

GREEK REPUBLIC PERSONAL DATA PROTECTION AUTHORITY Athens, 13-09-2019 Prot. No.: C/EX/6223/13-09-2019 A
P O F A S I NO. 31/2019 (Department) The Personnel Data Protection Authority Charaktira met as a Department composition at its headquarters on Wednesday, July 24, 2019 at 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 Menoudakou, the regular members Konstantinos Lambrinoudakis and Charalambos Anthopoulos and the alternate member Panagiotis Rontogiannis were present as the rapporteur and to replace the regular member Antonios Symvonis who, although legally summoned in writing, did not attend due to disability. Georgia Panagopoulou and George Roussopoulos, expert scientists and auditors, attended the meeting as assistants to the rapporteur, by order of the President. Irini Papageorgopoulou, an employee of the Administrative Department of the Authority, was also present, by order of the President, as secretary. The Authority took into account the following: Complaints numbered C/EIS/5535/21-06-2018 and C/EIS/6870/16-08-2018 of natural persons of telephone subscribers of the Hellenic Telecommunications Organization were submitted to the Authority S.A. (hereafter OTE). The Authority investigating the complaints at its department meeting on 6/3/2019 found that the advertised companies correctly reported that the telephone numbers of the individuals in question were not included in the opt-out registers they had received from L. Kifisias 1-3, 11523 Athens, Tel.: 210-6475600, Fax: 210-6475628, contact@dpa.gr, www.dpa.gr OTE. From the data submitted with OTE's memorandum No. C/EIS/422/21-01-2019 it emerged that the specific problem concerns 7,499 subscribers after 2016 and approximately 8,700 subscribers for the previous period, without it is possible to accurately confirm the last number. The Authority found that the non-sending of the telephone numbers of the OTE subscribers in question to the advertised companies was the result of a technical problem which has affected a significantly larger number of subscribers and considered that it should refer the case for a comprehensive examination with a new call, in which it will be examined the wider issue concerning the improper maintenance of the register of article 11 par. 2 of Law 3471/2006 (hereinafter "register no. 11") by OTE. With its document No. C/EX/2247/22-03-2019, the Authority invited OTE to attend the meeting of its department on 10/04/2019 in relation to the case in question. OTE was represented at this meeting by Eleni Gerutsi, lawyer, Panagiota Kourtis, lawyer, A and B employees of the ... department, while C, the Group's Data Protection Officer, was also present. Although OTE was given a deadline, it did not file a memorandum, as its representatives pointed out that its views had been detailed in its document No. C/EIS/422/21-01-2019. In said document it is stated that the company registers the details of its subscribers in the customer

relationship management (CRM) system Siebel, which is connected to the website (portal) of OTE, from where those interested can obtain the details of the register no. 11. It was found that the interface code between Siebel and the portal did not work properly, resulting in the image of a certain category of subscribers not being transferred from Siebel to the portal. In particular, when a subscriber included in the register no. 11 submitted a portability request, the process of deleting from Siebel and then from the portal both subscribers and their options, including the option of registry no. 11. When a subscriber revoked the portability request, their details were re-registered in Siebel but due to a bug in the code, that image was not transferred to the portal. OTE reports that as soon as it became aware of the problem, it proceeded to correct the code, rechecked its subscribers' registrations, identifying the problems and re-entering all these numbers in the register. The affected subscribers were 7,499 subscribers from 2016 onwards and are estimated at around 8,700 subscribers for the previous 2 time period. OTE states that the problem had not been noticed because even if a subscriber asked if he was registered in register no. 11, he would receive a positive answer from the employees, based on the information in the Siebel system. The Authority, after examining all the elements of the file, after hearing the rapporteur and the clarifications of the assistant rapporteurs, who left after the debate and before the conference and decision-making, and after a thorough discussion, CONSIDERED

ACCORDING TO THE LAW 1 The issue of telephone calls for the purposes of direct promotion of products or services and for any kind of advertising purposes is regulated in article 11 of Law 3471/2006, which defines the relevant unsolicited communications (see par. 1 and 2). It is noted that, with the provisions of article 16 par. 1 and 2 of law 3917/2011, par. 1 and 2 of article 11 of law 3471/2006 were amended, so that with article 11 par. 1 of law 3471/ 2006 is now defined as: "The use of automatic dialing systems, in particular using facsimile (fax) or e-mail devices, and more generally 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, it is allowed only if the subscriber expressly consents in advance", while paragraph 2 of the same article states that: "It is not allowed to make unsolicited communications with human intervention (calls) for the above purposes, as long as the subscriber has declared to the provider of the service available to the public, that he generally does not wish to receive such calls. The body is obliged to register these statements free of charge in a special list of subscribers, which is available to anyone interested". The law provides for the creation of opt-out registries with each provider and the subscriber may indicate, free of charge, to his electronic communications service provider that he does not wish to receive direct marketing telephone calls. Therefore, each provider bears, with the

