

Athens, 04-10-2021 Prot. No.: 2213 DECISION 45/2021 (Department) The Personal Data Protection Authority met as a Department at its headquarters on 02-17-2021 at the invitation of its President, in order to examine the case referred to in the history of the present. Georgios Batzalexis, Deputy President, in the absence of the President of the Authority, Constantinos Menoudakos, and the alternate members Evangelos Papakonstantinou, as rapporteur, and Grigorios Tsolias, in place of the regular members Konstantinos Lambrinoudakis and Charalambos Anthopoulos respectively, who, although legally summoned in writing, attended they did not attend due to disability. Regular member Spyridon Vlachopoulos, although legally summoned in writing, did not attend due to disability. The meeting was attended by order of the President, Ioannis Lykotrafitis, expert scientist - auditor 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/2757/21-04-2020 was submitted to the Authority, which related to the sending of an unsolicited e-mail message. In particular, according to the said complaint, the complainant received an email message on 04-07-2020 without having any previous transactional contact or other relationship with the data controller, or having otherwise provided 1-3 Kifisias Ave., 11523 Athens T: 210 6475 600 E: contact@dpa.gr www.dpa.gr 1 his consent for electronic communication of a promotional nature, for the purpose of the commercial promotion of e-learning educational services of the anonymous company with the name "ERGASIA EDUCATIONAL ANONYMI ETAIREIA" (hereinafter ERGASIA EDUCATIONAL). The message, which had the title "Information about the €600 distance training program for scientists", was sent from the email address info@ergasiakek.gr on 04-07-2020. The Authority, in the context of examining the complaint in question, sent to the complained company the document No. C/EX/2757-1/06-05-2020 requesting its opinions on the complainants. The complained controller replied to the Authority with the memorandum No. C/EIS/3719/01-06-2020, in which he mentions, among other things, the following briefly mentioned: 1) The company is certified as a Lifetime Center Level 2 Learning and has a total of four certified structures. Therefore, it has collected the consent of hundreds of interested parties who wish to be updated at regular intervals about its programs. 2) When an interested person registers in person at one of its offices, he is given to sign a form, in which he states whether he wishes to be informed about offers in training programs of related content. 3) Given that it provides many distance learning programs, an even more common way for interested parties to provide personal data is through telephone communication. Of course, no matter how careful employees are when they receive e-mail addresses, there is always the risk of mistakes. For this reason, very often, on the first attempts to send e-mails to new addresses, these e-mails are sent back

with a delivery error. 4) Even if the initial registration is done correctly, at a later stage when the company secretaries send informational messages to the 2 interested parties, there is a high possibility of typographical errors. 5) After a thorough check of its records, the company was unable to establish the source of the complainant's e-mail address and the reason for receiving the message. The only logical version is that there was some confusion with similar e-mail addresses that were in her files. 6) There were objective difficulties in the mass sending of electronic messages as well as suffocating time pressure for the execution of the program in question. Subsequently, the Authority invited with document no. prot.

C/EXE/436/20-01-2021 the complained data controller to a hearing via video conference before the Department of the Authority at the meeting on 27-01-2021, in order to discuss the above relevant complaint, as well as the general practice that follows for the promotion of its services by electronic means. At the meeting of 01-27-2021, the lawyer Dimitrios Sigalas (...), as a representative of the complained controller, attended via video conference, and expressed his views orally. Among other things, he repeated what he mentioned in his above memorandum, and added that they always make sure to have the consent of the recipients of the promotional emails they send, but due to the suffocating pressure that existed to organize the said e-learning program, something went wrong with the complainant's address and the message was accidentally sent.

Subsequently, the complainant was given a deadline, and submitted the memorandum No. G/EIS/918/05-02-2021, in which he presents the company's financial data for the last years. Among other things, it states that in 2019 the company, after 3 years of losses, presented profits of six thousand six hundred and ninety-two euros and fifty-nine cents (€6,692.59), while for almost the whole of 2020 and until today the company is suspended operation 3 of its activity due to the emergency arrangements to combat the pandemic. The Authority, after examining the elements of the file, the hearing process and after hearing the rapporteur and the assistant rapporteur, who withdrew after the discussion of the case and before the conference and decision-making, after a thorough discussion, THOUGHT IN ACCORDANCE WITH THE LAW 1. According to article 4 par. 7 of the General Regulation (EU) 2016/679 for the protection of natural persons against the processing of personal data and for the free movement of such data (hereinafter, the Regulation), which is in force since May 25, 2018, as controller is defined as "the natural or legal person, public authority, agency or other entity that, alone or jointly with others, determines the purposes and manner of processing personal data". 2. Article 6 para. 1 GDPR provides, among other things, that: "Processing is lawful only if and as long as at least one of the following conditions applies: (...) f) processing is necessary for the purposes of legitimate interests pursued by the controller or a third party, unless these interests are overridden by the interest or the

