

(Department) The Personal Data Protection Authority met in composition Department at its headquarters on 19-02-2020 upon the invitation of its President, in order to examine the case referred to in the present history. Georgios Batzalexis, Deputy President, acting in place of the President of the Authority Constantinos Menoudakos, the regular member of the Authority Charalambos Anthopoulos and the alternate members Evangelos Papakonstantinou and Emmanuel Dimogerontakis, as rapporteur, in place of the regular members Constantinos Lambrinoudakis and Eleni Martsoukos, respectively, were present. , although they were legally summoned in writing, they did not attend due to disability. George Roussopoulos, expert scientist-auditor as assistant rapporteur and Irini Papageorgopoulou, employee of the Authority's administrative affairs department, attended the meeting as secretary. The Authority took into account the following: Complaint No.

C/EIS/3409/13-05-2019 of A was submitted to the Authority, which concerns the receipt of unsolicited political communication (e-mail) to promote his candidacy B as ... F. In particular, according to the complaint, the complainant received on ..., at his 1 email address, an email message from the complainant, which was of a political nature for the purposes of promoting his aforementioned candidacy for the upcoming disputed period, local government elections of May 26, 2019, without – as the complainant claims – having any previous relationship with him. The Authority, in the context of examining the complaint in question, sent the complainant the letter No. C/EX/3409-1/07-06-2019 requesting his opinions on the complainants, taking into account the guidelines lines issued by the Authority for Political Communication. The complainant responded to the Authority with a delay with his document No. C/EIS/5940/02-09-2019, in which he briefly states the following: 1) The complainant's contact information was obtained legally in the context of a previous professional relationship . 2) The e-mail from ... was sent by mistake 3) In any case where a recipient did not wish to receive updates regarding his candidacy, he had the option to request the deletion of his e-mail address from my recipient list, according to the provisions of article 18 GDPR. 4) Proceeded to remove the recipient's e-mail address from the list of recipients promoting his candidacy. 5) It was an isolated incident.

Then, the Authority, with no. prot. C/EX/7597/05-11-2019 its document, invited the complainant to a hearing during the meeting of the Authority's department on 04-12-2019. Following the request of the complainant in the case no. G/EIS/8386/03-12-2019, the Authority with the no. prot. C/EX/8466/04-12-2019 its document, again invited the complainant to a hearing during the meeting of its department on 11-12-2019, during which the above-mentioned complaint was discussed as well as the general practice followed for communication of a political nature by electronic means. The complainant, 2 did not attend the meeting,

but expressed his views in writing with the memorandum No. C/EIS/8667/11-12-2019. In said memorandum, in addition to the original document, the following are mentioned: 1) He has created a personal list of recipients, which is largely identical to the professional list of recipients, with the risk of some "human" error, which in no case it is not appropriate. 2) The complainant actually received a message, raised an objection, which was satisfied, by removing his email address from the list of recipients. 3) The company of the complainant (with the name "B KE SIA O.E.", and with the registration number "...") issues and manages the communal services of the apartment building in which the complainant lives as a tenant. The complainant personally knows the manager of the apartment building. The complainant gave his e-mail address to the condominium company in order to receive the notices of the communal debts of this apartment as well as the payment receipts. His e-mail was noted in the apartment details along with the owner's e-mail. As the owner/owner of the two e-mails does not appear, the complainant added it to his list, thinking it was addressed to another person. He therefore acted in the belief that he was addressing another recipient, whose approval he has and knows personally. 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, and after a thorough discussion, CONSIDERED THE LAW 1. According to art. 4 pc. 7 of the General Regulation (EU) 2016/679 for the protection of natural persons against the processing of personal data and for the free circulation of such data 3 (hereinafter, Regulation), which is in force since May 25, 2018, as responsible processor 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. 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 data in the field of electronic communications. According to this article, such communication is permitted only if the subscriber expressly consents in advance. 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 the contact details, as well as in each message, in case the user had not initially objected to this use. 3. Especially for political communication through

