

Athens, 28-09-2022 Prot. No.: 2404 DECISION 46/2022 (Department) The Personal Data Protection Authority met, at the invitation of its President, in a regular meeting in the composition of the Department at its headquarters on 20/07/ 2022, in order to examine the case referred to in the history of the present. The meeting was attended by teleconference by Georgios Batzalexis, Deputy President, due to the disability of the President of the Authority, Konstantinos Menoudakos, and the alternate members Demosthenes Vougioukas and Maria Psalla attended, as rapporteurs in place of the regular members Konstantinos Lambrinoudakis and Grigorios Tsolia who did not attend due to disabilities although they were legally summoned in writing. The meeting was attended, by order of the President without the right to vote, by Haris Symeonidou, specialist 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: With the no. prot. C/EIS/2224/31-03-2021 complaint by A (hereinafter complainant), directed against the company Vodafone - PANAFON S.A.E.T. (hereinafter the complainant), which is received by a mobile phone subscriber, complaining about the non-satisfaction of his right of access to recorded calls made to the telephone service of the complainant on ... and time ... by a third party, who, during the complaint, identified himself with the details of the complainant and then proceeded to replace the SIM card of the complainant's number ... with another card that he had available as well as two subsequent recorded calls made on the same day between the hours of ... and ... by the complainant himself from his landline and from his wife's mobile phone. In particular, according to the complaint, following communication exchanged with the complainant in the context of the complainant's complaint to EETT and following the relevant suggestion of the complainant, the complainant submitted the ... in person to the Vodafone X store (...) the ... access requests of the above recorded calls. According to the complaint, the complainant's request was not met with any response. The Authority, in the context of examining the above complaint, with no. prot. C/EX/1614/29-06-2021 her document, invited the complainant to state her views on the complainants, clarifying in particular, whether a request was submitted by the complainant for access to recorded conversations which, according to the complaint, is alleged to had with him and they concern him, if and how he responded to the above request, stating at the same time, in case of non-response, the reasons for the delay. The complainant in her reply dated 07-14-2021 (with Authority's no. C/EIS/4721/15-07-2021) states that the requested conversations of the complainant have not been recorded, while she claims that incorrectly and by mistake in the document to EETT stated that, if the complainant submitted a relevant request, the calls would be sent to him. In particular, the complainant states that its policy, as it has been notified again in the past to the Authority, is to "only record calls related to

actions, concerning an agreement to enter into a new connection application, renewal or service upgrade and in particular the point of call that results in acceptance of the sale by the customer (negotiation & final confirmation of acceptance) or cancellation of an already existing one". In fact, in the same response, Vodafone notes that "... and your Authority, in light of the provision of article 4 par. 3 of Law 3471/2006 on the protection of personal data and privacy in the field of electronic communications, has considers that it is appropriate to record only acts that constitute a transaction or even a preliminary part of a transaction, such as for example the fact of acceptance by a subscriber of a specific offer". Thus, the complainant states that "For this reason, the above requested calls that were made on ... for the numbered ... mobile line, in accordance with the above applicable policy, were not recorded and this because their subject and content was related to [the] below: a. "replacement of the sim card of the number ...", b. "number blocking ..." and c. "replacement to the old sim card", as it results from the completion of the relevant field "Description of call content" by the complainant. It has simply been recorded in the company's information systems that calls were made on the above date" and claims that therefore it was incorrectly and in any case by mistake that it was stated in the respondent's reply letter to EETT from ... that the above calls would be given to the above subscriber if he completed the relevant application, which he attached. This is a form entitled "request for notification/deletion of a recorded call", which, according to the company's response, for the convenience of interested subscribers, has been posted at <https://www.vodafone.gr/vodafoneellados/enimerosi-kai-prostasia-pelaton/>. Furthermore, with the same document, the complainant states that in the context of notification of "sim swap" incidents to the Authority (see her letter from ... with G/EIS/8392/07-12-2020), the present case is also included. Finally, it asks to take into account the current conditions of the pandemic and the telecommuting of its employees and the consequent difficulty in collecting data, especially when the cooperation of various departments is required, as well as inadvertent failures that may occur and emphasizes that there was no intention on its part to dissatisfy of the complainant's relevant access request, stating that it intends to send the complainant a written response that will explicitly mention the above. website on 25/5/2022, upon request Following the above, the Authority, with G/EXE/1172/18-05-2022 and G/EXE/1171/18- 05-2022 summons to a hearing to the complainant and the complainant, respectively, invited the involved parties to a hearing at the Department meeting on 25/5/2022 in order to present their views on the case. During the meeting of the complainant, which was accepted by the Department, the discussion was postponed to 15/6/2022. During the discussion of 15/6/2022, the complainant A was present and on behalf of the complainant the attorneys-at-law of Emmanuel Chalkiadakis (AM Board of Directors...), Emmanouil Dimogerontakis (AM Board of

Directors...) and Konstantina – Maria Karopoulou (AM Board of Directors...)) and B, the company's Data Protection Officer.

