

Athens, 13-01-2023 Prot. No.: 126 DECISION 2/2023 The Personal Data Protection Authority met, at the invitation of its President, in an extraordinary meeting at its headquarters on 12-20-2022, in order to examine the case referred to in the history of the present. Konstantinos Menudakos, President of the Authority and the regular members Spyridon Vlachopoulos, Konstantinos Lambrinoudakis, Charalambos Anthopoulos, Christos Kalloniatis, Aikaterini Iliadou and Grigorios Tsolias were present as rapporteur and the substitute member Demosthenes Vougioukas as rapporteur, without the right to vote. At the meeting, without the right to vote, Eleni Kapralou, specialist legal scientist, Georgios Rousopoulos and Efrosyne Siougle, specialist IT scientists, as assistant speakers, and Georgia Palaiologou, an employee of the Department of Administrative Affairs, as secretary, attended the meeting, without the right to vote. The other lecturer's assistant, Kalliopi Karveli, was absent due to a disability. The Authority took into account the following: terminal devices of persons in Following publications in the press about the use of spy software to monitor the Greek Territory, the Authority, acting ex officio, requested the European Parliament, with the number of Prot. C/ENE/1938/ 28-07-2022 her document, a copy of the relevant report regarding A's mobile telephone communication terminal device, and at the same time requested from him, with document No.

C/EXE/1939/28-07-2022 of, more detailed information 1-3 Kifisias Ave., 11523 Athens T: 210 6475 600 E: contact@dpa.gr www.dpa.gr 1 before the Prosecutor of the Supreme Court regarding as well as a copy of the petition he had filed with the Prosecutor's Office Supreme Court. A submitted to the Authority the report-complaint No. C/EIS/9312/03-08-2022, with which he notified it of the indictment he had filed for the alleged attempt to trap the terminal device of his mobile phone with the monitoring software "Predator" as well as the relevant report of the Special Service of the European Parliament, requesting that the Authority act, within the framework of its powers, as the Law stipulates and, if relevant evidence emerges, the imposition of any prescribed sanction. Following investigations by the Authority and numerous press publications, which connected the company Intellexa S.A. with the above-mentioned monitoring software, and the orders No.

G/EXE/2272/14-09-20221 and G/EXE/2280/15-09-20222 of the President of the Authority, a control group consisting of the of Speakers D. Vougioukas and assistant Speakers K. Karvelis, G. Rousopoulos, E. Siougle carried out on 15-09-2022 an on-site administrative audit at the headquarters of the company Intellexa A.E., at 1 Nestoros Street, P.K. 15231 in Chalandri, as it appears from the data posted on GEMI3. Intellexa S.A., as can be seen from its articles of association published in GEMI, aims, among other things, to provide services related to the design and development of applications, networks and systems, software and technological solutions in general, but and data processing services. During the on-site inspection, it was

established that the company Interlog S.A., which provides accounting services to the company Intellexa A.E., has a facility at the address in question. (as I performed the processing), for part of the year 2022. Following a dialogue with executives of the company Interlog S.A., they were asked for the period of time, in which Interlog S.A. provides services to Intellexa A.E., a series of facts about Intellexa A.E., specifically its recent statement 1 It concerns Intellexa A.E. 2 It concerns Interlog S.A. 3. E. to EFKA. During the above inspection, and after it was established that at the official headquarters of Intellexa S.A. there is no real facility of this company, there was communication with the attorney of the company, Andreas Mitchaina. Finally, the Authority informed the company's attorney and its legal advisor, Andros Pelekanos, about an imminent inspection of the company's premises in Elliniko within the shortest possible time. Following the company's letter No. C/EIS/10397/23-09-2022, with which the latter requested the postponement of the audit for Monday 03/10/2022, the Authority sent the company Intellexa A. E. the document No. G/EX/2374/27-09-2022, with which he pointed out that for the proper conduct of the audit on Monday 3/10 at 10:00 a.m. required: - Access to the company's facilities in Elliniko Attica. - Access to the technological infrastructure that supports the processing, regardless of whether this infrastructure is located at the facility in question or elsewhere (e.g. via cloud computing). - Presence of appropriate personnel to provide the necessary information about the company's processing activities and to support access to the technological infrastructure and the data held. Before the audit, the Authority was provided with the information requested by the company Interlog S.A. with cases No. C/EIS/10544/29 -09-2022, C/EIS/{10586,10587}/30-09-2022 and C/EIS/{10619,10620}/03-10- 2022 of its documents, after a reminder with the Authority's letter No. G/EXE/2388/27-09-2022 and following the response of the Authority with No. G/EIS/10543/29-09-2022 Attorney of Intellexa S.A. in which it is stated that "...apparently due to a misunderstanding, we considered that we would provide you with the information in question on Monday, October 3, 2022, where the authorized lawyers of the audited 3 company requested that your Service visit the company's offices in Elliniko. In any case, the information in question that you requested will be sent to you within the day..." The above-mentioned audit team of the Authority carried out on 03/10/2022 an on-site administrative audit at the premises of the company Intellexa S.A. in the Greek. Andros Pelekanos, legal advisor, Andreas Mitchainas, attorney of the company, B, technical advisor of the lawyers, and C, executive of the Cypriot company FEROVENO LIMITED, representative of the group companies, participated in this on-site audit on behalf of the audited company. . During the inspection, the company's three-story building in Elliniko was found completely empty and without a functioning network infrastructure or information system. An interactive discussion of the audit team was held with the above persons and the

