

Athens, 09-10-2018

PRINCIPLE OF DATA PROTECTION
OF A PERSONAL CHARACTER

Prot. No.: G/EX/7984/09-10-2018

A P O F A S H A . 63/2018

The Personal Data Protection Authority met, after invitation of its President, to a regular meeting at its headquarters on 24-04-2018, following the meetings of 5-12-2017 and 27-02-2018, in order to examine the case referred to in the present history. They were represented by President of the Authority, Constantos Menoudakos and the regular members of the Authority Constant nos Christodoulou, Spyridon Vlachopoulos, Constant nos Lamprinoudakis, as rapporteur, Charalambos Anthopoulos and Eleni Martsoukou, also as a rapporteur. The regular member of the Authority Antonios Symvonis and the his substitute, Panagiotis Rontogiannis, if they were summoned but also in writing, they did not attend due to obstruction. At the meeting, without right vote, were also present, by order of the President, Ioannis Lykotraf and Leon das Roussos, specialist scientists - auditors, as assistant lecturers, and Irini Papageorgopoulou, employee of the administrative affairs department, as secretary.

The Authority took into account the following:

A number of complaints have been submitted to the Authority regarding undesirables telephone calls made with human intervention and purpose

the promotion of products or services of the company "Cosmote - Mobile

Telecommunications SA" (hereafter Cosmote or our controller).

The Authority, in the past, examined corresponding complaints against the two

responsible for processing and issued the no. 64/2016 Decision. With the

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This decision the Authority, examining six (6) related complaints about calls that

were carried out during the period October 2014 – June 2016,

found violations of Article 11 of Law 3471/2006 and Articles 4, 5 and 13

of Law 2472/1997. With the aforementioned Decision, the Authority, after taking into account Mr

difficulty in implementing the provision of article 11 of Law 3471/2006, due to the non-

of the existence of a consolidated registry, recommended Cosmote to adapt

appropriate the procedures it follows in terms of implementation

telephone calls for the purpose of promoting products and services,

essentially recording all the legality conditions of the said

process personal data.

After issuing the above Decision, the Authority continued to accept

complaints regarding receiving phone calls to promote products or

of Cosmote services to telephone numbers of subscribers where they have

object, in general, through the register of article 11 of Law 3471/2006,

especially to our controller.

The Authority has read these latest complaints as well as

complaints submitted shortly before the issuance of the no. 64/2016

of Decision and therefore were not examined with said Decision, to the

Cosmote, informing that the review of said complaints was aimed at

for the company to take the required actions to investigate the complaints with

in order to deal with them and improve its procedures. Specifically, the

Beginning with the no. prot. C/EX/5856/26-09-2016 its document communicated to

Cosmote seven (7) complaints, with the no. prot. C/EX/7190/08-11-2016

her document communicated to Cosmote another (1) complaint, with the no.

prot. C/EX/2335/20-03-2017 her document communicated to Cosmote other

four (4) complaints, and with the no. prot. G/EX/ 4019/19-05-2017 document

communicated to Cosmote another six (6) complaints.

Due to the large number of complaints against our controller,

which continued even after the Authority's last letter to him, h

Authority carried out an on-site inspection at Cosmote regarding its issue

making phone calls for the purpose of promoting products and

services, according to article 19 par. h) of Law 2472/1997. The control

was carried out on the one hand at the facilities of the company "COSMOTE E-VALUE

CONTACT CENTER SERVICES ANONYMOUS COMPANY" (hereinafter E-Value),

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partner of Cosmote for the aforementioned purpose, at the address at

6-8 Vasile th tou Megalo, Athens - Roof, P.O. 11854, on 26-06-2017 and

on the other hand, at Cosmote's facilities at 99 Kifis Avenue, P.O.

151 24, Athens, on 06-29-2017, by the employees of the Auditors Department of

Ioannis Lykotraf and Leon da Rousso of the Authority (hereinafter "team

control"), after no. prot. C/EX/4852/23-06-2017 and C/EX/4869/23-

06-2017 against the orders of the President of the Authority.

During the inspection, Cosmote was provided with a printed version of the letter a

of complaints that have been submitted to the Authority during the last months, i.e. from

the end of December 2016 until the end of June 2017. The said letter concerned

fourteen (14) complaints, of which nine (9) have already been forwarded

to Cosmote and before the audit, with the above mentioned Authority documents.