During this meeting, the parties were given a deadline and submitted, on time, the complainant's memorandum G/EIS/8545/05-07-2022, and the complained-of memorandum G/EIS/8664/08-07-2022. representatives of The complainant, during the hearing and with his memorandum, repeated what was mentioned in his complaint, stressing that with the company's practice of not recording the calls in question, he is not in a position to check whether his telephone identification process unknown perpetrator was done correctly and that the same procedure was not followed to reset his sim card, but he himself had to go to a store, which raises questions as to the correctness of the original process of replacing the sim at the request of the unknown perpetrator. The complained Vodafone reiterated that the requested calls had not been recorded, presenting as Related 1 with its above memorandum and citing under no. prot. C/EIS/3057/06-05-2020 her document to the Authority, in the context of a meeting between the Authority and its Data Protection Officer on, among other things, the call recording policy, from which it appears that only calls are recorded through which a service renewal/upgrade or a new connection request is made, after the subject has confirmed that he accepts the offer and in any case after he has been fully informed about the recording of the call. The complainant stated that the complainant was mistakenly given incorrect information by the Complaints Department, that the calls could be granted if he completed the correct application form, as this was the norm. He also stated that the company informed the complainant albeit belatedly, with its letter of ... about the non-compliance with the recorded call requests, provided as Related 2 and citing the Data Subject Rights Management Procedure, which it has established and implements. Finally, with regard to the sim card replacement procedure, the complainant states that the issue is under consideration by the Plenary of the Authority before which a hearing of the company has already taken place, arguing that the employee was correct, following the relevant instructions of the company for greater security in the process, asked the complainant to go to a store to complete his sim card replacement request in person, given the previous fraud incident and the inability to evaluate the complainant's statements over the phone. It is noted that in the context of the above case which is pending before the Plenary, it has been submitted to the Authority by the complainant under no. prot. C/EIS/7738/6-6-2022 memorandum, in which it is stated that the telephone sim1 card replacement procedure has now been abolished. CONSIDERED ACCORDING TO 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 (Official 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. In particular, from the provisions of articles 57 par. 1 item f of the GDPR and 13 para. 1 "In October 2020, the informal Working Group of our Company [...] recommended the adoption of additional security measures regarding the SIM card replacement process by the requesting subscriber/SIM owner, which were adopted and implemented , and in particular: [...] Removal of the ability to replace a SIM card through our Company's call center (customer service department). Applicants must visit a Company store and submit their request in person. Alternatively, it is recommended to send the new SIM card only by registered letter with a parallel sending of an informative SMS to the telephone number to which the replacement request concerns." 1 pc. g' of Law 4624/2019 it follows that the Authority has the authority to deal with A's complaint against Vodafone - PANAFON A.E.T. and to exercise, respectively, the powers granted to it by the provisions of articles 58 of the GDPR and 15 of law 4624/2019. 2.

According to the provisions of article 15 par. 1, 3 and 4 GDPR: "1. The data subject has the right to receive from the controller confirmation as to whether or not the personal data concerning him is being processed and, if this is the case, the right to access the personal data [...]. 3. The controller provides a copy of the personal data being processed. For additional copies that may be requested by the data subject, the controller may charge a reasonable fee for administrative costs. If the data subject submits the request by electronic means and unless the data subject requests otherwise, the information is provided in a commonly used electronic format", while according to Article 12 para. 3 and 4 GDPR: "The data controller provide the data subject with information on the action taken upon request pursuant to Articles 15 to 22 without delay and in any case within one month of receipt of the request. This deadline may be extended by a further two months if necessary, taking into account the complexity of the request and the number of requests. The data controller shall inform the data subject of said extension within one month of receipt of the request, as well as of the reasons for the delay. [...]. 4. If the controller does not act on the data subject's request, the controller shall inform the data subject, without delay and at the latest within one month of receipt of the request, of the reasons for not acting and for the possibility of submitting a complaint to a supervisory authority and taking legal action". As pointed out in Guidelines 1/2022 of the EDPS on the right of access, it is a general principle of the right of access that the information provided must be complete and correct.^{2 3} Furthermore, when personal data concerning a data subject is collected from the subject of the data, the data controller, when receiving the personal data, provides the data subject with all the information defined in article 13 par. 1 and 2 GDPR. According to the OE 29 Guidelines on transparency (WP260 rev.01) when informing subjects, the information provided should be specific and definitive: "The use of language