audited company was asked to provide the specific data, which were explained in detail during the audit and for which the auditees took notes, so that they could respond immediately, as they verbally assured. It is indicated that, as the representatives of the audited company claimed, some of the information was already available, as it had been handed over to the National Transparency Authority⁴. After the on-site inspection, Intellexa A.E. submitted to the Authority the request No. G/EIS/10682/04-10-2022 in which it requested that the audit questions be sent to it in writing, arguing that it was impossible to effectively and accurately draft the questions raised by the audit team based on rough notes taken during the audit, due to the complexity and particular technical nature of the matter. The Authority sent Intellexa S.A. the document No. C/EX/2481/06-10-2022 with the questions of the audit, in which the ⁴ It is pointed out that the Authority had asked the National Transparency Authority (NAA) for its conclusion in relation to the control of companies including Intellexa A.E., which he received with the document no. prot. evidence. ⁴ answer questions were categorized into twenty-four (24) question points,⁵ which include the data provided by the participants during the audit, and requested the provision of the requested information and evidence as quickly as possible, informing that this can be done and departmental. He also pointed out that in case the requested information is not provided in a question, the company should clearly and specifically document the reasons for non-response separately for each question. Despite multiple telephone assurances by the company's lawyers to auditors of the control group that the data would be sent, the company submitted to the Authority, by e-mail on 10-21-2022, No. C/EIS/11225/24 -10-2022 document, in which he stated, among other things, that "(...) ¹⁰. Unfortunately, the days following the audit at the offices in Elliniko included a series of reports in the Greek media referring to the audit and to information that provided in Greek Personal Data Protection Authority from company representatives during the audit. ¹¹. According to these reports, many former Intellexa AE employees were recently approached and harassed by journalists. ¹². Our principal is currently in the process of finalizing the responses and we advise you that we expect to submit relevant responses early next week. The company states that it is of the utmost importance, in the meantime, that assurances are provided by Your esteemed authority that the answers and information provided will be used solely for the purposes of the official audit and that strict and compelling measures will be taken to ensure that the information will remain strictly confidential." The Authority responded with document No. G/EX/2677/24-10-2022 that it expects full and documented answers to all the audit questions as soon as possible and that it is unnecessary to remind that the provided ⁵ Some questions include more individual questions. ⁵ information will be kept confidential and used exclusively for the purposes of the audit. Given that the company never

answered the Authority's questions despite the former's assurances to the contrary and despite the above mentioned and the notification from 11/11/2022 of the company's attorney that he will send the answers on 14/11/2026, the Authority proceeded with the summons to the hearing of Intellexa A.E. No. Prot. C/EX/2928/18-11-2022. before it, for the meeting of 29-11-2022 with the purpose of checking its compliance with the requirements of article 31 of the GDPR. According to this article: "The controller and the processor and, where applicable, their representatives shall cooperate, upon request, with the supervisory authority in the exercise of its duties." The summons to the hearing of the company became imperative also for the essential reason that, following the on-site administrative controls, questions were put to the company in writing that had been formulated in the context of the control and for which it had not provided an answer, despite the passage of time of forty (40) days. A few hours after sending the call, by email on 11-18-

2022 at 4:35 p.m., the company sent a response to the audit questions, which received reference number C/EIS/12125/28-11-2022. Furthermore, it is noted that in response to some of the questions, Intellexa SA. it did not provide information which the Authority had requested and which was indisputably in its possession, without requiring any special action on its part to provide it. In particular, the answers to the following questions are mentioned: and (as Q. 11: Provide invoices and receipts customer-supplier declarations) from the start of operation to date – apart from those already given by Interlog – and Please consider this answer as an authorization on behalf of Intellexa S.A. to you, in order to receive any item sent by the Company to Transparency, Beginning on 6 See page 4 of Intellexa S.A.'s memorandum No.

G/EIS/12456/09-12-2022 6 including full access to Your Service, to all documents submitted to the Transparency Authority.