During and after the on-site checks they were collected from the control group a series of digital and printed persuasives. Also, the team audit drew up the minutes of these audits, in which the responses/clarifications of the audited, as well as her on-site observations control group. The draft of the minutes was sent to the companies by message by e-mail on 24-07-2017 (with reference no. C/EX/5655/27-07-2017), while the companies sent their comments, by e-mail, to 07/08/2017 (with no. prot. C/EIS/6041/10-08-2017). Minutes later were finalized and sent to the companies (with the no. prot G/EX/6041-1/24-08-2017 document of the Authority).

At the same time, the Authority requested, in writing, from the service providers telephone communication let them grant her copies of the register data of article 11 of Law 3471/2006 that they observe for their subscribers (hereinafter opt-out registries). With these documents, he pointed out that it is necessary information on the date of registration in the register, at least for a few days after 10-31-2016 and that in case the information of date of registration for earlier registrations (not as regards declarations of subscribers during the first years of operation of the registry) the providers can mark it with an indicative date of their choice. Ask also, to in case subscribers have been deleted from the register, to grant them record with their deletion dates. Providers provided this information, in writing and in electronic form.

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Following these, the audit team studied the minutes in conjunction with them persuasive evidence and the relevant documents, drew up and submitted to the Authority the no. prot. C/EIS/8198/15-11-2017 audit finding, in which the

key findings of the audit team regarding the subject of the audit, as defined in section III of the entry and such emerged after the analysis of the evidence. The analysis methodology of arguments as well as the results of the analysis are presented in detail in annexes A, B and C of the portal. Also, they are quoted in the conclusion in detail the audit methodology (section II), the evidence of the audit, the nine (9) complaints forwarded to Cosmote before it took place on-site inspection, the five (5) related complaints the elements of which were shared with Cosmote during the audit, as well as the documents that sent and received by the Authority from the providers for obtaining copies of data of the register of article 11 of Law 3471/2006 that they keep for the their subscribers.

Also, the methodology with which they were examined is described in detail telephone calls made for promotional purposes for Cosmote account, within the first half of 2017.

In the conclusion, special mention is made of the complaints submitted to Authority regarding calls such as – based on the allegations of the complainants – were carried out within the first half of 2017 (see P naka at Appendix B of the book) and, therefore, it became possible to search and comparison with the aforementioned call data that have resulted from the eValue and were carried out by it on behalf of Cosmote to purpose of promoting Cosmote products and services.

The findings of the audit, as described in detail in the finding thereof, are summarized as follows:

1) It was established that for the account of OTE and Cosmote, during the first semester of 2017, a total of 16,611,108 calls were made to telephone

numbers that belonged to subscribers at least 30 days before
date of the call they were registered in their provider's "opt-out" register
(finding no. 1). Of these, 16,091,713 calls were made, since
more than 60 days have passed since the number of the called party was registered
subscriber to the "opt-out" register of his provider (see Table in Appendix A3

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of Portsmouth). These calls can also be separated into calls that
made to numbers belonging to landline connections let,
of which 15,794,944 (to subscribers who had registered at least 30
days in the registry of their provider), and in mobile phone connections let, the
where are you, yes 816,164 (respectively). It is not possible to be more precise
division of the above number of calls into calls made for the
promotion of products and services of Cosmote and OTE respectively.

2) eValue has a process to receive individual "opt-out" registries;
but only from the "big" providers. The process can be improved
as it was established that the register was not received from the Omninet company and that no
the requirement that all declarations of inclusion have been taken into account is always met
in the register submitted earlier than 30 days before
making a call (finding #1).

3) It was established that no specific procedure is systematically followed
the satisfaction of the special feedback of the invited subscribers (finding under
no. 2). Specifically, although eValue maintained the principle of objection (using
of the special software exclusion manager), during the check it was found that only
if a guest reacts strongly negatively, the eValue employee
he can enter his number in the same file.

4) It was found that the invited subscribers were not properly updated (finding under

no. 3), as for the calls made by eValue, the answering machine at the beginning of the conversation, after stating his name, he says that he is good for OTE or Cosmote account without reference to eValue, while at communication content should not include an update about the feature exercising the right of access and objection.

