

DECISION 24/2023 Athens, 12-06-2023 Prot. No.: 1500 The Personal Data Protection Authority met at the invitation of its President in a meeting via video conference on 28-06-2022 following the meeting from 10-05-2022 , in order to examine the case referred to in the present history. The President of the Authority, Konstantinos Menudakos, the regular members Spyridon Vlachopoulos, Konstantinos Lambrinoudakis, Christos Kalloniatis, as rapporteur, Aikaterini Iliadou and Maria Psalla were present in place of regular member Grigorios Tsolia, who, although legally invited in writing, did not attend due to disability. Regular member Charalambos Anthopoulos and his alternate member Nikolaos Livos, although they were legally summoned in writing, did not attend due to disability. At the meeting, without the right to vote, the auditor Pantelis Kammas, a specialist IT scientist, attended the meeting, as assistant rapporteur, and Irini Papageorgopoulou, an employee of the Department of Administrative Affairs, as secretary. The other assistant rapporteur Konstantinos Limniotis, an IT specialist, was absent due to disability. The Authority took into account the following: Complaint No. C/EIS/4145/23-06-2021 of A (hereinafter "complainant") was submitted to the Authority, regarding the sending of emails from the email address info@infinitypack.gr for the purpose of advertising products of the company INFINITY PACK EE (hereinafter, controller). Specifically, the complainant is a pharmacist and the advertising emails he received 1-3 Kifisias Street, 11523 Athens, Tel: 210 6475600, Fax: 210 6475628, contact@dpa.gr / www.dpa.gr 1 concerned pharmaceutical products. According to the complaint, the complainant received emails with advertising content from the above address, to four different email addresses, which are: ..., ..., ..., The above e-mail addresses, as stated by the complainant, are used by him only for transactions with the EOPYY public service. Also, the complainant had no previous transactional contact or other relationship with the data controller, in the context of which his e-mail addresses were granted. The Authority, in the context of examining the above complaint, sent to INFINITY PACK the document No. C/EXE/1697/13-07-2021, asking it to send its views on the complainants, as well as to specify the manner in which the above-mentioned special purpose e-mail addresses of the complainant came to its knowledge. The data controller responded to the Authority, through representative B, with document No. C/EIS/5139/04-08-2021, in which he states, among other things, that INFINITY PACK is a newly established company which are young entrepreneurs, and that he himself, as a member and manager of the company, always tries to comply with the applicable legislative frameworks. It also reports that no advertising messages were sent to the e-mail addresses that had come to its knowledge from various sources and previous collaborations, before May 2018, except for e-mail addresses for which their owners had explicitly stated that they wished to receive informational material or did not object to further messaging. Finally, the data controller declares to the

Authority and to the complainant himself, that the sending of messages to him was a simple oversight, unintentional and there was no intention to disturb. Due to the fact that in the above response there were no clear clarifications regarding the origin of the complainant's e-mail addresses, as was requested in document No. C/EXE/1697/13-07-2021, the Authority sent INFINITY PACK the No. prot. C/EXE/1969/31-08-2021 document, with which he once again raised the issue of the exact determination of the manner in which the e-mail addresses of the complainant came to the knowledge of the controller. 1-3 Kifisias St., 11523 Athens, Tel: 210 6475600, Fax: 210 6475628, contact@dpa.gr / www.dpa.gr 2 Immediately after the notification of the above document to the complainant, in order to inform him of the development of his complaint, the complainant sent the supplementary document No. C/EIS/5503/31-08-2021 to the Authority, via email, in which he states that after learning of B's letter, he does not wish to continue the examination of his complaint, because as he perceives there was no malice and that it was an isolated incident for which B has taken measures to prevent it from happening again. Subsequently, the newest response of INFINITY PACK was submitted to the Authority with document No. C/EIS/5772/14-09-2021, in which it is stated that in the context of the development of the company, the representative of B travels to many regions of Greece and comes into contact with many different professionals from various industries, with whom he exchanges information about products and the market. He also receives business cards and contact and contact details of agents, whom he has heard are interested in supplying his merchandise. Thus, during these trips it is very likely that one of the two pharmacies maintained by the complainant was visited. Finally, unfortunately, as he states, he cannot determine the exact source of the addresses in question. But he confirms that he no longer owns an email address nor intends to send marketing messages (spam) from now on. The Authority decided to continue the examination of the complaint ex officio and invited the data controller to a hearing at the Plenary meeting of 10-05-2022 (see call no. C/EXE/939/18-04- 2022), in order to discuss the general issue of unsolicited email communications for the purpose of direct marketing of products and services, including the manner in which e-mail addresses are collected and the transparency of such collection. During the meeting, B was present as administrator and representative of the complained-about company after the lawyer of Evangelos Margaritis (AM DSA ...). After the meeting, the data controller was given a deadline to submit a memorandum, which he submitted, within the set deadline, with document No. G/EIS/7358/24-05-2022. The data controller, both with his memorandum and during the hearing, repeated the positions he had supported with nos. C/EIS/5139/04-08-2021 and 3 Kifisias St. 1-3, 11523 Athens, Tel: 210 6475600, Fax: 210 6475628, contact@dpa.gr / www.dpa.gr C/EIS/ 5772/14-09-2021 documents of his opinions and in particular he put forward the following