We reiterate our expectation that the competent authorities in Greece should act in a coordinated and consistent manner. See the answer to question 11 above. provide all material sent to the National Transparency Authority. Q15: Please provide all of your company's contracts with the Group companies or any company for which it has developed software or hardware, of the contracts with Intellexa BVI and Intellexa Ireland. including It should be noted that during the audit it was reported that the information provided to the National Transparency Authority was available and could be submitted to the Authority in a very short period of time. During the meeting held by teleconference, the company Intellexa S.A. appeared through the lawyer of A. Mitchaina and the legal advisor A. Pelekanos, while filing the case number C/EIS/12456/09-12-

2022 memorandum, with which it claims, among other things, that "...Intellexa S.A. has chosen to ignore its justified reservations and to cooperate with various investigations and audits that have been launched, simultaneously, by many

different Greek authorities, as well as by the Data Protection Authority, always respecting the obligation deriving from article 31 (...) (...) The answers to the long list of questions asked by your Service required the collection of a large amount of information and the processing of it at a time where, as we had already notified you and as it was found on the day of the on-site inspection, our company was essentially not operating and there was no possibility for an immediate response from the legal representative. However, despite the existence of the known problems, which our company was called upon to deal with through no fault of its own, we tried to respond to the questions raised to the best of our ability. On 21/10/2022 we sent a letter to your Service informing you that we were already in the process of finalizing our answers and that we were going to submit the relevant answers in the next period of time. Throughout the intervening time, our company made every possible effort to cooperate and communicate with your Service and to answer all questions. Any delay observed from our side is solely due to the objective difficulty which exists due to the inactivity of the company's operation and lack of human resources, as well as due to the increased workload of attorneys, etc. Andros Pelekanou and Andrea Mitchaina. (...) (...)our company makes every possible effort to comply with the provisions of Article 31 of the GDPR and to cooperate with the Greek Authorities to which it has already provided detailed information and answers whenever it has been called to this end. Finally, it should be noted by your Service that Intellexa S.A. cooperated diligently with several Greek Authorities in the last months. The company recently provided more of the required information and related documents to the National Transparency Authority and the Investigative Committee of the Hellenic Parliament." The Authority, after examining all the elements of the file and what emerged from the hearing process after hearing the rapporteurs and assistant rapporteurs, after a thorough discussion 8 CONSIDERED ACCORDING TO THE LAW 1. The Authority, based on article 13 par. 1 ed. of Law 4624/2019 has the authority to "conduct ex officio or following a complaint investigations or controls for the implementation of this law and other regulations concerning the protection of the individual against the processing of personal data (...)". This competence of the Authority confirms its powers of investigation, as specified in article 58 paragraph 1 of the GDPR, according to which it can "give an order to the controller and the processor and, where appropriate, to the controller's representative processing or the processor to provide any information it requires for the performance of its tasks" (section a), to "conduct investigations in the form of checks" (section b), to "obtain, from the controller and the processor, access to all personal data and all information required for the performance of its duties" (section e) and to "have access to the premises of the controller and the processor, including any equipment and means of data processing, in accordance with the procedural law of the Union or a member state" (section f). 2. The

investigative powers of the Authority are defined in particular in article 15 par. 1 of Law 4624/2019, where it is stated that "In addition to the powers provided for in article 58 of the GDPR, the Authority conducts ex officio or following a complaint investigations and checks regarding compliance with this law in the context of which the technological infrastructure and other means, automated or not, that support the processing of personal data are controlled. When conducting investigations and audits, the Authority has the authority to obtain from the data controller and the processor, access to all personal data that is the subject of processing and all the information required for the purposes of the relevant audit and execution of her duties, without any kind of confidentiality being able to oppose her. Exceptionally, the Authority does not have access to identity information of associates or employees of entities contained in records kept for reasons of national security or for the investigation of particularly serious crimes." 3. In article 31 of the GDPR it is defined that "The controller and the processor and, where appropriate, their representatives cooperate, after request, with the supervisory authority for the exercise of its duties." The arrangement

this forms part of the general accountability obligations of an entity

(controller or processor), which are included in the section

1 of Chapter IV of the GDPR. According to article 83 par. 4 of the GDPR, violation

of this provision entails, in accordance with paragraph 2 of the same article,

administrative fines up to 10,000,000 euros or, in the case of businesses, up to

2% of the previous year's total global annual turnover

financial year, whichever is higher.

the beginning

installation

investigates cases

4. In this case, as it appears from the information in her file

software

case,

tracking on users' mobile terminals, with the purpose of

their unknowing monitoring, as well as the consequent collection and

processing of personal data collected by such software. For this purpose, an administrative audit is underway company Intellexa SA which, after all, as also confirmed by purposes which are mentioned in its statute, it can act either as controller or as processor in relation to investigated activities.