electronic media without human intervention and in accordance with the Authority's guidelines regarding the processing of personal data for the purpose of political communication, taking into account both article 11 of Law 3471/2006, and the Directive 1/2010 of the Authority for political communication as well as the General Regulation (EU) 2016/679 for the protection of natural persons against the processing of personal data which has been in force since May 25, 2018, the following apply: 4. The political communication<sup>1</sup> is of interest from the point of view of the protection of personal data, carried out in any period of time, pre-election or not, by political parties, MPs, MEPs, factions and holders of elected positions in local government or candidates in parliamentary elections, European Parliament elections and local government elections. These persons become data controllers, in accordance with Regulation (EU) 2016/679, article 4, item 7) as long as they define the purpose and method of processing. For example, when MPs or candidate MPs receive data from political parties and process it for their personal political communication, they also become data controllers. In this capacity and based on the principle of accountability<sup>2</sup> they must be able to demonstrate compliance with their obligations and processing rules. 4. When political communication is carried out using electronic means of communication, without human intervention, through public communication networks, as is the case of electronic messages (e-mail), the communication requires, according to article 11 par. 1 law 3471 /2006, as applicable, the prior consent of the data subject, subject to paragraph 3 of the same article, as applicable. 5. Political communication using electronic media is permitted without human intervention and without the consent of the data subject only if the following conditions are cumulatively met: (a) The contact information has been lawfully obtained in the context of previous, similar contact with the data subjects, and the subject during the collection of the data informed about their use with for the purpose of political communication, he was given the opportunity to express objected to this use but did not express it. The previous contact did not

1 See definition in article 1 par. 2 of Directive 1/2010 of the Authority

2 As defined in article 5 par. 2 of the GDPR

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it is necessary to have a purely political character, e.g. is it legal sending messages when email information was collected

in the context of a previous invitation to participate in an event or action, regardless of its political character. On the contrary, it is not considered that constitutes similar contact and is not legal to use electronics contact details for the purpose of political communication when the such information was obtained in the context of a professional relationship, such as for example the use of the customer file by a candidate for parliament. (b) O controller must provide the data subject with ability to exercise the right to object in an easy and clear way, and this in every political communication message. In every communication it is required to the sender's or person's identity is clearly and distinctly stated for whose benefit the message is sent, as well as a valid one address to which the recipient of the message can request it termination of communication.

6. In this particular case, the accused, based on the above, carried out, as a controller, political communication by dispatch email message. Hence its legality delivery is ensured only if the above mentioned have been observed

Thoughts 4, 5. From the responses of the controller, the following:

7. The data controller had not obtained their prior consents of a person to whom he sent a political communication message. Also, the contact details of the recipient of the message had not been entered into his possession in the context of previous similar contact with him. On the contrary, the his personal information was obtained in the context of business activity of the controller, through the company he maintains.

The data had been obtained for another purpose, namely the publication

common users. The controller's argument that his e-mail complainant was noted in the apartment details along with the e-mail of the owner, is in principle not accepted as no evidence is provided

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for its documentation, beyond the memorandum. Further, even if it does accepted, the controller is not authorized to use them data held in his company's filing systems, for them his own purposes as a candidate for municipal councilor.

8. The controller did not specify to the Authority the exact number of messages that were sent.

9. The controller provided the data subject with ability to exercise the right to object in an easy and clear way.

In fact, the complainant exercised the right to object and the person in charge processing responded.

10. The controller cooperated with the Authority by responding to the documents for clarification, even with an initial delay. But he did provide information with his memoranda mainly regarding the specific complaint.

11. No administrative sanction has been imposed on the controller in the past from beginning.

Based on the above, the Authority unanimously judges that, in accordance with Article 11 of Law 3471/2006 the conditions for enforcement against the person in charge are met processing, based on article 13 of Law 3471/2006 in conjunction with article 21 par. 1 item b' of Law 2472/1997 and with Article 84 of Law 4624/2019, of administrative sanction referred to in the operative part of the present, which is judged proportional to the gravity of the violation.

FOR THOSE REASONS

The Personal Data Protection Authority:

It imposes, on B, the effective, proportional and deterrent administrative

fine that is appropriate in the specific case according to

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special circumstances thereof, amounting to two thousand euros (2,000.00) euros, for the

above established violation of Article 11 of Law 3471/2006.

The Deputy President

The Secretary

George Batzalexis

Irini Papageorgopoulou

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