

Athens, 04-10-2021 Prot. No.: 2212 DECISION 44/2021 (Department) The Personal Data Protection Authority met as a Department at its headquarters on 17-02-2021 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. G/EIS/637/27-01-2020 was submitted to the Authority against the company "PREMIUMMEDIA PRODUCTION OF AUDIO-VISUAL WORKS PRIVATE CAPITAL COMPANY" with d.o. "PREMIUMMEDIA IKE", which related to the sending of unsolicited e-mails and 1-3 Kifissias Ave., 11523 Athens T: 210 6475 600 E: contact@dpa.gr www.dpa.gr 1 the non-satisfaction of the right to object which was exercised repeatedly. In particular, according to the above complaint, the complainant, although in the past he had participated in contests for theater tickets of the complained company through the monopoli.gr website and thus had submitted his personal data for the contests, including his e-mail address, subsequently, he had repeatedly tried to use the unsubscribe function from the website's recipient list, but without stopping the correspondence in question. In addition, he had contacted the complainant company twice electronically via email and expressed his intention to file a complaint if he continued to be spammed, but received no response and the spam continued to be sent up to the date of submission of the complaint to the Authority. The Authority, in the context of examining the complaint in question, sent to the complained company the document No. C/EX/637-1/19-02-2020 requesting its opinions on the complainants. The complained controller replied to the Authority with the electronic message No. G/EIS/1431/20-02-2020, in which he mentions, among other things, the following briefly mentioned: 1) The complainant had been included in the mailing list of the monopoli.gr newsletter, as it had participated in many competitions in December 2019. The registration in the newsletter list refers to the conditions of the competitions, which are posted on the website. 2) After the email he sent to the company about the non-operation of the automatic deletion (unsubscribe), they proceeded to a relevant check and as of 1/31/2020 he has been permanently deleted from the newsletter list. Subsequently, the Authority invited the complained controller to provide further clarifications on his views, which he provided with 2 the

memorandum No. C/EIS/1571/28-02-2020, which was supplemented with the No. G/EIS/1577/28-02-2020 e-mail. In it, he mentions, among other things, the following briefly mentioned: 1) The problem of the unsubscribe mechanism not working properly was presented after the overall upgrade of the content management system (CMS) that took place on 12-15-2019 (it was disabled during the upgrade - disable- of the unsubscribe feature). The problem was not noticed until the complainant's suggestion in an email sent on 10-01-2020. 2) Then, after all the technical checks and debugging were done, the problem was finally fixed on 01-18-2020. 3) To prevent this or a similar problem from occurring in the future, checks are carried out on a weekly basis after each sending of the newsletter. 4) From 16-12-2019 to 18-01-2020 (when the problem was corrected) 5 newsletters were sent. After the problem was fixed, i.e. after 18-01-2020, 592 unsubscribes were recorded. 5) Apart from the complainant, the company states that they have not received any other complaints or e-mails related to the non-possibility of deletion from the newsletter list. 6) The complainant attempted to delete and was finally successfully deleted on 01-31-2020. The controller states that the reason the controller did not delete it once it received the complainant's email pointing out the technical problem is due to its own poor internal (mis)coordination. In particular, after his email, which the company took as a very useful recommendation, it moved immediately to restore the technical problem both for its full harmonization with the relevant provisions, and to avoid similar incidents to other recipients. However, the developers who provide technical support to the website and are responsible for identifying and 3 remediating any problems, are external partners, which, as was seen at times, implies a lack of coordination. Thus, despite the fact that the technical problem was rectified very immediately and each user could be deleted at any time, unfortunately due to a lack of coordination, he subsequently failed to ensure that the complainant was "manually" deleted. 7) The data controller finally notes that respect for his readers is an important chapter for him and he tries in every possible way to ensure the quality of both the content and the services he provides. For this reason, it will intensify technical controls so that a similar incident does not occur in the future. Subsequently, the Authority invited with document no. prot. C/EXE/437/20-01-2021 the complained controller to a hearing via video conference before the Department of the Authority at the meeting on 27-01-2021, in order to discuss the above relevant complaint as well as the issue of the malfunction of the "unsubscribe" mechanism from the list of recipients of his newsletter. At the meeting of 01-27-2021, A, ... of the company attended via video conference on behalf of the controller, and presented her views orally. Subsequently, the data controller received a deadline and submitted the memorandum No. G/EIS/838/03-02-2021 within the deadline. In this memorandum, in addition to the previous documents, the following are briefly mentioned: 1. Responding directly and fully to

the restoration of the technical problem that arose and was the cause of the complaint, and with the aim of excluding/limiting the risk of its eventual recurrence in the future, the data controller carried out - in addition to - an additional of the immediate and required actions 4 reorganization of control and monitoring of the flow of his website by changing the page rules of the cache, so that the specific page does not have caching and can accept access tokens url. 2. The recipients of the newsletter are now provided with a double deletion option, given that the "unsubscribe" option can be found in the sent newsletter in 2 different places to make it even easier if they wish: a) in the header of the newsletter and b) in the footer of the newsletter. unsubscribe if the 3. From the moment a recipient of the newsletter selects the unsubscribe link, he automatically "enters" a form where he fills in the email he wants to be deleted from the list. As soon as he completes it, the following message appears: "You have successfully unsubscribed and will not receive our Newsletters". In addition, the possibility of unsubscribing is given at any day and time even if the newsletter has been sent some time ago. So if someone clicks on an old newsletter, the unsubscribe process will work normally. 4. This is an incident of technical malfunction of an isolated nature, which has been completely eliminated successfully. The Authority, after examining the elements of the file, the hearing process and after hearing the rapporteur and the assistant rapporteur, who withdrew after the discussion of the case and before the conference and decision-making, after a thorough discussion, THOUGHT IN ACCORDANCE WITH THE LAW 1. According to article 4 par. 7 of the General Regulation (EU) 2016/679 for the protection of natural persons against the processing of personal data and for the free movement of such data 5 (hereinafter, GDPR), which has been in force since May 25, 2018, as responsible processor is defined as "the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and manner of personal data processingcharacter".

