Athens, 03-03-2023 Prot. No.:543 DECISION 10/2023 (Department) The Personal Data Protection Authority met as a Department, at the invitation of its President, via video conference on Wednesday, January 25, 2023 at 10:00 , postponing the meeting from January 24, 2023, in order to examine the case referred to in the history of the present. The President of the Authority Konstantinos Menudakos and the alternate members Maria Psalla and Demosthenes Vougioukas attended in place of the regular members Grigoris Tsolia and Konstantinos Lambrinoudakis, who, although legally summoned in writing, did not attend due to disability, as well as the alternate member Christos Papatheodorou, as rapporteur, without the right to vote. Constantinos Limniotis, expert scientist - auditor as assistant rapporteur, and Irini Papageorgopoulou, employee of the Administrative Department, as secretary also attended the meeting, by order of the President, without the right to vote. The Authority took into account the following: The Heraklion Port Authority S.A. submitted to the Authority with no. petition C/EIS/7647/2- 06-2022, requesting the review of the Authority's Decision No. 61/2021, while with the subsequently submitted petition No. C/EIS/8679/ 11-07-2021 document, submitted a request for suspension of execution against the No. … Statement of Status 1-3 Kifisias Ave., 11523 Athens T: 210 6475 600 E: contact@dpa.gr www.dpa.gr 1 Administrative fine of of the Public Financial Service of Heraklion, which was issued in execution of the above Decision of the Authority. In the context of examining the complaint No. C/EIS/7720/10-11-2019 of A, which concerned the violation of his right of access as a data subject by the Heraklion Port Organization (hereinafter, "controller" or "OLI") and in particular the non-provision of information by OLI regarding his written request - which was initially submitted on ... and, subsequently, following the negative response from OLI, repeated on ... and for which he sent again reminder on ... - regarding the content of the material from the cameras of the OLI that related to a recorded traffic accident in which the complainant's car and another car were involved. on ..., the Authority found violations of article 15 par. 1 in combination with articles 12 par. 1 and 2 GDPR and 13 par. 1 of Directive 1/2011 by OLI and imposed, with the reasoning developed in the said Decision , an administrative fine of thirty thousand (30,000.00) euros. Against the above Decision, OLI submitted the no. prot. C/EIS/7647/2-06-2022 application (for treatment), with which he claims, among other things, the following: a) In paragraph 14 item i and ii, respectively, of the aforementioned decision, the Authority accepts on the one hand that "OLI did not satisfy the complainant's right of access while knowingly keeping the requested image data in the system" and on the other hand that "OLI invoked the first and only before the Principle that at the time of submitting the access request he had deleted the complainant's image data while it was found that he had kept it and had not deleted it." Further with point vii of the same opinion, it is accepted that "the violation of the right of

access is attributed to a conscious choice of OLI as while the image data of the complainant was knowingly kept on its systems, on the one hand it chose not to satisfy the right of access, on the other hand, he pleaded before the Authority with his hearing statement that the data in question had been deleted at the time of exercising the right of access, while they had not been deleted and were kept in his system." With regard to the above, OLI, with the request for treatment, claims that, as he stated during his hearing before the Authority, but also explicitly invoked with the no. prot. C/EIS/8565/14.12.2020 his memorandum, the data of the video surveillance system was kept for a period of six (6) days at the end of which it was deleted from it and, therefore, when the complainant's request was initially submitted, the 2 data in question had already been deleted. However, following the submission of said request, OLI, considering that the data could potentially be retrieved using a special technical method in case they are requested as evidence in the context of a potential judicial or prosecutorial investigation, stated in its response to the complainant explicitly its intention to make every possible effort to give access to said data through its possible recovery, even though subsequently and in the context of an internal investigation of the matter it was found that recovery of the data would not be possible as the deletion at the end of six (6) days is complete and final. So, according to OLI's claims, there was no conscious choice to refuse to satisfy the data subject's right of access, but an objective inability to satisfy it based on the facts. OLI further states that the failure to formulate its response to the applicant cannot safely and adequately lead to the conclusion that the data was kept by OLI for a longer period of time than six (6) days and that therefore these continued to be observed at the time of the request or even after it. b) In paragraph 14 item iii of the aforementioned decision, the Authority states that "from 25.5.2018, OLI should have complied with the requirements of the GDPR in relation to the legal operation of the video recording system, however, eighteen (18) months later, on ..., response time to the complainant, he was still in the process of compliance, by his express admission". As stated by OLI in the treatment request in question, since the implementation of the GDPR until today, including the period in question, it has carried out a multi-dimensional and intensive program of compliance and harmonization with the requirements of national and EU legislation on the protection of personal data by assigning this work to specialized external consultants, while it has also appointed a Data Protection Officer. Further and following the adoption of the compliance model introduced by the GDPR, the central dimension of which is the principle of accountability arising from article 5 par. 2 of the GDPR, OLI implements the appropriate technical and organizational measures to comply with the requirements of the GDPR and the directions and instructions of the Authority and has, already in 2018, adopted and implemented a series of procedures and policies which he indicatively names in his

