

GREEK EMPIRE

PRINCIPLE OF PROTECTION OF E OMEN

OF A PERSONAL CHARACTER

Athens, 09-11-2018

Prot. No.: G/EX/8841/09-11-2018

A P O F A S I NO. 66/2018

(Department)

The Personal Data Protection Authority met in composition

Department at its headquarters on Wednesday 7 November 2018 following an invitation from

Its President, in order to examine the case mentioned in its history

present. Georgios Batzalexis, Deputy President, was present

of the President of the Authority, Constantos Menoudakos, the regular member of the Authority

Constant Lamprinoudakis and the alternate members Panagiotis Rontogiannis as

rapporteur and Grigorios Tsolias to replace regular members Antonios Symvonis

and Charalambou Anthopoulos, who, although only summoned in writing, did not

attended due to obstruction. The meeting was attended, by order of the President, o

Georgios Rousopoulos, specialist scientist - auditor as assistant rapporteur. Also,

also attended, by order of the President, Irini Papageorgopoulou, an employee of

Administrative Department of the Authority, as secretary.

The Authority took into account the following:

Submitted to the Authority no. prot. G/EIS/4232/29-05-2018 his complaint

A. According to it, the complainant received on 24/5/2018 a message from "Pitsoulakis -

Robogiannakis O.E." (hereinafter our controller), through the Viber application, the

who stated that the company thanked him for his consent and that he would continue to do so

informs him about special offers, technological news, events and competitions. THE

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complainant states that there was no consent for the collection of his number either to continue sending messages. The Authority with the no. prot. G/EX/4232-1/25-06-2018 she sent a copy of her complaint to the person in charge let's process, the one who submitted his views with the no. prot. C/EIS/20-07-2018 his document.

With this document, the data controller asserts, in summary, that complainant incorrectly states that there was no consent to the collection of the number of him, as he provided his phone number to the company, in the box previous transactions and that he received his consent for the shipment advertising messages through the 4-step process of the application "Viber Business", which procedure ensures the conditions of legality. The one in charge edit let's say that for sending messages through the Viber application the provision of no. 11 par. 3 of Law 3471/2006, which gives him the possibility, under conditions, to send advertising messages to its customers.

The Authority, after examining all the elements of the file, after listening to him rapporteur and the clarifications of the assistant rapporteur, who left after the debate and before conference and decision making, and after thorough discussion,

THOUGHT ACCORDING TO THE LAW

1. Article 2 of Law 2472/1997 defines that "personal data" yes "any information referred to the data subject". "Subject to of data" and yes "the natural person to whom the data refers, and to whom the identity is known or can be ascertained, i.e. can be determined directly or indirectly, ie based on an identity number or based on one or more of specific elements that characterize its condition from a physical point of view, biological, mental, economic, cultural, political or social". In this context, the A natural person's telephone number is personal data, since it can

function as a means of indirect identification of its owner, allowing the contact him. It is also pointed out that, in accordance with Opinion 4/2007 of the group work of article 29 of the E.U. about the concept of personal data, especially during the operation of electronic services, as an indirect identification element, they can sufficiently in some cases to distinguish one person from others in the context of one of a specific set, even if its name has not been pronounced.

2

According to article 2 par. g) Law 2472/1997, as "responsible for processing", any natural or legal person who determines the purpose and manner of their processing personal data. Corresponding definition for both personnel data character as well as for the person in charge of processing are also provided for in article 4 par. 1 and par. 7 of Regulation (EU) 2016/679 (General Data Protection Regulation - GDPR) which has been in force since 25/5/2018.

2. Article 5 of Law 2472/1997 provides that the processing of personnel data character is allowed only when the data subject has given the his consent (par. 1) and by exception without consent, when "it is absolutely necessary for the sufficient pressure of the interests that he pursues responsibly processing or third party or third parties where the data are processed and under provided that this clearly overrides the rights and interests of the persons in the data are mentioned and their fundamental freedoms are not affected" (par. 2 section e'). Accordingly, in article 6 par. 1 of the GDPR are provided as conditions for the consent of a processing is the consent of the data subject for a or more specific purposes (sec. a') and its superior legal interest data controller (section f).

3. In article 2 paragraph k' of Law 2472/1997 it is defined as the subject's consent of the data "every free, express and specific declaration of will, expressed in a way

clear, and in full knowledge, and with the pia, of the text of the data, from previously informed, agrees to process the data of a personal nature...'. A similar definition is found in article 4 par. 11 of the GDPR, while article 7 of the Regulation in question defines additional obligations for consent, such as for example that when "the consent of y subject to the data provided in the context of a written statement the above and other subjects, the request for consent shall be submitted in such a way as to be clearly distinguishable from the other issues" (par. 2).

