prosecutor's office, while it does not contain references only to those related to the trade union activity of the complainant. 2 See indicatively also Gmd 4/2020 (under 2.1) APD, where the assistance of the conditions of application of article 6 par. 1 para. c of the GDPR as the legal basis of the processing is examined. 15 13. The Chamber then, with a third claim, refers to paragraph 1 of article 26 of Law 4624/2019 which concerns the transmission between public bodies, while it becomes obvious that it does not apply in this case, as far as the Federation and its primary unions do not fall under the concept of public bodies, as it follows from the aforementioned article 1 par. 3 of Law 1712/1987. As regards the cited article 26 par. 2 of Law 4624/2019 which concerns the transfer from public to private entities when it is necessary for the performance of the tasks of the transferring entity (section a'), it is established that the provision in question does not apply in this case as the transfer in question did not relate to the performance of the Chamber's duties, as stated above. Therefore, there is no need to examine the possible existence of the conditions of article 24 which cumulatively must be met for the application of subsection a' of par. 2 of article 26 of Law 4624/2019. Regarding the claim regarding the application of the provision of subsection b of paragraph 2 of the same article, it is established that the conditions for its application are not met. In particular, it is pointed out in addition to the foregoing and it is established that the cumulative condition of the absence of a legal interest of the complainant in not transmitting the document in question is not met, as there is an obvious and reasonable legal interest of the complainant that it not be transmitted to third parties even in his absence document initiating the criminal investigation against him of what was discussed in the transmitted document. With reference in particular to article 22 par. 1 of Law 4624/2019, it does not appear that any measure was taken by the Chamber in accordance with article 22 par. 3 of the same law (see indicatively the mismatches that exist in the recipients' email addresses - primary associations of the complaint and to the corresponding addresses of the official list of primary associations provided by the Chamber). 14. The fourth claim of the Chamber of Magnesia, which is presented again with the latter's Memorandum of 05.02.2021, regarding the possibility of considering the non-further transmission, which it ultimately did, as an "attempt 16 to cover up the ... matter", is rejected in addition to what was mentioned above, especially in relation to the absence of legal provision and obligation and for two (2) more reasons: firstly, because no provision of the law provides for any kind of related offense and secondly, because it is negated at a substantial level by the extremely late action which took place one (1) year and two (2) months after the first entry in the Chamber's file. And the additional claim that the file transmitted to third parties was previously requested by the Secretary of the Federation,

regardless of the fact that it was not proven by the data in the file, moreover, does not constitute a legal basis for processing personal data, nor can it be included in any of the provided by the provisions of the GDPR and Law 4624/2019. 15. As for the fifth claim of the complainant regarding the obligation allegedly arising from Article 4 of the Code of Administrative Procedure to proceed with the transfer in question, it should be noted that it is completely baseless supported, as it is not a request and therefore the complained Chamber is making an incorrect expansion interpretation of the above provision 3. Therefore, the above claim is rejected. 16. With reference to the Chamber's sixth allegation regarding the disclosure by the complainant himself of his data concerning the development of trade union activity, referring to the application of article 9 par. 2 para. e' GDPR, which is also repeated in no. Prot. C/EIS/925/05.02.2021 submitted Memorandum of the complainant, it is noted that in the disputed case the above provision does not apply according to the already detailed explanations in the rationale of the present case. This, especially because in this case a report against the complainant was forwarded to third parties addressed to the public prosecutor's office, which means that third parties became aware of a report which in itself contained censure against the latter and which did not only refer to his trade union qualities but also to his other personal data as stated above. Therefore, and the above 3 See and V. Gertso & D. Pyrgaki in: Code of Administrative Procedure (Diagrams – Interpretative Comments – Jurisprudence), Law Library, Athens, 2015, pp. 45 ff. with references in particular to the relevant decisions of the Supreme Court of Appeal 3004/2010 and 3938/2013. 17 claim must be rejected, as it cannot establish a legal basis for the disputed processing. 17. With regard to the seventh allegation put forward by the Chamber regarding the non-violation of the data subject's rights by the disputed transmission of the complaint to third parties because it does not appear that it was read by the recipients and was not mentioned to any Board of Directors, it is rejected as the illegal transmission of personal data constitutes an independent act of processing under no. 4 para. 2 GDPR, without requiring additional proof of any receipt of specific knowledge from third parties, nor is such a case included in the same provision. 18. With regard to the Chamber's eighth claim regarding the alleged fulfillment of a legal obligation recommended in the control of the legal composition of the Board of the Federation that managed subsidies of the complained-of by issuing relevant decisions as well as regarding the fulfillment of a project of public interest (article 6 par. 1 para. e' GDPR ) in view of the control of the correct use of the subsidies of the complainant to the Federation which, according to the Chamber, presupposes the control of the legality of the decisions of the Board of Directors of the Federation, in particular the following: Firstly, the invoked obligation to control the legality does not arise from any provision of the law formation of the Board of the Federation, nor is any relevant authority provided for by