current treatment request - and these include "subject rights exercise procedure". Further, OLI states that although it stated in its response to Complainant 3's request that it is in the process of complying with the GDPR, this does not mean or safely lead to the conclusion that OLI had not already taken its required compliance actions. The wording in question, according to OLI's claims, was intended to show that the Organization was in a compliance process which by its nature is a dynamic process which must be of a lasting and continuous nature. Therefore, according to its claims, OLI in its response to the data subject, even if it is accepted that the wording of its response was incorrect, expressly stated no that it had not complied with the Regulation at the time of receiving the subject's request of the data, but that it was in an ongoing process of complying with it. c) According to paragraph 14 item ix of the above-mentioned decision, the Authority found a lack of cooperation of OLI with the Authority for the reason that OLI did not respond to its original document and on the other hand it invoked before it the deletion of the data of the video surveillance system. With regard to this part, OLI claims with its current treatment request that it did not respond as it should have to the Authority's original document (prot. no. C/EX/749/30.01.2020), but it should be taken bearing in mind that this coincided in time with the rapid spread of the coronavirus, which resulted in the disruption and in many cases overturning the normality and smooth development of business and administrative activity, including inevitably that of ALL, as indicated through the application of the then new measure of remote work which had as an expected and justified result the inability to demonstrate due diligence when handling the case in question. With reference to the second reason cited by the Authority and in particular the request to delete the data of the video surveillance system first before the Authority, this is not, according to the claims of OLI, proof of non-cooperation with the Authority since it is pointed out that OLI attended the meeting of 26.11.2020 through his legal representative and timely filed his memorandum No. C/EIS/8565/14.12.2020. Furthermore, OLI, regarding the general conditions for imposing administrative fines, mentions the following in its application: a) The principle of proportionality is already recognized by article 25 par. 1 last paragraph of the Constitution. According to this principle, those imposed by the law restrictions must be a) necessary in the sense that there is no other convenient way to4 the achievement of the purpose pursued by the relevant regulation and b) be proportionate to it, so that the effects caused to the victim are not disproportionately burdensome, and the relationship between the means and the purpose must be reasonable, so as to prevent unduly burdensome consequences for the victim. After all, the principle of proportionality is a general principle of law, therefore it was valid even before its explicit inclusion in the Constitution during its aforementioned revision. The limitations of individual rights are appropriate, i.e. suitable for the realization of the intended purpose, necessary,

i.e. they induce the minimum possible restriction for individuals and the public, in the narrow sense proportional, i.e. they are in a reasonable relationship with the intended purpose, so that the benefit from them does not any damage remains. In fact, when applying this principle to individual rights, which derives from both the Constitution and the law of the European Union, between the legal purpose pursued by a restriction of a right and the intensity, extent and duration of the specific restriction must there is a reasonable relationship. The relationship is not reasonable, when the restriction imposed in the specific case: (a) is unsuitable (unsuitable) for the achievement of the result, (b) (even if it is suitable it is nevertheless) more burdensome in intensity, extent or duration than the a measure necessary to achieve the result, (c) (even if it is expedient it is nevertheless) disproportionate in relation to the reasons that caused it or the objectively achievable result or imposing an administrative sanction that limits a right to a measure disproportionate to the violation in question. b) OLI cites the entire provision of article 83 par. 2 of the GDPR regarding the general conditions for imposing fines, concluding that in this case, at its discretion, regarding the nature, gravity and duration of the violation (article 83 par. 2 a GDPR), the violation is due to a real inability to satisfy the request given that the requested data had been deleted at the time of its submission and as it was later established with certainty could not be recovered while in terms of the existence of direct or potential fraud (article 83 par. 2 b GDPR) it becomes clear that OLI could not gain any interest from the non-satisfaction of the said request and never aimed at the violation of the personal data of the complainant or at any damage to him, as is rightly pointed out in the disputed Decision. Furthermore, OLI states that it has never faced similar requests regarding access to the recorded material, nor has it committed any related or other violation (article 83 par. 2 5 par. e), while in any case and despite the previous deletion of the data made clear its intention to try to satisfy any request coming from any judicial or prosecutorial authority even if it realized afterwards that this would not be possible for the reasons extended above. Finally, OLI states that it is crucial for the Authority to take into account, when assessing the fine imposed, that, as it appears from the 05/04/2021 Press Release of the Fund for the Utilization of the State's Private Property (attached to its application ALL to the Authority), the organization has been placed in the privatization process to serve the greater public interest. Therefore and given that OLI seeks to maintain a stable financial situation while fulfilling any of its legal obligations, the imposed fine of thirty thousand euros (€30,000.00) is judged to be particularly burdensome and detrimental to the applicant based on the principle of proportionality, as analyzed above. Based on the above, OLI requests the revocation of Decision No. 61/2021 of the Authority, otherwise, in the alternative, in the event that the Authority deems that OLI has committed a violation, the aforementioned circumstances be taken into account

