

Athens, 31-12-2021 Prot. No.: 3035 DECISION 56/2021 The Personal Data Protection Authority convened, following the invitation of its President, in a meeting via video conference on 12-07-2021 in continuation of the one from 23-04-2021 meeting and by postponing the meeting from 31/3/2021, in order to consider the case mentioned in the history of the present.

Konstantinos Menudakos, President of the Authority, regular members Spyridon Vlachopoulos, Konstantinos Lambrinoudakis, as rapporteur, and Charalambos Anthopoulos were present. At the meeting, without the right to vote, the auditors Konstantinos Limniotis and Ioannis Lykotrafitis, specialist IT scientists, attended the meeting, as assistant rapporteurs, and Irini Papageorgopoulou, an employee of the Department of Administrative Affairs, as secretary. The Authority took into account the following: (offers A number of complaints have been submitted to the Authority in recent years regarding automated (without human intervention) telephone calls for the purpose of promoting products or services - gifts), without specifying, in these calls, the identity of the person on whose behalf the said calls are made, while all the calling telephone numbers started with the same prefix "... " (that is, the differentiation of the numbers existed, for the cases in question, in the last two digits of the calling numbers). In one case, the complaint concerned the sending of a short text message (SMS). 1-3 Kifissias Ave., 11523 Athens T: 210 6475 600 E: contact@dpa.gr www.dpa.gr 1 Specifically, the complaints were as follows: a) Case No. C/EIS/6386/23-07-2018 complaint by A, according to which her telephone number ... received on ...2018 a telephone call from the number ..., in which she was informed that they were calling from a "offer supermarket/online supermarket". She then called the above number, looking for the responsible lady B who was absent, as she was informed, and asking the question about the source of her data. She received, as the complainant states, a vague reply that her number ended up on their lists either because she filled out a form, or gave it to one of their employees. She also states that when she called the company back, she "pressed" option 2 to remove her number from their lists, however, she notes that they continue to harass her. The complainant names the company name (INCOSER) in her complaint form. b) C/EIS/1342/19-01-2019 complaint of C, as supplemented by C/EIS/2184/21-03-2019 document, according to which his telephone number ... received on ...2019 and time ... an automated telephone call from the number ..., answering which he heard an audio message that he has won 850 Euros and should proceed with the process by pressing the "1" key on his telephone. c) Under case number C/EIS/1552/27-02-2019 complaint by D, according to which her telephone number ... received on ...2019 and time ... an automated telephone call from the number ..., with which supermarket purchases were advertised as gifts. d) Under No. C/EIS/2332/27-03-2019 complaint by E, according to which his telephone number ... received on ...2019 and time ... an automated telephone call from the number