claims: a) He does not dispute the sending of the email which, however, was an isolated incident and occurred due to ignorance. b) The claim of the complainant that he uses the addresses in question only to communicate with the EOPYY service is unproven and therefore unfounded. c) Business trips were made to northern Greece, specifically to ... in the area of Xanthi, Komotini and Evros, as well as to ... in the city of Thessaloniki. In the above trips the controller's representative met with professionals from various industries with whom they exchange product and market information. The complainant's e-mail addresses came to his knowledge from a partner in northern Greece who stated that the complainant was interested in conducting commercial transactions in the company's subject matter. For the above trips, relevant documents are attached to the memorandum, such as receipts from tolls and accommodation hotels. d) He did not use or possess any "hidden list" of illegal and dubious origin e-mail addresses. The majority of those to whom the e-mails were sent come from the business cards he has collected on B's business trips. Attached to his memorandum is a photocopy of the page showing the above business cards as well as a copy of the list of addresses to which the messages were sent. Bulk messages via platform were sent only once. e) The INFINITY PACK company is a start-up wholesale supply of pharmacy items founded on 04-01-2020. Its turnover for its first year of operation amounted to €82,015.25 with a net profit of €23,492.78, of which the attributable tax amounts to €5,638.27, while it was asked to pay an additional tax advance of €1973.39, now the end of the pretense. For the year 2021, the company's turnover amounted to €49,306.81, which is clearly reduced compared to the previous year. For the above financial data, VAT declarations are attached to the memorandum. as well as the company's monthly income statement. f) After the complaint, the data controller complied with the requirements of the law for the proper management and protection of data. Specifically, at 4 Kifisias St. 1-3, 11523 Athens, Tel: 210 6475600, Fax: 210 6475628, contact@dpa.gr / www.dpa.gr the website of the company Infinitypack.gr has integrated an Https security protocol, so that they are properly observed the necessary technical measures required for protection electronic communications through encryption. Furthermore, a privacy policy, a cookie policy and appropriate organizational and technical measures have been incorporated to ensure that no email address comes to the knowledge of the company before it is confirmed by the website visitor (by selecting the relevant "box") that he has received the appropriate information by reading the company's Privacy Policy and expressly declares his consent. In addition, for the registration of each user to the Newsletter, a discrete consent is now requested according to article 11 par. 1 of Law 3471/2006, in compliance with what the Authority on the Legality of Electronic Consent has prescribed with Directive 2/2011, while also, as specifically stated by the data controller, it has been chosen not

to apply the exception of article 11 par. 3 of Law 3471/2006, which allows, under conditions, to send messages of promotional content to the company's customers. The Authority, after examining all the elements of the file and those discussed in the 10-05-2022 meeting, after hearing the rapporteur and the clarifications of the assistant rapporteur, and after a thorough discussion, DECIDED IN ACCORDANCE WITH THE LAW 1. In accordance with the provisions of Articles 51 and 55 of the General Data Protection Regulation (EU) 2016/679 (hereinafter, GDPR) and Article 9 of Law 4624/2019 (Government Gazette A

