

GREEK EMPIRE

PRINCIPLE OF PROTECTION OF E OMEN

OF A PERSONAL CHARACTER

Athens, 13-09-2019

Prot. No.: G/EX/6216/13-09-2019

A P O F A S I NO. 29/2019

(Department)

The Personal Data Protection Authority met in composition

of the Department at its headquarters on Wednesday, March 6, 2019 following the invitation of the President

of, in order to examine the case referred to in the history of the present.

Georgios Batzalexis, Deputy President, was present, as an obstacle

of the President of the Authority, Constantos Menoudakos, and the alternate members

Panagiotis Rontogiannis as rapporteur and Evangelos Papakonstad nou, in replacement

of the regular members Antonios Symvonis and Konstantinos Lambrinoudakis who

they were only summoned in writing, they did not attend due to obstruction. The regular member

Charalambos Anthopoulos and his deputy Grigorios Tsolias, although they were summoned

but only in writing, they did not attend due to obstruction. The meeting was attended by

order of the President, George Panagopoulos expert scientist-auditor as assistant

rapporteur and Irini Papageorgopoulou, an employee of the Administrative Department of

Authority, as secretary.

The Authority took into account the following:

No. was submitted to the Authority. prot. C/EIS/6870/16-08-2018 complaint of A

who reported that on 7/8/2018 at 4:00 p.m. he received a call on his phone number

advertising call for medical services, while the user has recorded his number (...)

in the register of no. 11 of Law 3471/2006 of its provider from 4/8/2015. Her provider

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of the natural person in question is the Organization

Hellas Telecommunications S.A. (hereafter OTE).

The Authority informed the company on whose behalf the call was made

the complainant asking for her opinions, with no. prot. G/EX/6870-1/05-09-2018

her document. The company in question replied pointing out that its telephone number

complainant did not appear in the register received from his provider (OTE). THE

the company states (prot. no. C/EIS/7456/18-09-2018) that it requested the register on 6/7/2018.

As a question was raised as to whether he had actually been included in the register of no. 11 of n.

3471/2006 the number of the complainant, the Authority requested from OTE with no.

prot. C/EX/6870-2/19-09-2018 her document to inform about the following: a) The detailed

period during which the registration of the complainant's number was active

its subscriber in the register of no. 11 of Law 3471/2006, b) whether this number

sent to the advertised company at its request prior to the event

of the relevant calls and c) every element that is available to the provider.

OTE responded with its document G/EIS/8651/01-11-2018. In it he states that

while the telephone number was entered in the register at the time mentioned by

complainants, was deleted from it due to a technical error in the portability process.

Specifically, the subscriber submitted on 01-08-2017 a request to change provider with

portability, which he canceled a day later. By submitting the request

portability, OTE deleted the data from the article 11 register, without

restores after canceling said request.

OTE reports that the technical error was corrected with the installation

patch on 4/10/2018 while all subscriber numbers for those

has been incorrectly removed from the registry following a portability request

rejoined the register on 14/10/2018. Note that the complainant (A) has

submit between 16/8/2018 and 15/11/2018 twelve (12) different

complaints about receiving telephone promotional calls.

With the no. prot. C/EX/10204/18-12-2018 its document the Authority invited

OTE as present at the meeting of its department on 09/01/2019 in relation to the

due case and a similar complaint by the subscriber. OTE was represented

in this session by Eleni Gerutsis, lawyer with A.M.D.S.A...., Panagiota

Kurtis, lawyer with AMDSA ... and B, ... CRM, while C Responsible was also present

Group Data Protection. OTE, after receiving a deadline, filed the no.

C/EIS/422/21-01-2019 memo, in which it is stated that the problem concerns 7,499

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subscribers after 2016 and to around 8,700 subscribers, without being able to

to confirm the last number. OTE confirms that it has corrected it

error and rewriting the numbers in the register.

The Authority, after examining all the elements of the file, after listening to him

rapporteur and the clarifications of the assistant rapporteur, who left after the debate

and before conference and decision making, and after thorough discussion,

THOUGHT ACCORDING TO THE LAW

1. The issue of telephone calls, for the purposes of direct product promotion or

services and for both advertising purposes, is regulated in article 11 of the law.

3471/2006, in which the relevant unsolicited communications are defined (see par. 1

and 2). It is noted that, with the provisions of article 16 par. 1 and 2 of Law 3917/2011

paragraphs 1 and 2 of article 11 of Law 3471/2006 were amended, so that with article 11

par. 1 of Law 3471/2006 now stipulates that: "The use of automatic systems

call, i.e. using facsimile (fax) or e-mail devices,

and more generally the making of unsolicited communications by any means

electronic communication, without human intervention, for direct purposes of commercial promotion of products or services and for each and every advertiser purposes, is permitted only if the subscriber expressly consents in advance", while paragraph 2 of the same article stipulates that: "It is not allowed to making unsolicited communications with human intervention (calls) for the above purposes, as long as the subscriber has declared to the provider of our publicly available service, that he generally did not wish to receive such calls.

The organization is obliged to register these declarations free of charge in a special list subscribers, which is at the disposal of every interested party".

The law provides for the creation of registers of objections ("opt-out") in each provider and the subscriber can declare free of charge, to his own service provider electronic communications, that he did not wish to receive telephone calls for directly let commercial promotion. Therefore, each provider bears, with the aforementioned provision, the obligation to keep, with these declarations, a Public Register that he made

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a public purpose and accessible to anyone who is interested in it use for direct commercial promotion.

2. Further, the telephone number of a natural person was personal given, since it can function as an indirect identification element of the owner of (cf. article 4 par. 1 of Regulation (EU) 2016/679 hereinafter GDPR), allowing the contact him. It is also pointed out that, in accordance with Opinion 4/2007 of working group of article 29 of the E.U. about the concept of personal of data, especially during the operation of electronic services, an indirect element identification, can sufficiently in some cases distinguish a person from others in the context of a specific set, even if it has not happened expungement of his name.

3. The principle of accuracy is fundamental in the processing of personnel data character (see no. 5 par. 1 c GDPR). Furthermore, based on article 32 of the GDPR, o data controller shall apply appropriate technical and organizational measures in order to ensure an appropriate level of security against risks, taking into account the latest developments, implementation costs and the nature, field application, the context and purposes of our processing, as well as the risks different probability of occurrence and severity for the rights and liberties of natural persons.

4. Taking into account that from the examination of the complaint in question a wider issue emerged issue of not properly maintaining the register of article 11 of Law 3471/2006 as a consequence technical error during the process of removing a subscriber portability request OTE, according to what is mentioned in the company's memorandum, the Authority considers that you must examine the said complaint in the context of the wider incident and to invite the company to a hearing again.

FOR THOSE REASONS

The Personal Data Protection Authority:

Accepts the validity of the complaint as stated in the history of the present and refers the case for a comprehensive examination with a new summons, where it will examine the wider incident of improper record keeping of article 11 of Law 3471/2006 by OTE.

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The Deputy President

The secretary

George Batzalexis

Irini Papageorgopoulou

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