fundamental rights and freedoms of the data subject that require the protection of personal data (...)" 3. The issue of making 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, is regulated in article 11 of Law 3471/2006 on the protection of personal data in the field of electronic communications, which incorporated Directive 2002/58/EC into the national legal order. 4 According to this article, such communication is only permitted if the subscriber expressly consents in advance. 4. The Authority, with Directive 2/2011 (Government Gazette B'/889/19-05-2011) on electronic consent in the context of Article 11 of Law 3471/2006, describes in detail the conditions and methods of legally obtaining the consent by electronic means for the purposes of the above provision. 5. Exceptionally, according to art. 11 par. 3 of Law 3471/2006, e-mail contact details obtained legally, in the context of the sale of products or services or other transaction, may be used to directly promote similar products or services of the supplier or to serve similar purposes , even when the recipient of the message has not given his consent in advance, provided that he is provided in a clear and distinct manner with the possibility to object, in an easy way and free of charge, to the collection and use of his electronic data and that during the collection of contact information, as well as in each message (s.b. from the complaint it does not appear whether it provided the possibility to object from future promotional communications), in case the user had not initially objected to this use. 6. In this specific case, the complained business, based on the above, carried out, as data controller, direct commercial promotion of its services by sending an e-mail message. Therefore, the legality of this mission is ensured if the above considerations 3, 4 and 5 have been observed. From the responses of the data controller the following emerges: the required prior consent is ensured 7. The data controller did not provide evidence to prove that it had the complainant, since such a thing, moreover, would not be possible, as the data controller points out that he was sent the disputed advertising email by mistake. In this regard, it is pointed out that in original memorandum

processing states that

was sending emails having

of, the person in charge

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her

mechanisms

confirmation

consent

- in cases where it is required

previously secured

- her

prior consent of the recipients, without however submitting any

evidence to prove this claim. More generally, the person in charge

processing in the information provided to the Authority for the procedures that

followed in the context of the promotion of his services, states that

there is a risk of errors in the recording of contact details

someone interested. However, Directive No. 2/2011 of the Authority

provides a set of best practices for obtaining consent with

electronic media for direct marketing purposes, i.e

application

"opt-in",

adapted to the specific electronic medium used. For

the case of subjects already registered in the past in one

program and are approached by sending emails to learn about others

programs, any error in recording their email address,

which could exist during the initial telephone registration, would have

detected when they would try to connect to the platform the first time

time, and therefore would have been corrected. In addition, the alleged responsible

processing claims that, as to the source of origin of its data

complainant, there was probably some confusion with similar ones

e-mail addresses that were on his file, but claimed not to be

can be accepted, since on the one hand he does not submit any relevant evidence

item (eg another similar email address which legally in his possession) to support his claim, on the other hand, it seems extremely unlikely that there are two alike email addresses belonging to candidates beneficiaries of the same program. It is also noted that, beyond her of a specific complaint, the data controller did not provide this nor information about other persons to whom he sent similar promotions messages.

8. The controller cooperated with the Authority by responding to the document for clarifications, as well as during the Authority meeting and in the memorandum who filed.

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9. No administrative sanction has been imposed in the past by the Authority on controller.

10. The Authority takes into account that according to its memorandum, the company, after 3 years of losses, presented in 2019 a profit of six thousand six hundred and ninety two euros and fifty-nine cents (€6,692.59), while for almost the whole of 2020 and until at least February 2021 he is suspended operation of its activity due to the extraordinary arrangements for it fight the pandemic. According to the data in GEMI1, the company during the period 01/01/2019 to 12/31/2019 had a turnover of €329,833.30.

Based on the above, the Authority unanimously judges that according to Article 11 of Law 3471/2006 the conditions for enforcement against the person in charge are met processing, based on the one hand, article 13 of Law 3471/2006, in combination with the article 21 par. 1 item b' of Law 2472/1997 and with Article 84 of Law 4624/2019, and

on the other hand, taking into account the above elements, of the administrative sanction, which refers to the operative part of the present, which is considered effective, proportionate and dissuasive, taking into account the aggravating factors that are referred to in paragraph 7 hereof and the mitigating factors which are referred to in paragraphs 8 and 9 hereof.

FOR THOSE REASONS

The Personal Data Protection Authority:

It imposes on the anonymous company with the name "EDUCATIONAL WORK JOINT STOCK COMPANY" the effective, proportional and deterrent administrative fine that is appropriate in the specific case according to special circumstances thereof, amounting to four thousand euros (4,000.00) euros, for the above found violation of article 11 of Law 3471/2006, based on

1 <https://www.businessregistry.gr/publicity/show/47188525000>

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articles 21 of Law 2472/1997 and 13 par. 1 and 4 of Law 3471/2006.

The Deputy President

George Batzalexis

The Secretary

Irini Papageorgopoulou

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