

Athens, 06-04-2021 Prot. No.: 1016 DECISION 14/2021 (Department) The Personal Data Protection Authority met as a Department via video conference on 02-17-2021 at 10:00, following the invitation of its President , in order to examine the case referred to in the present history. Georgios Batzalexis, Deputy President, in the absence of the President of the Authority, Constantinos Menoudakos, and the alternate members Grigorios Tsolias and Evangelos Papakonstantinou, as rapporteur, in place of the regular members Charalambos Anthopoulos and Konstantinos Lambrinoudakis respectively, who, although legally summoned in writing, did not appear attended 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, by George Roussopoulos, 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/3887/30-05-2019 of A was submitted to the Authority, which concerns the receipt of unsolicited political communication (SMS message) for 1 Kifisias Ave. 3, 11523 Athens T: 210 6475 600 E: [contact@dpa.gr](mailto:contact@dpa.gr) [www.dpa.gr](http://www.dpa.gr) 1 promoting the candidacy of B (hereinafter "complainant") for the European Parliament. In particular, according to the complaint, the complainant received on 24/05/2019 at 17:47, on his mobile phone number (...), an SMS message from the complainant, which was of a political nature and specifically for the purposes of promoting the candidacy of the complainant in the elections of 26 May 2019 for the European Parliament, 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/3887-1/14-06-2019 requesting his opinions on the complainants, taking into account the guidelines lines he has issued on political communication. The complainant responded to the Authority, after a verbal reminder, with his document No.

C/EIS/6449/25-09-2019 with a document signed by C's partner, which states the following: complainant cooperated with company X to send SMS, to the database of friends and members of the party to which he belongs and is active. The party's organizational sector communicated this information to them, and after each process the database is re-sent with additions and updates from the party. Political parties during pre-election periods enable candidates for public office to use a list of persons friendly to them for the purpose of political communication. The phone numbers used were gathered from the party's registry in question and the complainant proceeded to send the SMS through the aforementioned company, which assured them that those who have declared that they belong to the registry of the no. 11 of Law 3471/2006. There was no opt-out link in the SMS because the company in question did not inform them that it was required. The political communication was carried

out by the complainant with respect to the relevant legislation and the instructions of the Authority, both now and in the past. As proof, it is stated that there has never been a complaint from the thousands of natural persons who were recipients. The complainant was informed of the complainant's views and in the e-mail No. C/EIS/6563/01-10-2019 stated that he had never shared his details with [party ...], [party ...] or to B while he has never been a member or friend of said parties. In fact, he states that he was a member of [party ...] until 2012 when he left in writing with a letter to the then president of [party ...].

Following the above, the Authority sent to [party ...] the no. prot. C/EX/6759/07-10-2019 document, informing it of the allegations of B and the complainant in relation to the complaint and asking for his opinions, making special reference to whether he sent the information of the complainant (and in particular the phone number) to party candidates and in an affirmative answer, about the source of his personal data. The [party ...] responded with its document No.

C/EIS/302/15-01-2020. In it he states that the complainant is not and has not been a registered member or friend of [party ...] and/or [party ...]. Therefore, the complainant's personal data cannot have been shared by the [party ...] to the complainant. Then the Authority called with no. prot. C/EX/4490/29-06-2020 document B in a hearing, during which the above complaint will be discussed as well as the general practice followed for communication of a political nature by electronic means. Initially, a call was made for 18/3/2020 (G/EX/1730/05-03-2020). During the meeting an adjournment was given and the Authority proceeded with a new call for the meeting of 14/10/2020 and after 2 adjournments, for 09/12/2020. During the meeting of 9/12/2020, the complainant appeared through the lawyer of Dimitrios Zisimopoulos, while after that he filed the memorandum No. G/EIS/8524/11-12-2020. In it he states that after an investigation it was not possible to identify the origin of the particular message, therefore it appears that consent was not obtained for its sending. It states that the 3 office receives statements from the [party ...] with members and friends who provide written consent for the processing of their data and to whom the controller addresses. He believes the mission was an isolated accident. The Authority, after examining the elements of the file, after hearing the rapporteur and the clarifications from the assistant rapporteur, who was present without the right to vote and left after the discussion of the case and before the conference and decision-making, following a thorough discussion ,

CONSIDERED IN ACCORDANCE WITH THE LAW 1. From the provisions of articles 51 and 55 of the General Data Protection Regulation (Regulation (EU) 2016/679 – hereinafter GDPR) and article 9 of law 4624/2019 (Government Gazette A' 137) it follows that the Authority has the authority to supervise the implementation of the provisions of the GDPR, this law and other regulations concerning the protection of the individual from the processing of personal data. 2. According to article 4 par.