5) It was established that there is no proper procedure for observing consents (finding no. 4) as the observed data only concern subscribers of OTE/Cosmote. Corresponding consent is not provided for downloading promotional calls from non-OTE/Cosmote subscribers.

6) No recorded procedure was found to be applied by Cosmote so that to ensure that the appropriate conditions are met by eValue for the legality of the process of making promotional calls. It was talked about for the inclusion of eValue in the annual inspection carried out by the Department of Internal Audit of the OTE Group, however, no more were granted

5 details of the content of said inspection in order to determine whether the object of the audit also includes the procedure a making promotional calls. Also, it was found that it does not exist procedure for informing eValue for proven cases complaints, including those forwarded to them by APDPH. Consequently, although the complaints procedure is yes specific (see Persuasion 18), no reference is made to the participation of eValue, in order to identify any failure of the internal procedures and to appropriate revision of these (finding no. 6).

7) It was established that records of old subscribers are kept, as follows are used to re-attract them to the OTE group (finding under

no. 7).

8) From checking the logs, it was found that several calls while are answered by the called party, not routed to an operator (finding no.

8). Specifically, from the total of 16,091,713 calls made for account of the OTE group in numbers that were included in its register article 11 of their provider for more than 60 days, 911,405 calls have answered but have not been routed to an operator, which correspond to one percentage of the class, about 5.7%.

Subsequently, Cosmote was summoned only, with the no. first

C/EX/8307/17-11-2017 document of the Authority, in a hearing before it at the session

of 5-12-2017, as our data controller, to provide further clarifications and

to present his views on the findings of the meeting. With the above

document of the call, the Authority forwarded it to the person responsible for processing the above

mentioned audit finding, the aforementioned audit minutes, the

referred to in the finding with items a' b' to d' relevant documents of the Authority with the

to inform our data processor of complaints, those referred to in

finding of complaints with elements o f that were carried out in the company during

control, as well as older documents of the Authority with which he was informed about

complaints, with the complaints attached (in digital format), and finally the document

with calls made to numbers that have been on the register for over 30

days (also in digital format).

The Authority's meeting on 5-12-2017 was attended by Eleni Gerutsi,

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Cosmote's lawyer, who orally requested a postponement of her hearing

case, due to the fact that the data protection officer of the OTE group does not

was able to attend the meeting. The project was rejected by the Authority and

representative of the company received a deadline for submitting a memorandum. Then the our processor submitted, within your express deadline, the no. prot. C/EIS/543/22-01-2018 memo in which he briefly mentions, between others, the following:

a) Regarding making calls for promotional purposes to telephone numbers registered in the opt-out register of their provider, o Cosmote reports that the Authority with no. 18/2016 He only imposed a decision on her to OTE and OTE, and not to all providers, confirmation process of all the declarations of inclusion of their subscribers in their said registers, and consequently, the principle of equal treatment was not applied. This is how it is resulting in the actual deletion of the contents of the registers, as well as the news registers included only 13.9% of OTE's subscriber base and 7.8% of Cosmote, after the particularly low response of their subscribers in the different ways of communication (outgoing IVR calls, statement to 13888, SMS). Therefore, according to the companies, a large number of subscribers who had entered the register on their own initiative, opted out of it, according to the above procedure, without having it actually ask.

Moreover, the increase, from March 2016 onwards, of registries of competing provider companies, such as Wind and Forthnet, while he lives that they acted uncontrollably in terms of the way they were observed, but also how to carry out their promotional actions via telephone calls. He also argues that due to the situation created by companies of the OTE Group (OTE and Cosmote) were largely excluded from the communicate with the subscribers of both the three providers, who wanted them to be informed about their offers, as well as with their own, which

were unaware that they had been removed from the register, in compliance with the above no. 18/2016 Decision. Instead, the company claims that other providers they were completely unaware of the registers of OTE and Cosmote even after art due decision.

There were a total of 4,343 and 8,821 subscribers respectively for

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fixed and mobile telephones, in the year 2017, who declared that they wish to they receive calls from OTE and Cosmote companies, however they were part of registries of other providers and thus could not be called while they existed cases where this happened during the second month (in the above note it is quoted a l to the indicative numbers that requested a "call back" through the website, only on the 1st of every month from 1/1/2017 to 1/10/2017).