designations such as 'may', 'certain', 'often' and 'likely' should also be avoided. Where data controllers choose to use vague wording, they should be able, in accordance with the principle of accountability, to demonstrate why the use of such wording could not be avoided and why it does not undermine the lawfulness of the processing." (§ 13). This rule, for the same reason, must also govern the information that subjects receive in response to a relevant access request under Article 15 GDPR, since as pointed out "The principle of accountability in terms of transparency does not apply only at the point of data collection of a personal nature, but also throughout the life cycle of the processing regardless of the information provided or the communication carried out" (§ 29).

4. In accordance with article 4 par. 2 and 3 of Law 3471/2006 on the protection of personal data and privacy in the field of 2 "2.3.2 Correctness of the information. The information included in the copy of the personal data given to the data subject has to include the actual information or personal data held about the data subject. This includes the obligation to provide information about data that are inaccurate or about data processing that is not or no longer lawful. The data subject may for example use the right of access to find out about the source of inaccurate data being circulated between different controllers. If the controller corrected inaccurate data before informing the data subject about it, the data subject would be deprived of this possibility. The same applies in case of unlawful processing. The possibility to know about unlawful processing concerning the data subject is one of the main purposes of the right of access. The obligation to inform about the unchanged state of processing is without prejudice to the obligation of the controller to end unlawful processing or to correct inaccurate data. Questions about the order in which those obligations should be fulfilled, are answered in the following."

(Guidelines 1/2022 on data subject rights – Right of Access, §36). by traffic only electronic communications are permitted; listening, interception, storage or other type of monitoring or surveillance of electronic communications and related traffic and location data is prohibited. The recording of conversations and related data is an exception, when it is carried out in the course of a legitimate professional practice for the purpose of providing evidence of a commercial transaction or other communication of a professional nature, provided that both parties, after prior information about the purpose of the recording, provide their consent. The Authority has judged that, where the recording of the conversations is legal according to article 4 par. 3 of Law 3471/2006, prior consent of both parties is not required but prior information of the party that does not have the initiative of the recording according to Article 11 of Law 2472/1997 (see also the Authority's annual report for 2006, p. 78). The notification required by law can also be carried out by means of a recorded notification before the start of the critical telephone conversation. Furthermore, with the Authority's decision 86/2015, it was decided that, given that the provider must have

mechanisms in place to check that the telephone communication with the consumer is in accordance with the applicable regulatory and legislative framework, the recording of telephone calls to the its customer service department is a legal professional practice, which aims to provide evidence of communication of a professional nature, therefore, in this respect it is accepted that art. 4 par. 3 of Law 3471/2006. In fact, in the case of changing a sim card via a telephone call, if such a possibility is provided, the recording of the call could be considered as an appropriate security measure, if the serious consequences and corresponding potential risks of this transaction for the subscriber are taken into account. However, it should be noted that the issue of replacing the complainant's sim card was raised incidentally and is not the subject of the complaint, given that the relevant practices and procedures of the company are examined by the Plenary of the Authority (sim swap incidents). 5. In the case under consideration, the following emerged from the information in the file: On ... and time ..., the customer service department of the complainant replaced the SIM card of the complainant's number with another SIM card that the caller had (from an unknown number) in his possession, after telephone identification with the information of the complainant. On the same day the complainant contacted the department by telephone customer service of the complainant twice, specifically on ...

from his landline, requesting the deactivation of the said card

SIM and on ... from his wife's mobile phone, requesting the replacement again

of his SIM card. A protest by the complainant to the company followed

via fax on ..., issue of a new SIM card on the same day from the Vodafone store

X and submitting a complaint to EETT, on In this context, with the from...

her reply to EETT - communicated to the complainant - h

complainant stated that the person who introduced himself by phone as A, "knew

all of his personal information and, after his identification, requested the

replacement of the sim card of his phone number ..., request that

we implemented immediately". Disputing this fact, the complainant

addressed the complainant again on ..., asking "to be given the

content of this call in detail, which of course it should be

recorded". With the from ... document to EETT - communicated to

the complainant - the complainant answered the following: "Regarding her notification of recorded calls requested by the consumer, please complete the attached application (includes relevant instructions on how to send it and what is necessary documents)". It is noted that this is the form entitled "APPLICATION SHARE/DELETE RECORDED CALL", which, according to response of the accused, "it has been posted for the convenience of stakeholders her

