Athens, 04-28-2023 Prot. No.: 1071 Decision 14/2023 The Personal Data Protection Authority met via teleconference on 04-04-2023 at the invitation of its President, in order to examine the case referred to in the history of this . Georgios Batzalexis, Deputy President, in the absence of the President of the Authority, Konstantinos Menoudakos, was present, the alternate members Christos Papatheodorou, Nikolaos Livos, as rapporteur, Nikolaos Faldamis and Maria Psalla in place of the regular members Spyridonos Vlachopoulos, Charalambos Anthopoulos, Aikaterinis Iliadou and Grigorio Tsolias respectively , who, although legally summoned in writing, did not attend due to disability. Also, the regular member Konstantinos Lambrinoudakis and the deputy Demosthenes Vougioukas, nor the deputy member, Georgios Kontis, did not attend due to disability, although they were legally invited in writing. The meeting was attended, by order of the President, Anastasia Kaniklidou, legal auditor - lawyer, as assistant rapporteur, Irini Papageorgopoulou, employee of the Authority's administrative affairs department, as secretary as well as Georgia Palaiologou, coordinator of the teleconference and employee of the administrative department affairs of the Authority. The Authority took into account the following: Submitted to the Authority under no. prot. C/EIS/1056/10-02-2023 treatment request of 1 Kifisias Ave. 1-3, 11523 Athens T: 210 6475 600 E: contact@dpa.gr www.dpa.gr anonymous company "INTELLEXA A.E." against her with no. 2/2023 of the Authority's Decision, notified to it by the Authority's document with protocol number C/EX/126/13-01-2023. With the aforementioned decision, the Authority examined the applicant company's compliance with its obligations arising from Article 31 of the GDPR, regarding what was requested by the Authority in the context of an ex officio administrative audit pursuant to the provision of Article 58, paragraph 1 of the Regulation (EU) 2016/679 and articles 13 par. 1 item h and 15 par. 1 of Law 4624/2019 in the files and personal data processing activities of the applicant, in continuation of nos. C/EXE/2272/14-09-20221 and C/EXE/2280/15-09-20222 orders of the President of the Authority for ex officio administrative control. Specifically, as stated in the above decision, the Authority is investigating cases of the installation of monitoring software on users' mobile telephone terminals, with the aim of monitoring them without their knowledge, as well as the subsequent collection and processing of data collected by such software. For this purpose, an administrative audit is underway in the applicant company, which, moreover, as also confirmed by the purposes mentioned in its articles of association, can act either as a controller or as a processor in relation to the activities under investigation. In this context, with the contested decision, the Authority found that the applicant had unreasonably delayed responding to her requests and had not provided information in her possession that was requested by the Authority. In particular, with its contested decision, the Authority considered that: a) The applicant delayed too much in answering the

Authority's questions and responded after repeated reminders by the control team and after a period of more than forty (40) days had passed, only after received her summons to a hearing before the Authority. This period of time cannot 1 Order to carry out an audit to the Intellexa A.E. company. 2 Order to carry out an audit to the company Interlog A.E. 2 is in no way considered to be reasonable, while the Authority, in its document No. C/EXE/2481/06-10-2022, had informed the applicant that the answers could be provided in parts. The position of the applicant, according to which every effort was made to cooperate with the Authority, was presented without evidence and in any case did not justify such a long delay. On the contrary, from the actions of the applicant, as demonstrated by what is contained in her document No. Prot. C/EIS/11225/24-10-2022, it emerged that her assurances regarding cooperation and sending the documents were purely verbal. b) The applicant, despite repeated requests, did not provide specific information requested by the Authority and which related to questions 11 and 15 (financial information and contract information in relation to its activities). In particular, instead of providing the requested data, the applicant referred to the data that it had provided to the National Transparency Authority (hereinafter "NDA") in the context of a different administrative audit carried out by the latter. It is specifically pointed out that instead of providing the data, the applicant claimed the following: "We repeat our expectation that the competent authorities in Greece should act in a coordinated and consistent manner." In addition, although the applicant had stated during the audit that the answers to the EAD were immediately available and would be sent immediately to the Authority, this never happened. After all, the information that the applicant provided to the EAD concerns a limited period of time and only in relation to public service relations with her. As a result, they constituted only a small subset of those requested by the Authority. In any case, the applicant was, indisputably, in possession of the data requested by the Authority and chose not to provide them to the Authority. Therefore, with the challenged decision, the Authority decided that the applicant has violated by choice the obligation to cooperate with the supervisory authority of article 31 of the GDPR and imposed (a) on the applicant, based on article 58 par. 2 sub. i' of the GDPR, the effective, proportionate and dissuasive administrative fine that was appropriate in this particular case according to its special circumstances, amounting to fifty thousand (50,000.00) 3 euros, for the established violation of article 31 of the GDPR, and (b)) instructed the applicant, based on article 15 par. 4 sec. d' of Law 4624/2019, and ordered the immediate delivery to the Authority of the following items aa) invoices and receipts (as well as customer-supplier statements) from the start of operation of the applicant until the date of issuance of the contested decision - except for those has already been provided to the Authority by the company "Interlog A.E.", bb) all the information sent to the National Transparency Authority