Also, the company claims that because of the automated system dialer, a percentage of calls are due to system failure or for other technical reasons. Furthermore, they report that the vast majority (up of 80%) of the calls were missed, and therefore the subscribers did not they were disturbed.

b) Regarding the updating and receipt of all registers, the company a claims that in some cases of receiving the updated months of situations may have passed a period of time beyond two months from the declaration of registration of subscribers in the registers, unless delayed response of the other providers and their non-timely inclusion in their registers.

c) Regarding making calls for promotional purposes to telephone numbers that they have specifically objected to receiving phone calls, Cosmote denies the existence of a separate finding, as it is invoked that there is and a specific procedure is followed

managing subscriber or street objections and creating a special archive, using special software that number 197,244 entries, both yours subscribers and other providers, while also in the CRM system (Siebel) the option to register the customer's nuisance is given, in order not to called again. With reference to the procedure for registering the future refusal let's contact the subscribers of other providers, the company thinks yes absolutely legitimate to refer them to their provider, in order to submit the relevant registration number in the register 11.

Additionally, he argues that the separation of lists between subscribers of the group and those of the remaining providers are legitimate option, as there may be another way to communicate with the first ones in the context of the transactional relationship.

d) With reference to the notification of the person called, in the above memo it is stated that the callee receives sufficient information about his identity

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data controller. In the opposite case, if reference was also made to I was doing the eValue processing, it would get confused about it actual identity of the person in charge and the legal entity with the name o subscriber contracts and generally transacts. Furthermore, it is reported that for the rights of the subject, there is full information on the internet location of the company, as well as in every contractual document signed by subscriber. The company also notes that the average consumer is aware about his rights, as well as how to exercise them (as well as yes also known as their customer service.)

e) Regarding the maintenance of a special register of consents for the making promotional calls, the company notes that regarding them

its subscribers keep a special file, which includes the relevant statement, while the relevant options are provided in the applications - service contracts. For the remaining subscribers of other providers, their will is also recorded to receive communications from Cosmote, but this applies every time specific advertising campaign with a specific end date.

f) Regarding the security of our processing and the organizational measures for ensuring the necessary guarantees in terms of compliance with them conditions of legitimacy from the external partner, Cosmote notes that the dialer system kept all the necessary data to investigate someone complaint for 12 months. I executed the OTE and Cosmote contracts with her her processing eValue provide the obligations of eValue for confidentiality and security of our processing. Also contained are clauses for the obligation of eValue to comply with the guidelines of OTE/Cosmote in making outgoing calls and exclude those registered to register 11. In addition, OTE/Cosmote provides guidelines and directions to eValue in the form of special documents called "work guides". While, finally, the operation of eValue as a member of the OTE Group is governed by the two Binding Rules for the protection of personal data (Binding Corporate Rules Privacy - BCRPs) of the OTE Group.

g) As regards the maintenance of the data of old subscribers, the company considers that no provision of law is violated by the processing of personal data data of old subscribers when carrying out promotions actions towards them. He notes that a former subscriber has the reasonable

I expect the relevant information from OTE Group to be as soon as possible personalized and related to his needs, as they arise from

his consumer behavior, when he was a customer of the OTE Group.

h) Finally, regarding calls that are not routed to an operator,

it is noted that the percentage of these calls is particularly small (5.66%) and

justified as a technical failure resulting from the division of calls

to the available call center operators.

After the filing of the above memorandum, Cosmote was only summoned,

with the no. prot. C/EX/1295/13-02-2018 document of the Authority, in hearing from

before it again at the meeting of 27-02-2018, as the person in charge of our processing, for

to give further clarifications and to set out her views in detail. At

meeting of the Authority on 02-27-2018 was attended by Eleni Arapaki, Lawyer,

Aglaia Margarti, Lawyer, A, Director of Telephone Sales, and B,

Director of Security and Personal Data of the OTE Group. According to

hearing, the above representatives presented their views orally. Following

of the hearing, the person in charge of processing filed the no. first

C/EIS/2035/13-03-2018 memo. In this memo, the person in charge

Let's edit mainly repeats the views he has listed with it

previous note, and adds assertions referring to the consequences

of no. 18/2016 of Decision. In particular, it briefly mentions, among other things,

The following:

a) Regarding making calls for promotional purposes to

telephone numbers registered in the opt-out register of their provider, h

Cosmote reports that the purpose of the provision of article 11 of Law 3471/2006 yes no

protection of individuals/consumers and not of the competing provider. Company a

reiterates that the Authority with the no. 18/2016 Decision imposed on her selectively to DIA and OTE, and not to all providers, sanction. And this instead of checking the internal procedures of the other providers and to issue a relevant guide for the uniform application of the way of receiving statements of subscribers for registration and overall for the manner of keeping the article register 11 from all providers, thus creating an unequal situation, as supported by company a.