7 of the GDPR, which has been in force since May 25, 2018, the controller is defined as "the natural or legal person, public authority, agency or other body that, alone or jointly with others, determines the purposes and the way of the processing 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 by article 11 of Law 3471/2006 on the protection of personal data data in the field of electronic communications, which incorporated Directive 2002/58/EC into the national legal order. According to this article, such communication is permitted only if the subscriber expressly consents in advance. Exceptionally, in accordance with article 11 par. 3 of Law 3471/2006, e-mail contact information obtained legally, in the context of the sale of products or services or other transaction, may be used for the direct promotion of 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 collection and use of his electronic data and this during the collection of contact data, as well as in every message, in case the user had not initially objected to this use. Moreover, according to paragraphs 1 and 4 of article 13 of the same Law 3471/2006, as regards the observance of this law, the Personal Data Protection Authority has the powers of Law 2472/1997, as applicable from time to time, and imposes the sanctions provided by this last law in case of violation of the provisions of the above Law 3471/2006. 4. 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: Political communication<sup>1</sup> is of interest from the point of view of the protection of personal data, it is 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 to parliamentary elections, European Parliament elections and elections of local Authorities. These persons become data controllers, according to the GDPR, article 4, para. 7) as long as they define its purpose and method of processing. For example, when MPs or candidate MPs

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

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they receive data from political parties and process it for their personal political communication, they also become responsible processing. In this capacity they must be able to demonstrate the compliance with their obligations and processing rules.

5.

When political communication is carried out using electronics means of communication, without human intervention, through public networks communication, such as e-mail messages (e-mail), communication requires, in accordance with article 11 par. 1 Law 3471/2006, as applicable, the prior consent of the data subject, with subject to paragraph 3 of the same article, as applicable. It is highlighted also that short text messages (SMS) are also messages email according to the definitions of Law 3471/2006 and Directive 2002/58/EC. Consent, in accordance with article 4 par. 11 of the GDPR, must be provided with clear positive action which constitutes free, specific, explicit and fully informed indication of the subject's agreement of the data in favor of the processing of the data concerning it.

6.

Political communication using electronic media is permitted without human intervention and without the consent of the data subject only if the following conditions are met cumulatively:

(a) 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 and did not object to this use. THE

previous contact need not be purely political in nature, e.g.

is it legal to send messages when email details

collected in the context of a previous invitation to participate in some

event or action, regardless of its political character. On the contrary, no

is considered to constitute similar contact and is not legal to use

electronic contact information for the purpose of political communication

when 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.

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(b) The controller must provide the subject of

given the possibility to exercise the right to object in an easy and

clear, and this in every political communication message. In every communication

the sender's identity is required to be clearly and clearly stated

person for whose benefit the message is sent, as well as a

valid address to which the recipient of the message can request it

termination of communication.

7.

In this particular case, the complainant, based on the above,

carried out, as a controller, political communication by dispatch

short text message (SMS). Hence the legality of the mission

is ensured if the provisions mentioned in the above Considerations 5 and 6 have been observed. From

the controller's responses result in the following:

i. The controller had not obtained his prior consent

complainant for sending said message.

ii. The controller – based on the one SMS for which they exist

specific information (content, date and time of sending, sender details) – did not provide the data subject with ability to exercise the right to object in an easy and clear way.

8.

The controller did not properly investigate the complaint, according to his cooperation with the Authority, as his argument that the origin of the complainant's data was the political party in which belongs.

9.

of the messages that were sent.

10.

The controller had full knowledge of the applicable legal framework for political communication of a political nature and guidelines lines of the Authority that had been published and sent to the political parties already from the beginning of April 2019.

11.

No other complaint, other than this one, has been filed against him controller, while no administrative sanction has been imposed in the past to the controller from the Authority.

The controller did not specify the exact number to the Authority

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12.

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, of

administrative sanction, referred to in the operative part of the present, which

is considered proportional to the gravity of the violation.

#### FOR THOSE REASONS

The Authority imposes on B the effective, proportionate and dissuasive administrative

fine that is appropriate in the specific case according to

special circumstances thereof, amounting to three thousand euros (3,000.00) euros, for the

as above established violation of article 11 of Law 3471/2006.

The Deputy President

George Batzalexis

The Secretary

Irini Papageorgopoulou