<https://www.vodafone.gr/vodafoneellados/enimerosi-kai-prostasia-pelaton/>", although from the visit of the above address it is found that it has not been posted above special form but a general form ("Request for Exercise of Rights Data Subject") to exercise all rights under the GDPR and not specifically for accessing recorded conversations. Then and subscribers web page in

according to the complainant's suggestion, the complainant filled in the ... and delivered the ... in person to the Vodafone X store (...) three requests of accessing the three above recorded calls (using a form per call). As it turns out, the complainant did not receive any response from part of the company until On ... he contacted the store by phone X, from where he was informed that his request could not be granted because he did not indicated in the application the number from which the first call was made, that is, from whom the unknown third party had called. However it does not seem to his was any explanation given regarding the other two requested calls, for

which he had filled in all the required information. On ... the complainant reported all of the above to EETT and on ... submitted the complaint in question at the beginning. In the context of examining the complaint, the complained company reported to the Authority under no. prot. C/EIS/4721/15-07-2021 document, that the solicited calls have not been recorded and that it was mistakenly referred to from ... her reply letter to EETT that the calls would be granted to complainant, if he completed the relevant application.

It follows, therefore, that the complainant did not respond with anyone way to the complainant's access request within the defined in the article 12 par. 3 GDPR deadline, nor informed him about it, in accordance with article 12 para. 4 GDPR, while the information given to the complainant regarding the processing of his data and the satisfaction of his right was incorrect: In particular, the complainant as controller, through of a document addressed to a public authority (EETT), created the belief to the complainant, as data subject, that the requested calls have recorded and can be granted to him. But then the complainant did not respond in any way for a period of three (3) months (from ... to ...) to according to article 15 GDPR his request for access to said calls. According to telephone communication that the complainant allegedly had with store X on ... he was not given a correct and satisfactory answer, since, regarding the 1st called him it was stated that the problem was the lack of data (number caller), and regarding the 2nd and 3rd call it was not clear to him why his request cannot be satisfied, while the incorrect one was maintained complainant's belief that the requested calls are recorded.

After the intervention of the Authority, the complainant stated that the requested calls were not recorded after all. Therefore, the information provided

as data controller on ... both EETT and the complainant as subject, regarding the processing of his data and satisfaction of his request was incorrect.

6. Following the above, from the information in the file and after the hearing procedure, the Authority finds on behalf of the complained company Vodafone violation of articles 12 par. 3 and par. 4 and 15 GDPR, due to the overdue (after submitting a complaint and intervention of the Authority) responding to the request access of the complainant, but also due to the incorrect information that provided to him regarding the satisfaction of his right, on the one hand in the context of the procedure before EETT and on the other hand in the telephone his communication with Store X on

7. Based on the above, the Authority considers that there is a case to exercise the v Article 58 para. 2 GDPR corrective powers, taking into account the following:

- the violation falls under article 83 par. 5 b GDPR and had a duration of more than 6 months (the right was exercised on ... and answered on ... after her intervention authority)

- previous violation of article 15 by the controller has established in the context of the Authority's Decision 19/2022, at which time reprimand addressed: <https://www.dpa.gr/el/enimerwtiko/prakseisArxis/epipliti-sti-vodafone-panafon-gia-mi-ikanopoiisi-dikaiomatos-prosbasis>

At the same time, the following are taken into account as mitigating factors:

- the infringement concerns a single subject
- the subject did not suffer damage due to the specific violation
- the infringement appears to have resulted from negligence
- the data controller cooperated with the Authority to rectify it violation and limiting its consequences

- the violation does not concern specific categories of data
- the establishment by the controller of an appropriate Policy

Rights Management of the subjects, which he presented after the hearing, as Related 2, show the compliance disposition of the company and updating according to the needs arising in practice.

Given the above, the violation is judged to be of minor importance (Ait. Sk. 148) and the Authority deems it appropriate to reprimand the complained-about company for incorrect and late response to his access request complainant.

FOR THOSE REASONS

THE BEGINNING

Addresses the company Vodafone - PANAFON A.E.T. as controller reprimand based on article 58 par. 2 sec. b' of the GDPR for the violation of the incorrect and late response to his access request pursuant to Article 15 GDPR complainant.

The president

George Batzalexis

The Secretary

Irini Papageorgopoulou