The company adds that it fully complied with the no. 18/2016

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Decision, although in accordance with the principles of this treatment, of your measure attitude and justified confidence, he expected the creation of a single framework to regulate the situation and to be applied by others providers.

b) In the memorandum the company also notes that, as it has already pointed out and the Authority in the relevant Decisions (no. 63 and 64/2016), there is a difficulty in the implementation of the provision of article 11 of Law 3471/2006. Also, he claims that the company communicates with its own subscribers for other purposes as well of the advertisers, while expressing doubts about the validity of the conclusions which are extracted from the data for the unique numbers of OTE subscribers and Cosmote who were invited, as some of them may have requested to receive information about products and services through telephone calls from the company a. Consequently, in the company's opinion, it is not substantiated violation for these subscribers.

c) The company states that the no. 18/2016 Decision created one unequal and fictitious situation, because after the deletion of the original register, h subscriber response was quite low (12% for Cosmote). As cm

therefore, the rights of its subscribers were put at risk, while the others providers were acting uncontrollably in keeping their record, in the way carrying out their telephone promotions and in respect of the Cosmote register.

d) Regarding making calls for promotional purposes to telephone numbers of subscribers who have specifically objected to the receive phone calls, Cosmote reports that feedback from subscribers to receive promotional calls from the company has no permanent character, but it concerns a specific advertising campaign and yes extremely likely that the callee will express at some point if called back to subsequent advertising campaigns, interest to inform about another product.

e) With regard to informing the guests, the company claims that a call for the purpose of promoting a service should be short and comprehensive, and that if it is burdened with multiple regulations and legislation obligations will be converted from a telephone sale to a quotation call information to the caller.

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f) Regarding the maintenance of old subscribers' data, the company states that the companies of the OTE group in the context of their compliance with the new General Regulation 2016/679 on the Protection of Personal Data (GDPR) re-evaluate all the personal data they keep and processed, as well as the duration of their retention.

The Authority, after examining all the elements of the file and the opinions, developed by Cosmote in the meetings from 5-12-2017 and 27-02-2018, after hearing the rapporteurs and the clarifications of the assistant rapporteurs, as follows

withdrew after discussion and before conference and decision-making,

and after thorough discussion,

THOUGHT ACCORDING TO THE LAW

1. The person in charge of processing shall be designated by law (Article 2 letter g) Law 2472/1997)

whoever "...determines the purpose and method of processing, as natural or

legal person, public authority or agency or anyone else

organization...". Accordingly, the processor is assigned to the following

follow his

of the article as "anyone who processes data

of a personal nature on behalf of a data controller, such as...".

As stated in Opinion 1/2010 of the O.E. of article 29 (see p. 11) "H

status of the person in charge of the processing is primarily a consequence of it

factual situation that an entity has chosen to process

personal data for its own purposes. Also, in

via Opinion (see p. 16) states "A pragmatic approach is required

which will place greater emphasis on the discretion to determine them

objectives and decision-making ability. In these cases the question

is why the processing is taking place and what is the role of contingencies

of connected actors, such as outsourcing companies: would have

processed data by the company acting on the basis of outsourcing

if it had not been defeated by the controller, and under what conditions

conditions? The processor may further operate based on

general guidance, which is mainly provided on the objectives and not

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he goes into great detail as to manner." In the Opinion,

the O.E. of article 29 (see p. 18) comes to the conclusion "The determination

of the "purpose" of the processing rests with the "controller".

Whoever takes this decision is, therefore, (de facto) responsible for it

processing. Determining the "how" of the processing may be delegated

to a third party by the data controller, in terms of technical or organizational aspects

tasks. Substantial matters which are important for its evaluation

of the legality of the processing are under the responsibility of the person in charge

processing".