above-mentioned 3 provision, the obligation to keep, with these statements, a Public Registry that serves a public purpose and to which anyone interested in using it for direct commercial promotion has access. 2. Furthermore, the telephone number of a natural person is personal data, since it can function as an element of indirect identification of its owner (cf. article 4 par. 1 of Regulation (EU) 2016/679 hereinafter GDPR), allowing communication with him. It should be noted that, according to Opinion 4/2007 of the working group of Article 29 of the E.U. on the concept of personal data, especially in the operation of electronic services, indirect identification elements, can in some cases sufficiently distinguish a person from others within a certain set, even if his name has not been verified. 3. From the combination of the two considerations above, it follows that each provider becomes a data controller for the purpose of maintaining the register of art. 11 par. 2 of Law 3471/2006, processing that is necessary for the fulfillment of a task performed in the public interest or in the exercise of public authority assigned to the controller. This processing falls in principle within the scope of Law 3471/2006, as, according to paragraph 1 of Article 3 of the said Law "The provisions of Articles 1 to 17 of this Law apply to the processing of personal data character and ensuring the confidentiality of communications, in the context of providing publicly available electronic communications services on public electronic communications networks including those that support data collection and identification devices...". It should be noted that in paragraph 2 of this article it is clarified that "Law 2472/1997, as applicable, and the executive laws of Article 19 of the Constitution, as applicable, apply to any issue related to the provision of electronic communications services that is not specifically regulated by this law". Now, after the implementation of the GDPR, any reference to Law 2472/1997, which was issued in compliance with Directive 95/46/EC, is understood as a reference to the GDPR (see also art. 94 par. 1 GDPR). Therefore, for every issue related to the provision of electronic communications services that is not specifically regulated in Law 3471/2006, the GDPR applies. 4. The principle of accuracy is fundamental in the processing of personnel data character (see art. 5 par. 1 c GDPR). In practice, this means that the person in charge

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processor must take all reasonable measures so that the data it holds can
is accurate in relation to the purposes of the processing, after careful consideration
any challenges to data accuracy, ensuring and through
preventive checks that personal data that is not accurate
are corrected. Furthermore, in article 25 par. 1 of the GDPR the meaning of is defined

data protection by design and it is provided that "Receiving taking into account the latest developments, the cost of implementation and the nature, scope, the context and the purposes of the processing, as well as the risks of different probability of occurrence and seriousness for the rights and freedoms of natural persons persons from the processing, the controller effectively implements, both at the time of determining the means of processing and at the time of processing, appropriate technical and organizational measures, such as pseudonymisation, designed to implement data protection principles such as minimization of the data, and the incorporation of the necessary guarantees in the processing against way to meet the requirements of this regulation and to be protected the rights of data subjects." The arrangements in question, regarding the principle of accuracy and in the sense of data protection since the design, are now essential for the processing of personal data, while there is no specific reference to them in Law 3471/2006. Therefore, the articles due to regulations are also applied to subscriber data processing, to the extent that the data concern natural persons.

5. The concept of risk for the GDPR is analyzed in recital no. 75.

This concept includes any risk to the rights and liberties of natural persons may lead to economic loss or any other significant economic or social disadvantage and deprivation right. In this case, it appears that natural persons subscribers of OTE deprived of their statutory right not to receive generally unsolicited advertising calls, while they had the impression that this right was theirs was provided.

6. From the information in the file it appears that the time duration of the event on which natural person subscribers of OTE were deprived of their right, were

particularly large, more than 3 years, that the number of persons who more than 16,000 subscribers were affected, of which a large percentage corresponds to natural persons, and who continued to receive unsolicited

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advertising calls. Regarding the way of keeping the register of no. 11, it is established that from the design of the system the observance of data in two different OTE applications (CRM Siebel and Portal). THE this design to comply with the data protection obligation already by design, taking into account the criteria of Article 25 of the GDPR shall should have incorporated appropriate and sufficient measures to ensure the data accuracy, such as with periodic accuracy control, sampling or overall. No such measure had been taken, in violation of its provisions GDPR, and specifically of article 25 and article 5 par. 1 c'.

7. The controller is a company operating as a service provider of electronic communication, which is generally required to ensure a high standard security for the personal data of its subscribers, including of natural persons. According to the data publicly available at G.E.M.H., the revenues of the OTE group for the year 2018 were 2,887.6 million euros¹. The Authority has previously established that OTE was responsible for an incident personal data breach, imposing its sanction fine with decision 1/2015 (prot. no. C/EX/51/08-01-2015), while especially for the register of no. 11 had imposed on him the sanction of the warning (of the law 2472/1997) such as to modify the procedure for declaration of membership of subscribers with the decision 16/2018 (prot. no. C/EX/1659/16-03-2016).

8. The Authority accepts that the incident is not due to fraud on the part of the controller and that as soon as the controller was informed by the Authority, he acted for it

remedying the breach by cooperating with her.

9. The Authority, taking into account the above established violation and its details

file considers that it must impose the provision provided for in article 58 par. 1 i) thereof

GDPR sanction of the administrative fine. Pursuant to article 83 of the Regulation and

in order for the sanction to be effective, proportionate and dissuasive,

taking into account the aggravating factors referred to in paragraphs 6 and 7 thereof

present and the mitigating factors referred to in paragraph 8 hereof, the

the amount of the fine is determined at two hundred thousand (200,000) euros.

10. Regarding the two complaints of natural persons of OTE subscribers who

are mentioned at the beginning of the present, as accepted by the controller,

1 Prot. No. 1585114/05-07-2018 announcement of the G.G. of Trade and Consumer Protection

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the incident in question also affected their own data, therefore the Authority finds

that the complaints are well founded. The corrective measure of the administrative fine, such as

this was analyzed in the previous consideration, it is imposed for the entire offense,

in which are included both the cases of the complainants who

are recipients of the decision.

FOR THOSE REASONS

The Personal Data Protection Authority:

It imposes on the "Telecommunications Organization of Greece S.A." the effective,

proportionate and dissuasive administrative fine appropriate to the particular

case according to its special circumstances, amounting to two hundred thousand

(200,000.00) euros.

The Deputy President

The Secretary

George Batzalexis

