

Athens, 11-02-2021 Prot. No.: 608 DECISION 3/2021 (Department) The Personal Data Protection Authority met as a Department via video conference on 20-01-2021 at 11:30, 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. Konstantinos Limniotis, specialist scientist - auditor as assistant rapporteur and Irini Papageorgopoulou, employee of the Authority's administrative affairs department, as secretary attended the meeting, by order of the President. The Authority took into account the following: Complaint No. C/EIS/3748/27-05-2019 was submitted to the Authority, which concerns the receipt of unsolicited political communication by A (hereinafter 1-3 Kifisias Ave. 11523 Athens T: 210 6475 600 E: contact@dpa.gr www.dpa.gr 1 "complainant") to promote the latter's candidacy in the regional elections as In particular, according to the above complaint, the complainant received on ... a short text message (SMS) to his telephone number ... from the complainant, which was of a political nature for the purposes of promoting his aforementioned candidacy for the upcoming elections, during the disputed period , regional elections, 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/3748-1/12-06-2019 with which he requested his opinions on the complainants, taking into account the relevant guidelines issued by the Authority for political communication. Due to non-receipt of a response, the Authority re-sent the above document, by email on 4/11/2019, to another email address of the complainant which he indicated after telephone communication. Subsequently, the complainant responded to the Authority with document No. G/EIS/7441/11-11-2019, in which he states that throughout the election process (which was the first in which he participated) he only got to know the contact information of those citizens who gave it voluntarily, voluntarily and freely. During the period of ... he sent messages from his personal mobile phone only to his fellow citizens who had given his contact information voluntarily and voluntarily, without receiving any protest. For this particular case, he believes that some accidental renumbering was probably done when sending the messages. 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 LAW 2

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 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, according to article 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 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 the collection and using 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. In addition, according to paragraphs 1 and 4 of article 13 of the same law 3471/2006, regarding the observance of this law, the Personal Data Protection Authority has the 3 powers of law 2472/1997, as applicable from time to time, and imposes the penalties 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 means 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: The policy communication¹ is of interest from the point of view of the protection of personal data, 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 in parliamentary elections, European Parliament elections and local government elections. These

persons become data controllers, in accordance with the GDPR, article 4, para. 7, as long as they define the purpose and method of processing. For example, when MPs or candidate MPs receive data from political parties and process it for their personal political communication, they also become data controllers. In this capacity, they must be able to demonstrate compliance with their obligations and processing rules.

5. When political communication is carried out using electronic means of communication, without human intervention, through public communication networks, as is the case of electronic messages (e-mail), the communication requires, according to article 11 par. 1 law 3471 /2006, as applicable, the prior consent of the data subject, subject to paragraph 3 of the same article, as applicable. It is also pointed out that short text messages (SMS) are also messages

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

4 in accordance with the definitions of Law 3471/2006 and Directive 2002/58/EC.

6. Political communication using electronic means is permitted without human intervention and without the consent of the data subject only if the following conditions are cumulatively met: (a) The contact information has been legally obtained in the context of previous, similar contact with the data subjects, and the subject during the collection of the data was informed about its use 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. it is legal to send messages when the email data was collected in the context of a previous invitation to participate in an event or action, regardless of its political nature. On the contrary, it is not considered to constitute a similar contact and it 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. (b) The controller must provide the data subject with the possibility to exercise the right to object in an easy and clear way, and this in every message of political communication. The identity of the sender or the person must be clearly and clearly stated in every communication for whose benefit the message is sent, as well as a valid address to which the recipient of the message can request its termination of communication. Consent must be given in an unequivocal affirmative action which constitutes free, specific, express and full knowledge indication of the agreement of the data subject in favor of the processing of data concerning it.

7.

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

carried out, as a controller, political communication by dispatch

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

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is ensured if the provisions mentioned in the above Thoughts 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. As he points out,

said mission is probably due to human error since the

contact details of the recipients of the messages he sent had

come into his possession after his free and express consent

(without, however, providing evidence of this).

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 data controller cooperated with the Authority by responding to

document for clarification, providing the information requested in

memorandum he submitted.

9.

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.

10.

Based on the above, the Authority considers that, taking into account article 13

of Law 3471/2006, the conditions for enforcement against him according to

article 21 par. 1 item b' of Law 2472/1997 on administrative sanction, which is mentioned in the operative part of the present, which is judged to be proportional to its gravity violation.

11.

Based on the above, and also taking into account that the person in charge processing has not previously been a candidate in an election contest, the Authority unanimously judges that according to article 11 of Law 3471/2006 there are the conditions of enforcement at the expense of the controller, based on the one hand Article 13 of Law 3471/2006, in conjunction with Article 21 par. 1 item. b' of n. 2472/1997 and with article 84 of Law 4624/2019, on the administrative sanction, which referred to in the operative part of the present, which is judged to be proportional to the gravity of the violation.

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FOR THOSE REASONS

The Authority imposes, based on articles 21 of Law 2472/1997 and 13 par. 1 and 4 of Law 3471/2006, to A the sanction of the warning, for the above established violations of Article 11 of Law 3471/2006.

The Deputy President

George Batzalexis

The Secretary

Irini Papageorgopoulou

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