and taking into account the authority of proportionality to impose on ALL the minimum and most lenient sanction (imposition of a milder measure). The Authority, after examining the elements of the file, the hearing process and the submitted memorandum, after hearing the rapporteur and the clarifications of the assistant rapporteur, and after a thorough discussion, CONSIDERED ACCORDING TO THE LAW 1. According to article 2 par. 8 of Law 3051/2002 (Government Gazette A' 220) on the "Constitutionally enshrined independent authorities, amendment and completion of the recruitment system in the public sector and related regulations" issued pursuant to Article 101 A of the Constitution "8. Against the executive decisions of the independent authorities, a petition for annulment can be filed before the Council of State, as well as the administrative appeals provided for in the Constitution and the legislation. Legal remedies against the decisions of the independent authorities can also be brought by the relevant Minister". 6 2. Article 24 par. 1 of Law 2690/1999 (KDDiad) stipulates that "If the relevant provisions do not provide for the possibility of exercising, according to the next article, a special administrative or interlocutory appeal, the interested party, for the restoration of material or moral damage to his legal interests caused by an individual administrative act may, for any reason, upon his application, request, either from the administrative authority that issued the act, its revocation or amendment (remedial request), or , by the authority that is in charge of the one that issued the act, its cancellation (hierarchical appeal)". In the sense of the provision, the request for treatment aims to revoke or modify the challenged individual administrative act for legal or factual defects of it that go back to the regime under which it was issued. This is an "informal" administrative appeal in contrast to the standard "special" and "individual" appeals of article 25 of the Civil Code. This appeal requests the revocation or amendment of the above-mentioned individual administrative act, in order to restore the material or moral damage of the applicant caused by the administrative act, in those cases where the law does not provide for the possibility of exercising the above appeals of article 25 KDDiad. 3. In this particular case, the only new factual element invoked by OLI with the application under consideration is the fact that the Organization has been placed in the process of privatization to serve the greater public interest, but this element is not, by law, crucial for establishing the violation of article 15 par. 1 in combination with article 12 par. 1 GDPR nor with regard to the measurement of the administrative sanction imposed by the contested decision for this established violation. Moreover, the question of the interpretation of the wording used by OLI as a data controller in its reply to the complainant is not a new legally essential element and does not affect the judgment on the identification of the above violation - that is, even though the data had been deleted , informed him that he would respond to any judicial or prosecutorial order considering that they could possibly be recovered using a special

technical method, but without informing him that the data had been deleted - regardless of the fact that this claim is not substantiated by the examination in question treatment request. The other allegations and evidence, which the applicant invokes, have already been presented with no. prot. C/EIS/8565/14-12-2020 memorandum of the controller and have been examined and taken into account by the Authority when issuing the no. 61/2021 of Decision. 7 4. According to what is set out in the previous paragraph, the allegations put forward with the request for treatment are not based on the invocation of new and crucial facts for the case, from the assessment of which a different judgment could arise under the legal conditions, but with this application, the correctness of the assessment of the data of the case and the judgment of the Authority in the interpretation and application of the relevant provisions of the GDPR is simply disputed. Consequently, there is no case of re-examination of the case for the purpose of revoking or amending it with no. 61/2021 of the Authority's Decision and, therefore, the relevant request is rejected. 5. Finally, the considered application is also rejected as far as the suspension of the execution of the administrative fine is requested, because this request is beyond the Authority's competences. FOR THESE REASONS, THE AUTHORITY Rejects it with no. prot. C/EIS/7647/2-06-2022 treatment request of the Heraklion Port Organization SA against the Authority's Decision 61/2021. The President Konstantinos Menudakos The Secretary Irini Papageorgopoulou8