

No. Fac.: 11.17.001.009.050 Decision Non-compliance with an Order of the Commissioner for Personal Data Protection

within a set deadline I refer to the Order issued by my Decision dated February 21, 2022, regarding a complaint submitted to my Office on March 26, 2021, by Mr. XXX, against Mr. XXX and the Cyprus Radio Foundation (hereafter the "RIC"). Based on the duties and powers granted to me by Articles 57 and 58 of Regulation (EU) 2016/679 on the protection of natural persons against the processing of personal data and on the free movement of such data (hereinafter the "Regulation"), I note the following: Facts of the case

2. At the conclusion of my aforementioned Decision, I sent an Order to the RIK to record a procedure related to the examination of complaints concerning professional issues, of a non-disciplinary nature, in accordance with the provisions of the Regulation, and to send it to My office within 8 weeks of receiving it. The Decision was delivered by hand to RIK on February 21, 2022, 3. and a relevant acknowledgment of receipt was presented to my Office on the same day. The time frame, which I set, for sending the requested 4. procedure ended on April 21, 2022. On June 21, 2022, I issued a First Instance Decision on the issue of RIK's non-compliance with my above Order, as until the said date, no process had been sent to my Office. With my First Instance Decision, the RIK was invited to submit within 3 weeks the reasons and the positions that I should take into account in the context and for the purposes of imposing an administrative sanction. On June 22, 2022, XXX sent a letter in which 5. he informed that he has given instructions to XXX of RIK to prepare the requested procedure. On July 1, 2022, an Officer of my Office informed XXX, that beyond the procedure, we are actually awaiting the positions of the RIK, for his non-compliance with my Order. 6. On July 26, 2022, the RIK sent, beyond the deadline, the procedure it established regarding the examination of complaints concerning professional matters of a non-disciplinary nature. The RIK never sent the reasons and positions that it thought I should take into account for the purposes of imposing an administrative sanction, pursuant to Article 43 of the General Principles of the Administrative Law Law of 1999, Law 158(I)/1999. Legal Framework Below I list the Legal Framework in which I have based Rationale 7. and my Conclusion. Any marking in the text is my own. According to Article 58 of the Regulation, "2. Each control authority has 8. all of the following corrective powers: a) to issue warnings to the controller or processor that intended processing operations are likely to violate the provisions of this regulation, b) to reprimand the controller or processor processing when processing operations have violated the provisions of this regulation, c) to give an Order to the controller or to the processor to comply with the requests of the data subject for the exercise of his rights in accordance with this regulation, d) to give an Order to the controller or processor to make the processing operations in accordance with the provisions of this regulation, if necessary, in a specific way and within a certain

period, e) to instruct the controller to notify the personal data breach to the subject of data, f) to impose a temporary or definitive restriction, including the prohibition of processing, g) to give an Order to correct or delete personal data or to limit the processing pursuant to articles 16, 17 and 18 and an Order to notify such actions to recipients to whom personal data disclosed pursuant to Article 17(2) and Article 19, h) withdraw the certification or order the certification body to withdraw a certificate issued in accordance with Articles 42 and 43 or order 2 the certification body not to issue certification, if the certification requirements are not met or are no longer met, i) to impose an administrative fine pursuant to article 83, in addition to or instead of the measures referred to in this paragraph, depending on the circumstances of each individual case, j) to issue an Order for suspension the circulation of data to a recipient in a third country or an international organization." According to Article 83 of the Regulation, The administrative fines, according to 9. "1. Each supervisory authority shall ensure that the imposition of administrative fines in accordance with this article against infringements of this regulation referred to in paragraphs 4, 5 and 6 is effective, proportionate and dissuasive in each individual case. 2. the circumstances of each individual case, are imposed in addition to or instead of the measures referred to in article 58 paragraph 2 items a) to h) and article 58 paragraph 2 item j). When deciding on the imposition of an administrative fine, as well as on the amount of the administrative fine for each individual case, the following shall be duly taken into account: a) the nature, gravity and duration of the infringement, taking into account the nature, extent or purpose of the relevant processing, as well as the number of data subjects affected by the breach and the degree of damage they suffered, b) the fraud or negligence that caused the breach, c) any actions taken by the controller or the processor to mitigate the damage suffered by the data subjects, d) the degree of responsibility of the controller or the processor, taking into account the technical and organizational measures they apply pursuant to articles 25 and 32, e) any relevant previous violations of the controller or processor, f) the degree of cooperation with the supervisory authority to remedy the violation and limit its possible adverse effects, g) the categories of personal data affected by the violation, h) the way with which the supervisory authority was informed of the breach, in particular if and to what extent the data controller or processor notified the breach, i) in case the measures referred to in Article 58 paragraph 2 were previously ordered to be taken against the data controller involved 3 processing or of the processor in relation to the same object, the compliance with said measures, j) compliance with approved codes of conduct in accordance with article 40 or approved certification mechanisms in accordance with article 42 and k) any other aggravating or mitigating factor arising from the circumstances of the particular case, such as the financial benefits obtained or losses avoided, directly or indirectly, from