137), the Authority has the authority to supervise the implementation of the provisions of the GDPR , of 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, a data controller 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 personal data processing". 1-3 Kifisias St., 11523 Athens, Tel: 210 6475600, Fax: 210 6475628, contact@dpa.gr / www.dpa.gr 5 3. Furthermore, in accordance with article 5 par. 1 of the GDPR, which defines the fundamental conditions for the legality of any processing of personal data, the data must be lawfully and legitimately processed in a transparent manner in relation to the data subject ("lawfulness, objectivity and transparency"), and must also be collected for specified, explicit and legitimate purposes and not to be further processed in a manner incompatible with those purposes ("purpose limitation"). Furthermore, according to Article 5 para. 2 of the GDPR, the data controller bears the responsibility and is able to demonstrate that personal data are processed lawfully and legitimately in a transparent manner in relation to the data subject ("principle of accountability"). 4. The more specific issue of sending messages, for the purposes of direct promotion of products or services and for any kind of advertising purposes, is regulated in article 11 par. 1 of Law 3471/2006, in which it is defined that "The use of automatic calling systems, in particular with use of facsimile (fax) or e-mail devices, and in general the making of 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 only permitted if the subscriber consents from expressly in advance." 5. 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. 1-3 Kifisias St., 11523 Athens, Tel: 210 6475600, Fax: 210 6475628, contact@dpa.gr / www.dpa.gr 6 6. From the examination of the details of the case file, it appears that the company INFINITY PACK , has proceeded as a data controller in sending e-mails of a promotional nature without the prior specific consent of the data subjects, as well as without a previous similar sale of products or services, in the context of which the e-mail contact details of the recipients were obtained of messages. And this is because the data controller provided the business cards of various persons to support his claims that he had their consent to send such messages, but from the mere fact that he had these cards in his possession it cannot be inferred that he has received their consent person, whose details appear on a business card, for sending promotional material. Besides, for some of the e-mail addresses to which e-mails were sent (including the complainant's addresses), the corresponding business cards were not provided either. 7. Furthermore, for the special case of the complaint, regardless of the fact that it has been revoked, the controller cannot accurately determine the source of the complainant's e-mail addresses, since he generally states that he receives business cards and contact and communication details of agents against during his travels, but without, as mentioned above, having the complainant's card in his possession. In this case, from the fact that the complainant's e-mail addresses have been created in a way that identifies communication only with a specific service (EOPYY) and are not used for other purposes, while, as the complainant states in his complaint (and does not effectively withdraw this claim even with the subsequent withdrawal of his complaint), they are not written on a communication card nor is there any other possible source of their origin beyond the EOPYY, it can be questioned whether the data comes from an internal system of the EOPYY. The data controller considers the complainant's claim that the specific e-mail addresses are only used for communication with EOPYY to be inaccurate and states that these addresses did not come from a "hidden list", but came to his knowledge from 7 Kifisias St. 1- 3, 11523 Athens, Tel: 210 6475600, Fax: 210 6475628, contact@dpa.gr / www.dpa.gr of a partner in northern Greece who stated that the complainant was interested in carrying out commercial transactions in the company's object and could not to miss the opportunity (with the data of that moment, i.e. after the corona virus period) to expand the company's customer base. However, the controller does not state exactly what the source of the complainant's data was (ie from which partner the complainant's data was provided). In any case, even if the details of the partner that was the source of the data were available, this does not constitute the complainant's consent to the sending of electronic messages and, therefore, it

follows that the controller was not adopting correct procedures regarding obtaining consent before sending promotional messages. Besides, it does not appear that the conditions for exemption from obtaining consent for the direct promotion of the supplier's products or services or for serving similar purposes, set out in the above article 11 paragraph 3 of Law 3471/2006, are met. Furthermore, according to what was stated in the previous paragraph, the data controller is not able to determine, for all the personal data it processed in view of the above-mentioned purpose, its source and, therefore, did not prove that the principle of transparency is met of the processing in accordance with its relevant obligation arising from the above-mentioned provision of article 5 par. 2 of the GDPR principle of accountability, with which a compliance model was adopted according to which the controller is obliged to plan, implement and in general takes the necessary measures and policies, in order for the processing of the data to be in accordance with the relevant legislative provisions and, in addition, must prove himself and at all times his compliance with the principles of article 5 par. 1 GDPR. Therefore, the processing referred to in the previous considerations constitutes a violation of article 5 par. 1 item. a' of the GDPR. The Authority, taking into account the above established violations of Article 5 para. 1 of the GDPR and Article 11 of Law 3471/2006, and also taking into account that: a) the case of the complaint (which was indeed withdrawn by the complainant) has an individual character, b) no other violations had been established in the past for the person in charge 8 Kifisias St. 1-3, 11523 Athens, Tel: 210 6475600, Fax: 210 6475628, contact@dpa.gr / www.dpa.gr

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processing,

c) the data controller, as soon as he became aware of the complaint, proceeded

in actions for its general compliance with the legal framework,

d) the controller responded without delay to her documents

principle,

e) the financial data of the company, as listed in its history

present,

deems that the conditions are met, on the one hand, to contact the data controller,

based on article 58 par. 2 b' of the GDPR, a reprimand which is considered effective,

proportionate and dissuasive, and on the other hand to impose against him, based on the article 13 of Law 3471/2006, in conjunction with Article 21 par. 1 item a of Law 2472/1997 (the which remains in force according to article 84 of Law 4624/2019) warning, the which is deemed proportional to the gravity of the violation, as stated in dispositive of the present.

FOR THOSE REASONS

The Authority, taking into account the above:

- 1) Reprimand based on Article 58 par. 2 b of Regulation (EU) 2016/679 to "INFINITY PACK EE" for the violation of the provision of article 5 par. 1 thereof Regulation (EU) 2016/679.
- 2) Enforces, based on articles 21 of Law 2472/1997 and 13 par. 1 and 4 of Law 3471/2006, in "INFINITY PACK EE" the sanction of the warning, for the above established violations of Article 11 of Law 3471/2006.

The president

The Secretary

Konstantinos Menudakos

Irini Papageorgopoulou

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