

Athens, 07-22-2021 Prot. No.: 1764 DECISION 35/2021 (Department) The Personal Data Protection Authority met as a Department via teleconference on 02-17-2021 at the invitation of its President, in order to examine the case referred to in the history of the present. Georgios Batzalexis, Deputy President, in the absence of the President of the Authority, Constantinos Menoudakos, and the alternate members Evangelos Papakonstantinou, as rapporteur, and Grigorios Tsolias, in place of the regular members Konstantinos Lambrinoudakis and Charalambos Anthopoulos respectively, who, although legally summoned in writing, attended they did not attend due to disability. Regular member Spyridon Vlachopoulos, although legally summoned in writing, did not attend due to disability. The meeting was attended by order of the President, Ioannis Lykotrafitis, expert 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: Complaint No. C/EIS/2801/23-04-2020 was submitted to the Authority, which concerns telephone harassment and inappropriate satisfaction of the right of access. In particular, according to the said complaint, the complainant states that he received a call on his personal mobile phone ... from the number ... on ... on ... for the purpose of commercial promotion of educational services 1-3 Kifisias Avenue, 11523 Athens T: 210 6475 600 E: contact@dpa.gr www.dpa.gr 1 teletraining of the company with the name "Private Institute of Vocational Training OMIROS Limited Liability Company" (hereinafter IIEK OMIROS). The complaint also states that the caller on behalf of the data controller asked to speak to the complainant by name, and when he confirmed that he was himself, told him that they saw that he had applied for the teletraining allowance and would like to ask him if he has chosen a provider for his training, as IIEK OMIROS offers teletraining services. The complainant states that during the call he exercised the right of access to the source of his personal data as well as how the caller knows that he has applied to the platform to receive the teletraining allowance. The answer he received was that his information was sent "from the headquarters of IIEK OMRIOS". The complainant states that indeed, a few days before receiving the call in question, he had registered an application to participate in the "Ergani" Information System as a beneficiary/beneficiary in order to receive the training allowance. Finally, it is noted that the mobile phone number of the complainant (...) to which the call was made is registered in the register 11 (opt-out) of his provider ... from ...-... continuously until today. The Authority, in the context of examining the complaint in question, sent to the complained company the document No. C/EX/2801-1/06-05-2020 requesting its opinions on the complainants. Initially, the complained controller replied to the Authority with the electronic message No. G/EIS/3310/14-05-2020, in which he mentions, among other things, the following briefly mentioned: 1) For the irregular use of the personal (non-sensitive data) of the subject

on the part of the company, although a legitimate interest can be established on its part for product promotion actions, it fully accepts the violation and will see to it that the practice of using the data of the interested parties for promotional purposes stops, as long as they have not given their consent to do so. 2) There was no transmission to third parties, the data was not given to someone outside the company. Subsequently, and in order for the Authority to continue the examination of the said complaint within the framework of its competences, it invited the complained company to provide clarifications if and, if so, how the Ministry of Labor and Social Affairs provided this data from the Information System "Tool", details of the type of data (e.g. name, telephone, address, etc.), as well as the number of subjects (eligible scientists-professionals) to whom it concerned. The data controller responded with e-mail No. G/EIS/3427/20-05-2020, in which he stated that the IEK has legal access through ERGANI to the personal data (name, surname, VAT number) in order to registration of interested parties is facilitated. However, with his latest electronic message No. C/EIS/3439/20-05-2020, the complained controller states that the source of this data is not the "Ergani" Information System, that the original information is not correct and was essentially a misjudgment by the employee who made the call that led to the complaint. On the contrary, the data used by IIEK OMIROS has exclusively and in every case the origin of the internet. More specifically, the personal data collected and used concern 1000 subjects and include: name, surname, phone, address & email. To a later request by the Authority for additional information and clarifications on his last response, the complained controller responded with the electronic message No. C/EIS/3583/26-05-2020, in which he clarifies, among other things, the following briefly mentioned: 1) With reference to the websites used to collect said contact information, these were Golden Guide (xo.gr), <http://www.vrisko.gr>, <https://www.starofservice.gr/dir/thessalia/larisa/larisa/nomos>, <http://www.lawfirms.gr/dikigoroi>, <http://www.google.com>, 3 <http://www.dsa.gr> etc. 2) Regarding the legal basis for this processing, the company declares that this was Article 6 para. 1 point f) GDPR, i.e. the processing is necessary for the purposes of the legal interests pursued by the controller, as well as the article 9 par. 2 item e) GDPR, i.e. the processing concerns personal data that has been manifestly made public by the data subject. 3) With regard to the method of approaching potential customers, it was clarified that communication was made only by telephone and in no other way. 4) The specific practice of promoting services using contact information available online was applied exclusively only for this program/action (voucher) and for specific professions. The Authority also requested clarifications on the matter from the Ministry of Labor and Social Affairs with document No. G/EX/3663/28-05-2020. The Ministry responded with document No. G/EIS/4428/25-06-2020 in which, among other things, it stated the following: 1) Due to

the nature of the action and its implementation through training vouchers), the whole process was solely up to the initiative of the beneficiary and the choice of the training institution with which he would cooperate. Only after the beneficiaries completed the application in one of two ways (ie either in person or through a training provider authorized by them), the Ministry gained access to the personal data of the beneficiaries necessary for the implementation of the action. On the contrary, as is evident from the previous analysis, the other training providers registered in the relevant Register, the 4 that were not selected by a certain beneficiary, had absolutely no access to any data of the beneficiary in question, in the context of the above action. 2) From the usage rights based on their codes, the training providers had access to the data of only the beneficiaries, for whom they activated the training check, in accordance with the Invitation procedure, and not to all potential beneficiaries.