the provisions of Law 4497/2017, while in any case the Chamber has not been legally assigned such a task that is performed in the public interest, nor has it been assigned the exercise of public authority in accordance with those defined by the provisions of article 6 par. 1 sec. e' GDPR (see p. s. 10 and 45 GDPR) for this and does not invoke relevant provisions of the national legislation. Finally, with regard to the provision of article 5 of Law 4624/2019, the Authority with no. 1/2020 Its opinion has deemed that it repeats the provision of article 6 par. 1 sec. e' GDPR in violation of EU law. and therefore the above applies. In any case, the alleged illegal formation of the Board of Directors of the entities financed by the Chamber in no way hinders the ability of the Chamber to proceed in the same general way and without invoking an explicit legislative provision, in fact invoking control 18 of the implementation of the action financed by it. Therefore, the invoked control obligation, even if it were assumed that it existed, could be fulfilled without the transmission in question becoming necessary, while in any case the Chamber had all the relevant legal remedies provided by law<sup>4</sup> in order to achieve the annulment of a certain union decision since the competent court would now judge the foundation of the relevant legal interest of the Chamber, since the elements of the foundation of the legal claim would have been presented before it. And under the last version mentioned above, the further transmission in question becomes an ineffective means of treatment of the alleged invalidity or annulment of union decisions. It is noted that the only reference of the Chamber of Magnesia to legislation concerns the already repealed Law 2081/1992. <sup>19</sup>. Because it is recalled that in order for personal data to be subject to legal processing, i.e. processing in accordance with the requirements of the GDPR, the conditions of application and observance of the principles of article 5 paragraph 1 of the GDPR must be cumulatively met, as also emerges from the recent decision of the Court of Justice of the European Union (CJEU) of 16-01-2019 in case C496/2017 Deutsche Post AG v. Hauptzollamt Köln<sup>5</sup>. The existence of a legal basis (art. 6 GDPR) does not exempt the controller from the obligation to observe the principles (art. 5 para. 1 GDPR) regarding the legitimate nature, necessity and proportionality as well as the principle of minimization. In the event that any of the principles provided for in article 5 para. 1 of the GDPR are violated, the processing in question is considered illegal (subject to the provisions of the GDPR) and the examination of the 4 Cf. AP 497/1994, TNP LAW is omitted. <sup>5</sup> "57. However, any processing of personal data must comply, on the one hand, with the principles to be observed in terms of data quality, which are set out in Article 6 of Directive 95/46 or Article 5 of Regulation 2016/679 and, on the other hand , to the basic principles of lawful data processing enumerated in Article 7 of this Directive or Article 6 of this Regulation (cf. judgments of 20 May 2003, Österreichischer Rundfunk and others, C-465/00, C-138/ 01 and C-139/01, EU:C:2003:294, paragraph 65, and of 13 May 2014, Google Spain

and Google, C-131/12, EU:C:2014:317, paragraph 71)'. 19 conditions of application of the legal bases of article 6 GDPR. Thus, the illegal collection and processing of personal data in violation of the principles of Article 5 GDPR is not cured by the existence of a legitimate purpose and legal basis<sup>6</sup>, which, however, does not exist in this case. In addition, the CJEU with its decision of 01-10-2015 in the context of the case C-201/14 (Smaranda Bara) considered as a condition of the legitimate and legal processing of personal data the information of the subject of the data prior to the processing<sup>7</sup>. Furthermore, the data controller, in the context of observing the principle of legitimate or fair processing of personal data, must inform the data subject that he is going to process his data in a legal and transparent manner<sup>8</sup> and be in a position per at all times to prove his compliance with these principles (principle of accountability according to art. 5 par. 2 in combination with articles 24 par. 1 and 32 GDPR). The processing of personal data in a transparent manner is a manifestation of the principle of legitimate processing and is linked to the principle of accountability, giving the subjects the right to exercise control over their data by holding the controllers accountable<sup>9</sup>. The GDPR introduces the principle of accountability, according to which data controllers who collect and process personal data must design their procedures and technical and organizational systems in such a way that they can demonstrate, at any time, both before the supervisory authorities as well as the courts, that they are fully compliant with what the GDPR provides. The introduction of the accountability principle shifts the 'burden of proof', regarding the lawfulness of processing and GDPR compliance, to the controllers or processors themselves. The controller is obliged based on the principle of 6 See Decision 26/2019 APD, sc. 5. Compare Decision 38/2004 APD. 7 See Decision 26/2019 APD, sc. 5. 8 See related CJEU C496/17 *ibid.* par. 59 and CJEU C-201/14 of 01-10-2015 par. 31-35 and especially 34. 9 See Guidelines OE 29, Guidelines on transparency under Regulation 2016/679, WP260 rev.01, pp. 5 and 6. 20 accountability (see article 5 par. 2 in conjunction with articles 24 and 32 GDPR) to choose the appropriate legal based on the provisions of article 6, paragraph 1 of the GDPR, as well as being able to demonstrate in the context of internal compliance the observance of the principles of article 5, paragraph 1 of the GDPR<sup>10</sup>. 20. Because in this case the complained Chamber, by further forwarding to third parties the report against the complainant without the existence of a legal basis, in accordance with the above and cumulatively without the prior information of the complainant - subject of the data for the purpose of said further processing, violated Article 5 paragraph 1 paragraph a of the GDPR and in particular the principle of legal, objective and transparent processing as detailed above as well as Articles 12 paragraph 1 and 14 paragraph 4 of the GDPR. 21. Because the violation of the basic principles for processing in conjunction with the non-establishment of a legal basis for the latter, as detailed above