4. Article 3 of Law 3471/2006 stipulates that the scope of application of the law in question includes "the processing of personal data and the safeguarding of privacy of information, in the context of the provision of available services of electronic communications on public electronic communications networks'. On the side this, when the processing consists of direct commercial promotion of products and services for advertising purposes by sending electronic messages mail (including SMS) through electronic services

3 of communications in public electronic communications networks, is applicable more specific article 11 of Law 3471/2006 on the protection of personal data in electronic communications In particular, according to par. 1 of the above article, "h use of automatic dialing systems, in particular using teleprinters (fax) or e-mail, and in general the processing of unsolicited of communication by means of electronic communication without human intervention, for direct practical promotion of products or services and for any kind advertising materials, permitted only if the contributor consents in advance expressly". The Authority with Guide a 2/2011 on electronic consent describes in detail the conditions and ways of legally obtaining consent with

electronic means for the purposes of the above provision. Unique experience in obligation to obtain prior consent was, in accordance with par. 3 of the article, the case when the contact details by e-mail legally acquired, in connection with the sale of products or services or otherwise transaction and are used for the direct promotion of similar products or services of the supplier or to serve similar purposes and so on conditions set by the specific paragraph.

5. To send an advertising message through the Viber application

The phone number is being processed. Sending such messages, at the time of sending the complained message it was regulated by law.

2472/1997 while after 25/5/2018 it falls within the scope of the Regulation (EU)

2016/679 (General Data Protection Regulation – GDPR) and not on the

implementation of Law 3471/2006. And this because the "Viber" application was its "service information sharing"¹ and not a public electronic communications service

d chain of electronic communications. Therefore, the examination of the legality of his mission

said message must be made based on the provisions of Law 2472/1997, while the following

25/5/2018 observance and use of the telephone number for advertising purposes and the validity

any consent of the data subject is held based on its provisions

GDPR. In particular, the legality of said processing can be relied upon

consent of the subject of our processing in the best legal interest of

data controller. Especially for the last case, in order to judge that the

processing is necessary for the purposes of the legal interests pursued by

¹ See also article 4 par. 25 of Regulation (EU) 2016/679

responsible for our processing and to ensure the rights of their subjects

data, taking into account that the sending of these messages resembles the

send SMS messages to public telephone networks, yes they must be met

at least the two conditions with those described in no. 11 par. 3 of n.

3471/2006.

6. In this case, it follows from the evidence of the case file that o

complainant has in the past dealt with our data controller, on its side

so he gave him his cell phone number. However, its subject

our processor (and controller's client) was not informed during the granting stage

of his telephone number for the further uses of this number and also for the

the fact that the number would be used to promote products and services.

Furthermore, the acceptance within the "viber" application of receiving messages from

our data controller, through the use of our "viber business" service, cannot

was considered as consent, as it did not meet the criteria of consent as

are described in article 2 paragraph k' of Law 2472/1997 (but not in article 4 paragraph 11 of

GDPR). And this is because it appears that the subject of the data, during the collection of the

data, he has not been properly informed about the purpose of our processing, i.e

promotion of the company's products and services, while not during his mission

message, the purpose of this mission is sufficiently specified, if for example yes

to serve the customer relationship or to send advertisements

messages. Therefore, the use of the four-step process, as described in

note from our processor, does not guarantee the legality of the original use

(collection) of the telephone number, when it was not properly updated

data subject for the purposes of our processing.

7. Consequently, a violation of Law 2472/1997 is established due to the processing of

customer phone number to send a message through the online application

"viber", without proper notification of the recipient, infringement which occurred in

time during which the GDPR does not apply. Further, as the person in charge

processing appears to have implemented the said message sending procedure

in order to obtain consent which would be in force after 5/25/2018, the

due to telephone number was unlawfully kept for the purpose of promoting products and

services not only before but also after 25/5/2018. Considering its gravity

violation and the fact that there was no other complaint against the person responsible

processing, the Authority considers that it should address a relevant reprimand to the person in charge

5

process, based on article 58 paragraph 2 paragraph a' of the GDPR.

FOR THOSE REASONS

The Personal Data Protection Authority:

Directs a reprimand to our processor for illegal processing

telephone number, as it is described in the reasoning of this present.

The Deputy President

The secretary

George Batzalexis

Irini Papageorgopoulou

6