Furthermore, regarding the definition of the person performing the processing a, h

above Opinion states (see pp. 30-31) "The most important element is the

obligation for the processor to act "...on his own behalf

controller". Action on behalf of another means the

serving someone else's interests and remembers its legal meaning

delegation of powers' and 'However, the delegation of powers may

still imply some degree of discretion about it

better

way

service

of interests

of the person in charge

her

processor, allowing the processor to choose the most

appropriate technical and organizational manner."

This Opinion also provides an example of role evaluation

controller and processor for centres

call (see example no. 20, p. 34) "A person in charge of

processing outsources some of its work to a centre

calls and gives

order the call center to appear

using the identity of the data controller

when calling the data controller's customers. In

in this case, the expectations of the customers and the way in which the

controller is presented to them through the company

outsourcing lead to the conclusion that the outsourcing company

commission acts as a processor for its controller

processing (on his behalf)."

The issue of phone calls, for direct marketing purposes

products or services and for both advertising purposes,

regulated in article 11 of Law 3471/2006, in which the relevant

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2.

unsolicited communications (see par. 1 and 2). With the provisions of the article

16 par. 1 and 2 of Law 3917/2011, par. 1 and 2 of the article were amended

11 of Law 3471/2006, so that Article 11 par. 1 of Law 3471/2006 defines

further that: "The use of automatic dialing systems, in particular using

facsimile (fax) or e-mail devices, and more generally n

making unintended communications by any electronic means

communication, without human intervention, for direct marketing purposes

promoting products or services and for any kind of advertising purposes,

is only allowed if the subscriber expressly consents in advance", whereas

paragraph 2 of this article states that: "It is not allowed to

making unintended communications with human intervention

(calls) for the above purposes, as long as the subscriber has declared to

the provider of the service available to the public, that he does not generally wish to receive such calls. The organization is obliged to register them free of charge these statements in a special list of subscribers, which is available every interested party".

Consequently, after 01-09-2011, the date on which the effect of the amended provision, telephone calls with a human intervention, in view of the above purposes, are allowed, unless the called has declared that he does not want them ("opt-out" system). The opt-out system it has the consequence that natural or legal persons can address them their objections, regarding the processing of their data, etc specifically, directly to our controller (i.e. the advertiser) exercising the right of objection regarding personal processing data based on article 13 of Law 2472/1997 and generally, through the of their registration in the special list of subscribers of the provider it provides for Article 11 par. 2 of Law 3471/2006. The law provides for the creation of registers ("opt-out") to each provider and the subscriber can declare free of charge, at own provider of electronic communications services, that he did not wish to receives telephone calls for direct marketing. Every provider bears, with the aforementioned provision, the obligation to comply with these statements, Public Registry that served a public purpose and in which is accessible to anyone who is interested in using it directly commercial promotion.

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3.

Article 10, paragraph 3 of Law 2472/1997 also states that "The responsible processor must take appropriate organizational and technical measures

for the security of the data and its protection from accidental or unlawful destruction, accidental loss, alteration, prohibited dissemination or access and any other form of unfair processing. These measures must ensure level of security commensurate with the risks involved in the processing and the nature of the data that is the subject of the processing....” while in par. 4 of the same article states that "If the processing is carried out for account of the person in charge by a person not dependent on him, or the relative assignment must be made in writing. The assignment obligatorily provides that the active, the processing is carried out only by order of the person in charge and that the other obligations of this article shall be borne by him accordingly."

4. Based on the above provisions, the Authority, with the no. 64/2016 Decision, addressed a recommendation to Cosmote to adapt appropriate specifics procedures he follows in terms of making telephone calls calls for the purpose of promoting products and services. In This decision, as in the considerations of no. 62-63/2016 and 65-67/2016 of the Authority's Decisions concerning the same issue, described the way that Cosmote, but also every data controller, must act when making telephone calls for the advertisement of its products or services, so that its conditions are met of article 11 of Law 3471/2006, but also the general conditions of legality processing of personal data provided for in Law 2472/1997.