5. The Authority finds that Intellexa SA. has been unreasonably delayed to respond to its requests and has not provided information which are in its possession and were requested by the Authority. Specifically:

a) The company was too late to respond to the Authority's questions and responded after repeated reminders by the control group and then after a period of time exceeding forty (40) days, only after received her summons to a hearing before the Authority. This period of time cannot be considered in any way as reasonable. It is even noted that with its document No. C/EXE/2481/06-10-2022 the Authority had informed the company that providing the answers could also be done in parts. THE

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position of the company, according to which every effort was made of cooperation with the Authority, is presented without proof and in any case is not justified so long delay. On the contrary, from the actions of the company, such as is also proven by what is included in the case number C/EIS/11225/24-10-2022 document, it appears that its assurances of cooperation and of sending the documents were exclusively verbal. Suffice it to say that the company stated in writing on 10-21-2022 that it expects to submit the answers "early next week" when he finally filed them her answers after the lapse of four weeks.

b) The company, despite repeated complaints, did not provide specifics information requested by the Authority and concerning Questions 11 and 15 (financial and contract data in relation to its activities).

In particular, instead of providing the requested data, it referred to the data which he had granted to the EAD in the context of a different administration control carried out by the latter. It is specifically pointed out that instead of providing the data, the company claimed the following: "We repeat the our expectation that the competent authorities in Greece should act coordinated and consistent". The perception expressed by the company at this point it completely ignores the independence of the control procedures conducted by the Authority, which is a direct consequence of itself securing its independence both at the level of constitutional rules, as and at the level of EU law rules, it is related to the effective exercise of its duties within the statutory purpose of the protection of personal data. In view of these and taking into account different purpose pursued in each of the cases of implementation control, there is no question of administrative coordination in the sense implied from the company. In addition, although the company had reported during the audit that responses to the EAD were immediately available and would be sent directly to the Authority, this never happened. After all, the data that Intellexa A.E. provided to the EAD concern a limited period of time and only in relation to public service relations with it. As a result, they recommend little just subset of those requested by the Authority. In any case, the company had,

undisputedly, in its possession the aforementioned data requested by the Authority and chose not to grant them to the Authority. It follows from the above findings

that the Intellexa SA company has breached the obligation by choice

cooperation with the supervisory authority of Article 31 of the GDPR.

6. The Authority also takes into account that the nature and gravity of the violation is particularly serious. The established violation is included in those of article 83 par. 4 of the GDPR (violations with a maximum amount of 10,000,000 euros) and concerns the personal data processing activities being investigated of the company, from the year 2019 to 2022, which are related to production, support and operation of software/hardware solutions for processing of all types of personal data, not excluding specialists categories of personal data. Furthermore, the company has full knowledge of it institutional framework and chooses not to cooperate. It is also taken into account annual turnover of Intellexa S.A. for 2021 (5,481,120.55 euros), as emerges from GEMI's data.

7. Based on the above and subject to the exercise of its powers according to GDPR based on the results of the audit carried out, the Authority decides unanimously that, in view of the violation found and taking into account the above elements meet the conditions for enforcement against her company of the administrative sanction of the fine, based on article 58 par. 2 sec. i GDPR, referred to in the operative part of the present, which is judged effective, proportionate and dissuasive. For the measurement, the Authority receives taking into account the criteria of article 83 par. 2 of the GDPR, as specified in prior consideration, based on guidelines for implementation and the determination of administrative fines for the purposes of regulation 2016/679 issued by O.E. of article 29 and have been adopted by European Data Protection Board.

In addition, as the Authority's audit is ongoing and the data which

the Authority requested from Intellexa SA. are critical to the exercise of
of its powers, the Authority unanimously decides that, in addition to the fine,
instruct Intellexa S.A., based on article 15 par. 4 sec. d' of n.

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4624/2019, and to impose the immediate delivery of the information to the Authority
requested by questions 11 and 15, as listed above.

FOR THOSE REASONS

The beginning:

a) imposes, on Intellexa S.A., based on article 58 par. 2 sec. i' of the GDPR, the
effective, proportionate and dissuasive administrative fine which
appropriate in the specific case according to the special circumstances
thereof, in the amount of fifty thousand (50,000.00) euros, for the above established
violation of Article 31 of the GDPR.

b) instructs Intellexa SA, based on article 15 par. 4 sec. d' of n.
4624/2019, and requires the immediate delivery to the Authority of the following items aa)
invoices and receipts (as well as customer-supplier statements) from
company launch to date – in addition to what it already has
provides the Authority with Interlog A.E., bb) all information sent to
National Transparency Authority and c) all the company's contracts with any
company and which are related to production, manufacture, customization or
processing in any software or hardware way, including
of the contracts with Intellexa BVI and Intellexa Ireland.

The president

Konstantinos Menudakos

The Secretary

Paleologo Georgia