and cc) all the contracts of the applicant with any company and which are related to the production, manufacture, adaptation or processing in any way of software or material, including contracts with the companies “Intellexa BVI” and “Intellexa Ireland”. Subsequently, the applicant filed the remedy request in question in which she requests the revocation or the modification of the contested decision in whole or in part, complaining that with the above decision it was wrongly judged that she did not cooperate with the Authority and violated Article 31 of the GDPR, while requests the re-evaluation of the imposition of the relevant sanction by the Authority. The reasons for revoking the challenged decision of the Authority, as argued by the applicant, are mainly the following: - The Authority's judgment that the period of 40 days is not reasonable is incorrect, as the questionnaire of the Authority which was sent to the applicant consisted of a multitude of questions, which in most questions also contained sub-questions. The Authority in no way took into account the real and objective difficulties faced by the applicant due to the non-existence of official staff and the technical difficulties that had arisen during the previous period when the remaining staff worked only via telework, due to the known problems that had occurred in the past at the applicant's facilities in Elliniko. In addition, the Authority did not take into account that all the documents related to the specific case need to be translated from Greek to English, so that its legal representative is informed, as well as that the applicant does not maintain an independent accounting office 4 within the company nor legal department staffed by in-house lawyers, which does not allow it to have an immediate response to the collection and presentation of documents. - The applicant, acting in good faith and to facilitate the investigation, provided full authorization to the Authority's control team to receive every document that the applicant had already submitted to the EAD. The fact that the EAD did not provide the Authority with all the documents and evidence is outside the applicant's sphere of responsibility and she had no way of knowing about it. Besides, the applicant was only informed of the fact of the lack of cooperation between EAD and the Authority by notifying her of the contested decision (where relevant mention is made). - It is not reasonable for the applicant to be punished with such a disproportionate fine for the time she had to answer the questionnaire, as she acted diligently and in accordance with the principles of good faith, with the resources and limited possibilities available to her, and her legal advisor was in contact with the audit team and informed it about the objective difficulties she was facing.

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The existence of the above objective factors and difficulties had

explained by the attorneys of the applicant in direct communication

with the Authority's control team. So, any - according to the Authority's claims -

delay is deemed absolutely justified.

- The applicant had no intention of not providing the information that

were included in questions 11 and 15, while in good faith he proposed the extraction of

data directly from the EAD. After all, the applicant already has the specific data

presented to the Authority, bringing them to the attention of the audit being carried out.

- In reference to the Authority's judgment that the applicant responded only after receiving

the summons for hearing before it, this is incorrect, because it is objective

impossible for the applicant to have managed to complete the drafting of such an extensive one

questionnaire which includes most sub-questions, within

period of a few hours that elapsed from the receipt by the applicant of the call

until the response to the questionnaire is sent.

- The fine imposed on the applicant is extremely disproportionate

with its financial capabilities but also in relation to the alleged infringement,

because the applicant is in a state of under-functioning, while as of 31-08-2022 she is not

employs staff. In addition, after the publication of the publications in the Media

For information, the turnover of the applicant was dramatically reduced.