5. As it appears from the evidence in the case file, eValue has undertake a number of telephone service services, among them as well as making advertising calls to promote them products and services of OTE and Cosmote, which belong to OTE group. The way of promoting the services and the products of both

OTE (fixed telephone and pay TV) as well as Cosmote

(cell phone let's) yes common, confirmed/established fact

and from the examination during the control of indicative telephone scenarios

calls, thus, as noted above, making it impossible

accurate breakdown of total outbound promotional calls that

were carried out by eValue in those carried out for the promotion of

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products and services of Cosmote and OTE. The two companies have

moreover, they decided to have a common corporate image, despite maintaining it

different legal status. Each of these two companies

determines the context of each advertising campaign it will run for

eValue's account (e.g. number to call, candidate description

customers, etc.), while jointly determining other details of the method

eValue operator. Therefore, it is clear that Cosmote was

responsible for our processing for the issues under consideration in this Decision

activities. eValue has the role of processor,

as it processes the data for the account of those in charge and not

for its own purposes.

6. Furthermore, the following emerges from the evidence of the case file:

a) Cosmote, through eValue as processor,

make calls for promotional purposes to telephone numbers

who are registered in their provider's "opt-out" register. THE

number of these illegal calls for the two companies of the OTE Group

(OTE, Cosmote) for the first half of 2017 amounts to 16,611,108.

As discussed above, the precise separation of calls that

were carried out to promote OTE and Cosmote products no yes yes

possible, as the two companies have decided to promote together their products and services, as evidenced by the indicative scripts of the calls included in the elements of the control, while not

The Authority received a series of calls per company. In every case, because the network and services of OTE concern a fixed of Cosmote's mobile phones and counterparts, it is assumed that according to most of the calls made to landlines concerned the promotion of OTE products and services, and respectively to mobile phones for Cosmote products and services, without however excluding this as noted above that many calls involved combination promotion of products and services of both companies, which they belong to moreover, in the same group. The number of invited subscribers is joined their provider's opt-out register for a period of time longer than thirty days, while Cosmote did not provide any specifics consents for making calls to said telephone numbers

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numbers, in order to document their legitimacy. From those presented log showed that thousands of calls are made daily for promotional purposes. Making calls of these, as described in the audit report, was not challenged essentially by the controller. Cosmote claims that some of the calls made to the subscribers of the OTE group companies with the consent of the subscribers, because some of them may they had requested to receive such information. The claim that there was consent for certain calls to subscribers, yes unproven because the consent of the subscribers has not been secured, such as

required according to article 5 of Law 3471/2006, according to which the consent

must be complied with in writing and electronically. Besides, even if

these calls are not taken into account, a very large number remains

calls to subscribers of other providers for the ones it does not have

obtain consent

them, as well as from

total

of

of the aforementioned 16,611,108 calls, only 565,926 concerned

OTE subscribers and 665,257 Cosmote subscribers. Cosmote

claims to communicate with its own subscribers and for others

purposes, apart from advertising purposes, however, no information was provided

nor does it appear that the company complied, as it had an obligation, with the appropriate measures

data in the call system to make it possible to separate them

calls made by eValue for these different purposes.

The company acknowledges that there may be reasonable delays

registration of telephone numbers in the registry, as well as each provider

responds at a different time and therefore may

do not respond in time. However, from the audit evidence reviewed

for the first half of 2017 it emerged that the other providers respond to

at the latest within four (4) days to eValue's requests, while respectively

there was a case in which the period of time that has elapsed since

eValue's previous time to other providers was 34 days.

Therefore, as long as it appears that the other providers respond to

reasonable period of time to its requests, it is not particularly justified

large number of illegal calls, given that eValue has

possibility of more timely sending of the relevant requests.

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b) From all the audit findings, as described in

history of the present and are analyzed in the conclusion, the Authority considers that the

Cosmote has not implemented the most appropriate procedures for the

possible elimination of technical or human errors or even for their detection

of any malfunctions, in violation of article 10 of Law 2472/1997.

Specifically:

i) Effective compliance procedures are not implemented

file of special objections, in order to satisfy the will of subscribers,

of Cosmote and of any other provider, which express it

their response to receiving promotional calls on behalf of the company.