2. The issue of making unsolicited communications with anyone means of electronic communication, without human intervention, for purposes direct commercial promotion of products or services and for any kind advertising purposes, is regulated in article 11 of Law 3471/2006 on personal data protection in the field of electronic communications, which incorporated Directive 2002/58/EC into the national legal order. According to this article, such communication is allowed only if the subscriber expressly consents in advance.

3. Exceptionally, according to art. 11 par. 3 of Law 3471/2006, the elements lawfully obtained e-mail contact, in the context of sale of products or services or other transaction, they can be used to directly promote similar products or services of the supplier or to serve similar purposes, even when the recipient of the message has not given his consent, provided that it is provided to him in a clear manner and distinctly the possibility to object, in an easy way and free of charge, to collection and use of his electronic data and this according to collection of contact information, as well as in each message (s.s. from complaint does not appear if it provided the possibility to object from future promotional communications), in case the user initially does not had disagreed in this usage.

4. According to article 21 par. 2 of the GDPR, "If personal data nature are processed for direct commercial purposes promotion, the data subject is entitled to object at any time moment in the processing of the personal data that the relate to the said commercial promotion, including profiling, if related to this direct marketing

6 promotion." In addition, according to article 21 par. 3 of the GDPR when the data subjects object to processing for purposes direct marketing, personal data not are now processed for these purposes.

5. Article 25 paragraph 1 of the GDPR states that "Taking into account the latter developments, implementation costs and the nature, scope, context and

the purposes of the processing, as well as the risks of different probability of occurrence and seriousness for rights and freedoms of natural persons from the processing, the controller applies effectively, both at the time of determining the means processing as well as at the time of processing, technically appropriate and organizational measures, such as pseudonymisation, designed for implementation data protection principles such as data minimization, and the incorporation of the necessary guarantees in the processing in a manner so that the requirements of this regulation are met and to the rights of data subjects are protected."

6. In this particular case, data processing has taken place personal nature of the complainant for product promotion purposes and services from the controller. The legitimacy of the original collection is not judged by this, as the complainant accepts that the he himself had provided his data to the controller.

7. From the information in the file it appears that while the data controller provided the recipient of the newsletter with the possibility to object to any future message, through the relevant link, as applicable requirement of article 11 par. 3 of Law 3471/2006, and the complainant expressed his objection to future sending of promotional messages purposes, it was not possible to satisfy the provisions of article 21 of the GDPR right of objection of the subject, after his email subject remained in the data controller's file and missions continued. However, the controller should have has the appropriate organizational measure to respond, i.e. defined process, through which he could identify that the right

opposition of the subject could not be satisfied. So, the person in charge processing did not act to stop the sending of advertisements messages, as it should, as well as opposition and deletion in case direct marketing must be respected.

8. Based on the above, the definitive cessation of the processing of his email subject by the controller for direct marketing purposes and consequently the satisfaction of the right to object, no was carried out even after the problem was identified, in continuity relevant report sent by the complainant to the person in charge. The definitive satisfaction of the right occurred only after its re-exercise right of opposition of the complainant, after his rehabilitation technical problem.

9. The technical problem lasted from 15/12/2019 until 18/01/2020 which corrected. From the information provided to the Authority by the person in charge processing revealed that there were a further 592 cases of failure in the satisfaction of the subject's right to object during this period.

10. The controller cooperated with the Authority by answering the relevant questions requests for clarifications, as well as during the Authority's meeting and at memorandum he filed.

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

12. According to the data in GEMI1, the company during the use of the period 01/01/2019 to 31/12/2019 had a turnover of €323,636.65 and profits after from taxes €101,014.07.

Based on the above, the Authority unanimously judges that according to according to article 21 paragraph 3 of the GDPR, and article 25 paragraph 1 of the GDPR, the enforcement conditions against the controller, based on the article 58 par. 2 sec. i' of the GDPR, taking into account the criteria of article 83 par. 2 thereof GDPR, of the administrative sanction, referred to in the operative part of the present, h

1 <https://www.businessregistry.gr/publicity/show/69787603000>

8 which is deemed effective, proportionate and deterrent, taking them into account aggravating factors referred to in paragraphs 7, 8 and 9 hereof and mitigating factors referred to in paragraphs 10 and 11 hereof.

FOR THOSE REASONS

The Personal Data Protection Authority:

It imposes on the company "PREMIUMMEDIA PRODUCTION OPTIKO-ACOUSTIC ERGON PRIVATE CAPITAL COMPANY" with d.t. "PREMIUMMEDIA IKE", the effective, proportionate and dissuasive administrative fine which appropriate in the specific case according to the special circumstances of this, in the amount of five thousand euros (5,000.00) euros, for the above established violations of Article 21, paragraph 3 of the GDPR, and Article 25, paragraph 1 of the GDPR.

The Deputy President

George Batzalexis

The Secretary

Irini Papageorgopoulou