the infringement. 3. In the event that the controller or processor, for the same or related processing operations, violates several provisions of this regulation, the total amount of the administrative fine does not exceed the amount set for the most serious violation. 4. Violations of the following provisions shall attract, in accordance with paragraph 2, administrative fines of up to EUR 10 000 000 or, in the case of undertakings, up to 2 % of the total worldwide annual turnover of the previous financial year, whichever is higher: a) the obligations of the controller and the processor in accordance with Articles 8, 11, 25 to 39 and 42 and 43, b) the obligations of the certification body in accordance with Articles 42 and 43, c) the obligations of the monitoring body in accordance with Article 41 paragraph 4. 5. Violations of the following provisions shall attract, in accordance with paragraph 2, administrative fines of up to EUR 20 000 000 or, in the case of undertakings, up to 4 % of the total global annual turnover of the previous financial year, depending whichever is higher: a) the basic principles for processing, including the conditions applicable to consent, in accordance with Articles 5, 6, 7 and 9, b) the rights of data subjects in accordance with Articles 12 to 22, c) the transmission of personal data to a recipient in a third country or an international organization in accordance with articles 44 to 49, d) any obligations under the law of the Member State which are established by virtue of chapter IX, e) non-compliance with order or to temporarily or permanently limit the processing or to suspend the circulation of data imposed by the supervisory authority pursuant to article 58 paragraph 2 or not providing access in violation of article 58 paragraph 1. 6. Failure to comply with an Order of the supervisory authority as referred to in Article 58 paragraph 2 shall attract, in accordance with paragraph 2 of this Article, administrative fines of up to EUR 20 000 000 or, in the case of undertakings, up to 4 % of the total global annual turnover of the previous financial year, whichever is higher.

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7. Without prejudice to the corrective powers of the supervisory authorities according to article 58 paragraph 2, each member state may determine them rules on whether and to what extent administrative fines can be imposed on public authorities and bodies established in said member state."

10.

According to article 32 of Part X, of the Protection of

Natural Persons Against the Processing of Personnel Data

Character and the Free Circulation of this Data Laws

2018 and 2022 (hereinafter "Law 125(I)/2018"):

"32.-(1) In compliance with the provisions of article 83 of the Regulation, the Commissioner imposes an administrative fine.

(2) In case of failure to pay the person referred to in subsection (1) administrative fine, this is collected as a civil debt due to Democracy.

(3) Administrative fine imposed on a public authority or public entity and concerns activities of a non-profit nature, may not exceeds two hundred thousand euros (€200,000)."

Thinking

11. As reported by the RIK, according to its internal procedure, h its management allowed the sharing/forwarding of messages, intra-departmentally, by heads of departments, when these concerned unclassified information or information with a "Restricted Use" classification level. As he had explained, the specific procedure was not recorded.

The RIK, determining the purpose and method of processing

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personal data included in internal memos/ messages concerning the consideration of professional issues recommends him controller.

13. As I explained in the Rationale related to the complaint

My decision, dated February 21, 2022, internal memos/messages, which contain personal data, must be processed based on the Regulation and to be judged on a case-by-case basis their notification.

14. As I mentioned, RIK, as a controller, has the responsibility to sensitize, inform and train its staff appropriately regarding the provisions of the Regulation. The recorded procedures which determine the ways of processing are necessary for the update and proper staff training. Also, the procedures are, as I had

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points out, an important measure by which the controller can to prove his compliance with the provisions of the Regulation.

15. Therefore in my Decision dated February 21, 2022, by virtue of my powers as defined in Article 58 of the Regulation, I ended up issuing an Order, based on which the RIK would have to record procedure related to the examination of complaints concerning professional issues, of a non-disciplinary nature, which he should send to My office within 8 weeks.

16. As I have noted in the Facts of the present, the time period that was given to RIK for the preparation and dispatch of the relevant process passed and I did not receive anything related. Nor did I receive any request for extension of the given time period and/or any update on the reasons that the RIK did not have, before the issuance of the First Sight My decision dated June 21, 2022, respond.

17. Following the issuance of my First Instance Decision dated 21 June 2022, the RIK sent the requested procedure, late. note that, even though the procedure is overdue, it will be evaluated and relevant my suggestions will be sent to RIK for updating and/or correction, regardless of said Decision.

Conclusion

18. Considering that RIK did not submit any new data in his defense, but neither did he put before me any reason or mitigating factor regarding the imposition of an administrative sanction and, considering, the conclusion in my First Instance Decision dated 21 June 2022, as well as the Legal framework and Rationale herein Decision,

I find that the RIK did not comply within the set deadline by my Order, dated February 21, 2022, which had been issued based on the provisions of Article 58(2) of the Regulation.

19. Based on the provisions of Article 83 of the Regulation, insofar as apply in this particular case, I consider them below mitigating (1)-(3) and aggravating (4) factors:

(1)

dated February 21, 2022,

(2)

(3)

the non-existence of another, previous, violation on the part of RIK,

the absence of malice or intent to violate on the part of RIK,

the fact that the RIK finally complied with my Order

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the fact that the RIK did not respond to my Order within it

(4)

deadline, but a First Instance Decision had to be issued

on my part for the training at the end of the process.

20. In exercising the remedial powers conferred on me by Article 58(2)(b) of the Regulation,

I decided,

at my discretion and subject to the above provisions, to address

Reprimand to RIK, for its non-compliance, within the set deadline,

by my Order, dated February 21, 2022.

Irini Loizidou Nikolaidou Nicosia, September 7, 2022

Data Protection Commissioner

Personal Character

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