discussed, lead to the imposition of the administrative sanctions of article 83 par. 5

item a' of the GDPR while the violation of the provisions of articles 12-22 of the GDPR

rights of the data subjects, entails the enforcement of the relevant

sanctions according to article 83 par. 5 item b' of the GDPR.

And according to the GDPR (Rep. Sk. 148) in order to strengthen the enforcement of

rules of this Regulation, sanctions, including

administrative fines, should be imposed for each violation thereof

of this Regulation, in addition to or instead of the appropriate measures that

are imposed by the supervisory authority in accordance with this Regulation.

22. Based on the above, the Authority considers that there is a case to exercise the v

the article 58 par. 2 of the GDPR corrective powers in relation to

found violations.

23. The Authority further considers that the imposition of a corrective measure is not sufficient for the

restoring compliance with the GDPR provisions that have been breached

and that it should, based on the circumstances established, be imposed, according to

10 See for all the above with no. 18/2020 and 43/2019 decisions of the Protection Authority

Given with further relevant references. See in this regard also National Decree NSK 130/2020.

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application of the provision of article 58 par. 2 sec. i' of the GDPR in addition and

effective, proportionate and dissuasive administrative fine according

article 83 of the GDPR both to restore compliance, and for

punishment of illegal behavior<sup>11</sup>.

24. Furthermore, the Authority took into account the criteria for measuring the fine which

are defined in article 83 par. 2 of the GDPR, paragraph 5 item a' and b' of the same

articles applicable to the present case and the Guidelines

lines for the application and determination of administrative fines for them

purposes of Regulation 2016/679 issued on 03-10-2017 by the Group

Work of Article 29 (WP 253), as well as its actual data

case under consideration and in particular:

i.

ii.

iii.

The fact that the Chamber, namely an NPDD, violated them provided by article 5 par. 1 sec. a' GDPR principles of legality, objectivity and transparency, i.e. violated its fundamental principle GDPR for the protection of personal data.

The fact that the observance of the principles provided for by its provision article 5 par. 1 sec. a' of the GDPR is of capital importance, primarily, the principle of legality, so that if it is missing, processing becomes unlawful from the outset, even if they have the other principles of processing should be observed, especially in this case that no legal basis was established for the processing in question according to the pre-arranged while the transfer in question does not the complainant was previously informed about the purpose of the further processing.

The fact that the violation of the principles of article 5 par. 1 sec. a' of GDPR concerned, among other things, personal data of Article 9 of the GDPR, as regards the document transmitted to third parties

11 See OE 29, Guidelines and the implementation and determination of administrative of fines for the purposes of Regulation 2016/679 WP253, p. 6

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iv.



v.

vi.

vii.

viii.

against the complainant contained references to the trade union  
activity of the latter.

The fact that the processing of personal data in violation of the GDPR  
data without legal basis and prior information  
for the purpose of the further transmission of the contested reference art  
in this case it affected one (1) natural person as the subject of  
personal data.

The fact that the aforementioned violations of the GDPR do not  
it is proved beyond doubt that they are attributed to his deceit  
complained Chamber but in its negligence due to ignorance of the  
provisions of the GDPR.

of

The absence of previous violations  
of the complained Chamber as it emerges from a relevant audit  
that no administrative sanction has been imposed on him by the Authority to date.

The fact that from the elements brought to the attention of the Authority and  
based on which he established the above violations of the GDPR, o  
controller did not derive financial benefit, either  
caused material damage to the complainant.

The fact that the violation of the provisions on the basic principles  
for the processing as well as with the rights of the subjects  
falls under, in accordance with the provisions of article 83 par. 5 sec. a and b

GDPR, in the highest prescribed category of the system

gradation of administrative fines.

25. Based on the above, the Authority unanimously decides that it should be imposed

to the complained Chamber as controller n

referring to the administrative sanction, which is judged to be proportionate

with the gravity of the offence.

The beginning

FOR THOSE REASONS

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It imposes on the complained controller Chamber

Magnesia the effective, proportional and deterrent administrative money

fine appropriate to the specific case, according to the special ones

circumstances thereof, amounting to five thousand (5,000) euros for the above

established violation of article 5 para. 1 para. a GDPR and 14 para. 4 in

combination with article 12 par. 1 GDPR, in accordance with articles 58 par. 2 item i

and 83 par. 5 item. a' and b' GDPR.

The Deputy President

George Batzalexis

The Secretary

Irini Papageorgopoulou

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