Subsequently, the Authority invited with document No. C/EXE/434/20-01-2021 the complained data controller to a hearing via video conference before the Department of the Authority at the meeting initially on 27-01-2021 in order to discuss the above related complaint, as well as the general practice that follows for the promotion of its services by electronic means. However, the data controller requested a postponement, and finally the meeting on 02/03/2021 was attended by Anastasia Kouzinoglou, a lawyer with AMDSA, and Georgios Makryplidis, part of the administration of IIEK OMIROS, on behalf of the data controller and presented orally their opinions. Among other things, they repeated what was mentioned in the above memorandum, and added that this is an isolated incident due to human error, even though they had received copies of the matrices 11 from the providers before the specific promotion, while the contact details were posted in publicly accessible professional directories. Subsequently, the complained controller was given a deadline, and filed the memorandum No. C/EIS/1051/11-02-2021 within the deadline. In this memorandum, in addition to the previous documents, the following are briefly mentioned: 1. To promote the action "Program of Remote Training with certification for scientists affected by COVID-19 who belong to the 6 main scientific branches of the country based on KAD defined by the Ministry of Finance" was addressed to freelancers - beneficiaries of the program in question. 2. In the context of promoting its services, the complained 5 controller collected data of freelancers posted on public professional directories on the internet. The data it collected was the first name, last name and telephone number of the subjects in order to carry out promotion by making telephone calls only, and not e.g. by sending electronic messages. 3. At the start of the relevant calls, the company's employees informed the subjects about the company's full details, about the reason for the phone call, and about the rights of access and opposition they have in accordance with the current legal framework. 4. The company did not have nor did it gain

access to the electronic information system of the Ministry of Labor "ERGANI", but this is solely an arbitrary assumption of the complainant. 5. Prior to the telephone calls, the company arranged to obtain from all telecommunications providers copies of their Article 11 records of their subscribers, and company employees before making each call carried out a relevant check. A check is also carried out in the records of the company itself for the cases where the subject may have specifically exercised the right of objection directly to the company. Any other case of carrying out commercial promotion activities is based on the subject's prior express consent. 6. In the case of the complainant, a mistake was made by the employee, who did not carry out a proper check, as a result of which the relevant call was made to his number. The complainant initially objected to the communication, and the employee in question subsequently removed his information from the list of persons to whom the relevant promotion would be carried out. 7. The specific incident was isolated and no other mistake was made during the promotion in question. The company made recommendations to the employee as well as to all 6 staff in order to ensure that similar mistakes are avoided. 8. The complained telephone call was a telephone call for the purpose of promoting a product related to the professional activity of the complainant, i.e. a product addressed to lawyers. The company complies with the current legislative framework for the protection of personal data. Among other things, employees are bound by a confidentiality agreement, and adhere to the company's applicable code of conduct. There are also specific policies that describe the organizational and technical protection and security measures that have been taken and are reviewed at regular intervals. The Authority, after examining the elements of the file, the hearing procedure and after hearing the rapporteur and 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, after a thorough discussion, **CONSIDERED IN ACCORDANCE WITH 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 related to 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 only allowed if the subscriber expressly consents in advance", while paragraph 2 of the same article states that: 7 "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". Consequently, after 01-09-2011, the date on which the amended provision entered into force, telephone calls with human intervention, in view of the above purposes, are allowed, unless the called subscriber has declared that he does not wish them (system "opt-out"). The "opt-out" system means that subscribers, natural or legal persons, can address their objections, regarding the processing of their data, either directly to the data controller (i.e. the advertiser) by exercising the right to object to the processing of personal data based on article 21 of the GDPR or generally through their registration in the special list of subscribers of the provider provided for in article 11 par. 2 of Law 3471/2006. The law provides for the creation of registries ("opt-out") with each provider and the subscriber can declare, free of charge, to his own provider of electronic communications services that he does not wish to receive telephone calls for direct marketing. 2. Making telephone calls for the purpose of promoting products and services is regulated in principle by article 11 of Law 3471/2006. However, it should be pointed out that, in article 3, paragraph 2 of this law, it is clarified that "Law 2472/1997, as applicable, and the executive laws of article 19 of the Constitution, as applicable, apply to every issue related to the provision of electronic communications services, which 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 article 94 par. 1 GDPR). Therefore, for every issue related to the provision of electronic communications services to subscribers or users who are natural persons and which is not specifically regulated in Law 3471/2006, the GDPR applies (see also article 95 GDPR as well as the recital under 'number 173). 3. According to article 4 par. 7 of the General Regulation (EU) 2016/679 on the protection of natural persons against the processing of personal data and on the free movement of such data (hereinafter, GDPR), which has been in force since May 25, 2018, as controller is defined as "the natural or legal person, public authority, agency or other entity that, alone or jointly with others, determines the purposes and manner of processing personal data". 4. Article 5 GDPR defines the processing principles governing the processing of personal data. Specifically, it is defined in paragraph 1 that personal data, among others: "a) are processed lawfully and legitimately in a transparent manner in relation to the subject of the data ("legality, objectivity, transparency)". 5. Based on the principle of accountability as defined in Article 5 para. 2 GDPR "The data controller bears the responsibility and is able to demonstrate compliance with paragraph 1 ("accountability)". Therefore, the controller must be able to demonstrate