Accordingly, no proper procedure is applied for the observance of consents,

as the data kept only concern their subscribers

OTE/Cosmote, while no corresponding consent is provided for downloading

promotional calls from non-OTE/Cosmote subscribers. Relatively, the

Cosmote claims that feedback from subscribers on the download

of promotional calls from the company does not have a permanent nature, but

It concerns a specific promotional campaign and it is extremely possible

invited to express at some point, if called upon again in subsequent ones

campaigns, interest to be informed about another product. THE

this claim, however, is unfounded because the right of objection is exercised

to the controller as a whole, and not in respect of individual ones

action thereof, while the objection is valid until its possible removal

providing newer specific consent.

ii) The right to information of the invited parties is not properly satisfied

users or subscribers, as in its content do not communicate information on the identity of the company representative is included for whose account the call is made nor information about it possibility of exercising the right of access. Her business let us know that the information about the identity of the person performing the processing a would create confusion for the called party, and that the information about the rights of the called party would "encumber" the call and cancel him of its commercial nature, do not negate the obligation of the person in charge process to apply appropriate procedures to comply with the his legal obligations, without causing confusion to the called party or to

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informing him of his rights is omitted.

iii) Cosmote does not adequately monitor eValue for compliance with legal procedures during phone call promotions.

In particular, it has not carried out any relevant on-site inspection this matter has not been subjected to any other relevant control action, e.g. has not requested λ in outgoing calls from eValue, regarding calls made on his behalf, to check if these were made to numbers that are not registered in his "opt-out" register their provider, while the agency states that many of the non-marital ones of calls made are due to system failure or others technical reasons in processing through the dialer system. Moreover, no eValue's information or involvement in its cases was mentioned handling complaints submitted.

iv) A sufficient number of calls are answered by the called party but, due to technical or organizational failure, according to Cosmote's claims, no

are routed to an operator, in violation of our processing obligation to ensure the conditions so that all calls are routed to operator, such as having an operator available before the call was made, because otherwise it would not be possible satisfaction of any right of the called subscriber or user.

7. Cosmote claims with its pleadings that the Authority with no. 18/2016 Her decision was imposed only on DIA and OTE (and not on everyone the providers) confirmation procedure of all their membership declarations of their subscribers in their registers, and therefore the principle was breached of handling, while keeping the article 11 register is not yes uniform or appropriate from all providers. However, even if the Cosmote has found an unexpected increase in the number of registered in the "opt-out" registers of the other providers, the doubts of as to the validity of the registers they do not see the prohibition of making calls to numbers that appear registered to these, since such processing is clearly contrary to its provisions article 11 par. 2 of Law 3471/2006.

Regarding the fact that data is kept and processed

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8.

of old subscribers to re-attract them to the OTE group, i

Cosmote denies that any provision of the law is being violated and promotes it

Argument that a former subscriber has a reasonable expectation of the relevant information from OTE Group to be yes as possible

personalized and related to his needs. However, and

processing for this purpose requires prior valid consent

because the subscriber status ceases from the end of the customer relationship or,

since it was considered that a superior legal interest was established, the

old subscribers to at least be informed specifically about him

above purpose of our processing, but it did not appear during the check that

there was a relevant update. In fact, the holding company reports that the

companies of the OTE group in the context of their compliance with the new General

Regulation 2016/679 on the Protection of Personal Data (GDPR)

re-evaluate the set of personal data they maintain and

processed, as well as the duration of their retention.

9. Taking into account the above violations and n as the particularly large one

absolute number of violations (at least 816,164 illegal calls,

in accordance with what is mentioned above in the history and point 6 thereof

reasoning) that were established, the fact that the controller, if

and has improved some procedures, it does not apply properly in practice

technical and organizational measures while having sufficient time at his disposal

period from the issuance and notification of Decision 64/2016 to

date chosen by the Authority for the start of the audit of the documents

of recorded calls (1/1/2017), and was therefore able to apply

effective procedures for its compliance with its recommendations

Principle, of the fact that the person in charge clearly processes the above

actions aimed at making a profit, the Authority considers that it should

imposed on the person in charge of the processing provided for in article 21 par. 1

item b' of Law 2472/1997 sanction referred to in its operative part

present, the penalty is proportional to the gravity of the violations.

FOR THOSE REASONS

The Authority imposes, based on articles 19 par. 1 item. f and 21 of Law 2472/1997 and 13 par. 1 and 4 of Law 3471/2006, to the company "Cosmote - Mobile Telecommunications SA" a fine of 150,000 Euros for the above findings violations of the provisions of Article 11 of Law 3471/2006 and Article 10 of Law 2472/1997.

The President of the Authority

The Secretary

Constant Menoudakos

Irini Papageorgopoulou