- With the issuance of the contested decision and the enforcement of the administrative

a fine of fifty thousand (50,000) euros, the Administration violated its principle

good administration and proportionality, since the said fine is judged

excessive for the financial data of the applicant, while in no case is it

proportionate nor to the alleged nature and gravity of the act which

the Authority wrongly considered it to be serious even in relation to its financial capacity

applicant.

- Alternatively, the Authority could impose its penalty on the applicant

reprimand.

The Authority, after examining the elements of the file and after hearing the rapporteur

and the clarifications of the assistant rapporteur, who was present without the right to vote,

after a thorough discussion,

THINK ACCORDING TO THE LAW

1.

Because, article 2 par. 8 of Law 3051/2002 on the "Constitutional

registered independent authorities, modification and completion of the system

of public sector recruitment and related regulations" issued in execution

of Article 101 A of the Constitution states that "8. Against the executory decisions of

of independent authorities, a petition for annulment may be brought before its Council

of State, as well as the administrative ones provided for in the Constitution and legislation

refugees. Legal remedies against the decisions of the independent authorities can

to be exercised by the relevant Minister as well".

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2.

Because according to article 24 par. 1 of Law 2690/1999 (KDDiad) "If from the

relevant provisions do not provide for the possibility of exercising, according to the next article,

of a special administrative or adversarial appeal, the interested party, for the

restoration of material or moral damage to his legal interests caused

from an individual administrative act may, for any reason, upon request, request,

or by the administrative authority that issued the act, revocation or amendment

of (request for treatment), or, from the authority that is in charge of the one that issued it

act, its annulment (hierarchical appeal)". Within the meaning of the provision, the application

treatment is intended to revoke or modify the affected individual

of an administrative act for legal or factual defects thereof which go back to

status under which it was issued.

3.

Because, with the above provisions of article 24 of the Civil Code, a right is established
every "interested" administrator, who has suffered material or moral damage from
individual administrative act, to address the authority that issued said act
before resorting to judicial protection (simple administrative appeal, otherwise an application
treatment). This is an "informal" administrative appeal as opposed to the formal ones
"special" and "unequivocal" appeals of article 25 KDDiad. The appeal in question
requests the revocation or modification of the above-mentioned individual
administrative act, in order to restore his material or moral damage
applicant, which was caused by the administrative act, in those cases where
the law does not provide for the possibility of exercising the above appeals of the article
25 KDDiad3.

4.

Because, with the present application for treatment, the content of which is set forth
above in the history of the present case, the applicant disputes its legal correctness
contested decision and the correctness of the assessment of the facts
of incidents by the Authority, without citing or providing new and critical for
the case facts4, from the assessment of which could under the

3 See indicatively, the one with no. 73/2018 Decision of the Authority.

4 See Supreme Court 1175/2013 (sq. 9), 3259/2011 (sq. 9), 434/2007 (sq. 5), 2683/2003 (sq. 5).

legal conditions for a different judgment of the Authority to arise. Therefore according to
in essence, it makes allegations that are the subject of annulment proceedings
control.

5.

It is noted that the claim of the applicant that acting in good faith and to

research facility provided full authorization to the audit team

of the Authority to receive every document it had already submitted to the EAD while being informed

for the lack of cooperation between EAD and the Authority only with its notification

contested decision, does not constitute a critical element in relation to the obligation

of the controller in cooperation with the Authority, as it is specialized in

article 31 of the GDPR, and of his compliance with his independent obligations which

derive from the institutional framework of data protection and consequently the relevant

competence of the Authority to take charge of the case ex officio

administrative control5.

6.

Therefore, no need to revise it with no. 2/2023

Decision, which was communicated to the applicant with no. prot. C/EX/126/13-01-

2023 document of the Authority.

FOR THOSE REASONS

The beginning

It rejects the no. prot. C/EIS/1056/10-02-2023 treatment request of the company

"INTELLEXA A.E." against Decision 2/2023 of the Authority.

THE DEPUTY PRESIDENT

George Batzalexis

THE SECRETARY

Irini Papageorgopoulou

5 See CJEU, decision of 15.06.2021, C-645/19, sc. 67, for the importance, in the system established by

Regulation, of the supervisory authorities, which are responsible for contributing to the "high

level" protection of the fundamental rights of natural persons against processing

of their personal data.