compliance with the six basic principles governing the processing of personal data. 6. Article 6 para. 1 GDPR provides, among other things, that: "Processing is lawful only if and as long as at least one of the following conditions applies: (...) f) processing is necessary for the purposes of legitimate interests pursued by the controller or a third party, unless these interests are overridden by the interest or the fundamental rights and freedoms of the data subject that require the protection of personal data (...)". 7. With regard to informing the called user, when the data has not been collected by the subject himself, the provisions of article 14 of the GDPR apply and the data controller must provide the data subject with a series of information, including the 9 his identity, his contact details, the existence of the right to submit a request to the controller for the exercise of the rights of the called data subject, and the source from which his data originates. 8. In this particular case, the complainant, as data controller, made an unsolicited telephone call with human intervention for the purpose of direct commercial promotion of his services to the complainant, because the called telephone number of the complainant was registered in the register of article 11 of Law 3471 /2006 that his telecommunication provider observes, thus violating therelevant provision. The company declares that before the realization of said

promotional energy received from the providers copies of these registers in order to carry out checks before each call that o phone number was not registered in said registry. However, due to error of an employee, no proper check was carried out before the dispute call.

9. Furthermore, the complainant, as admitted in the above relevant documents submitted to the Authority, collected personal data that was published on the internet for the purpose of providing information to the general public about the contact details of subjects as freelancers. At then processed this data, i.e. collection, entry in a file and finally used to make the calls of said promotion, i.e. for a processing purpose incompatible with the purpose for which this personal data was published in Internet. Consequently, as it cannot be a legal basis for the

disputed processing the pursuit of the legal interests of the controller processing, i.e. the case of article 6 par. 1 par. f) of the GDPR, where is required not to prevail over the interest or fundamental rights and the liberties of the data subject, the processing in question was not legal.

10. Further, as the controller does not state that the subjects previously informed about the collection of their personal data

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from said publicly accessible sources, there was also a breach of principle of the transparency of article 5 par. 1 a' of the GDPR, and non-provision of necessary information to the data subject, according to what are defined in article 14 of the GDPR.

11. Regarding the reported illegal access of the person in charge processing in the "Ergani" information system of the Ministry of Labour, it was not possible to document illegal processing either by complaint or from the information gathered from the investigation it conducted the beginning.

12. The controller did not specify to the Authority the exact number of of subjects whose data was collected or the exact number of of calls made.

13. The controller cooperated with the Authority by responding to the documents for clarifications, as well as during the Authority meeting and in the memorandum who filed.

14. No administrative sanction has been imposed in the past by the Authority on controller.

15. According to the data in GEMI[1], the company during the use of the period

01/07/2019 to 30/06/2020 had a turnover of €3,198,421.99 and profits after from taxes €121,910.66.

Based on the above, the Authority unanimously judges that according to Article 11 of Law 3471/2006, article 5 par. 1 item a' of the GDPR and article 14 of the GDPR the conditions for enforcement against the data controller are met, with based on the one hand, article 13 of Law 3471/2006, in combination with article 21 par. 1 item b' of Law 2472/1997 and with Article 84 of Law 4624/2019, and on the other hand the article 58 par. 2 sec. i' of the Regulation and article 15 par. 6 of Law 4624/2019, taking into account the criteria of article 83 par. 2 of the GDPR, of the administrative sanction, referred to in the operative part of the present, which is judged effective, proportionate and dissuasive, taking into account the aggravating factors

1 <https://www.businessregistry.gr/publicity/show/6982201000>

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elements referred to in paragraphs 8, 9 and 10 hereof and mitigating factors elements referred to in paragraphs 13 and 14 hereof.

FOR THOSE REASONS

The Personal Data Protection Authority:

It imposes on the "Private Vocational Training Institute OMIROS Limited Liability Company" the effective, proportionate and dissuasive administrative fine that is appropriate in the specific case according to with the special circumstances thereof, amounting to five thousand euros (5,000.00) euros, for the aforementioned violations of Article 11 of Law 3471/2006, in combination with article 5 par. 1 item a' of the GDPR and article 14 of the GDPR.

The Deputy President

George Batzalexis

The Secretary