..., but without to determine the content of the promotion. The complainant states that his telephone number was registered in the register of article 11 of Law 3471/2006 ("opt-out" register) of his provider. 2 e) Under case No. C/EIS/3218/06-05-2019 complaint by Z, according to which her telephone number ... received on ...2019 and hours ..., ... and ... automated telephone calls from the number ..., with which money was advertised, as it states. f) Under case No. C/EIS/3367/10-05-2019 complaint by H, according to which his telephone number ... received on ...2019 and time ... an automated telephone call from the number ..., with which advertised, as it states, a monetary benefit of 850 Euros. g) Under case number C/EIS/3906/31-05-2019 complaint by Θ, according to which on his telephone number ... he received on ...2019 and time ... a short text message (SMS) from the number ..., which stated "Thanks for participating! You are the big winner! To receive your gifts for free, call 9019015906. INCOSER Charge 3.5€/1'+VAT. GR. FRI. 2120001516". As reported by the complainant, the phone number given as a complaint line does not seem to correspond to an actual number (does not call). h) Complaint No. C/EIS/4417/24-06-2019 of I, as supplemented by document No. C/EIS/4653/02-07-2019, according to which his phone number ...received a call on ...2019 at ... from the number He did not have time to answer and called the number in question, where he received information that he was called by Super Market Offers because he has won an 800 euro gift voucher, which he will have to call another number to receive. As the complainant also states, his telephone number was registered in his provider's "opt-out" register. i) Ministry no. 31475-19/03/2020 complaint by K, which was forwarded to the Authority with No. ... (Authority No.: C/EIS/3590/26-05-2020) document of the General Secretariat of Trade and Protection Consumer. According to this complaint, on ...2020 and time ..., the complainant received a call from ..., in which, after listening to a recorded message, which said that she had won 600 euros for shopping at a supermarket, she was invited to press the button 1, which she did and then she spoke to a lady, who told her that 3 won the amount of 640 euros for purchases from a super market. Subsequently, according to the complainant, when she asked which super market the offer was from, the interlocutor hung up, while calling the above number again, she was informed that it was from the Offer Super Market. The complainant also mentions that on that day she had tried to place orders in various supermarkets, entering her mobile phone on the relevant websites. j) Under case number C/EIS/4560/01-07-2020 complaint by L, according to which his telephone number ... received on ...2020 and time ... an automated telephone call from the number ..., with which advertised, as it says, gift certificates. As the complainant also states, his telephone number was registered in his provider's "opt-out" register. The Authority, for the first of the above complaints (under item 1 complaint), sent to the company INFO COMMUNICATION SERVICES (INCOSER), as

part of its examination, the letter No. C/EX/6386-1/02- 08-2018 document, requesting the company's opinions on the complainants, and in particular on the issue of non-fulfillment of the right of access, of the non-adequate fulfillment of the natural person subscriber's right to information about data controller data, as well as the non-reporting of information about the exercising the rights of access and objection. The complained-about company responded with document No. C/EIS/9369/26-11-2018. It states, among other things, the following: i) ii) iii) The company from time to time carries out promotions of various products and services by telephone with clear terms of participation which are communicated in detail in advance to the participants. Participants declare participation either online or on paper by consenting to communication with them. They are expressly excluded and are not invited even if the subscribers who are registered in the register of article 11 declare their participation. 4 iv) v) When the call is made to a participant, two options are given in the initial menu of the service: a. to contact a representative by selecting number 1, and b. to be deleted from the company's lists by selecting number 2. For the above complaint, the following information is provided in particular: a) For the sake of brevity, the company is referred to as INCOSER, instead of the full INFO COMMUNICATION SERVICES, and it owns the online supermarket of offers <https://www.websupermarketdeal.gr/>, b) the complainant was given all the information about the identity of the company and its activity, i.e. that it is a promotional company of products and services, c) Only one call was made to the complainant, so it does not appear her systematic harassment, as she states, d) the rest of the calls/communications with the company were made on her own initiative, e) she was informed of the nature and purpose of the communication and collection of her data (right to information), as well as the right to object (which, as the company says, was exercised by the complainant after, according to what the complainant herself states, she chose the number 2 so that it is not called again). She did not choose to call back to ask for more information, f) There is the possibility, which has unfortunately happened sometimes, that the telephone number declared by the participant was entered incorrectly or even that someone else's telephone number was declared intentionally by a third party, g) The complainant appealed to the Authority without having previously exercised her rights against him controller. For the rest of the complaints, for which the complainants did not mention the name of the complained-about company because it had not been notified to them during the calls they received, the Authority, for the cases of the under b', c' of complaints, sent to the company Microbase Advanced Services of Communications and Informatics IKE (hereinafter, Microbase), to whose network belonged the 5 telephone numbers mentioned as callers in said complaints, numbered first C/ EX/1342-1/19-03-2019, C/EX/1552-1/05-04-2019 documents respectively, requesting to provide the

necessary subscriber information for the respective numbers (name, surname or surname, address and/or other contact). In both cases, Microbase replied that the owner of the numbers in question is the company INFO COMMUNICATION SERVICES ADVERTISING - PROMOTIONAL - COMMERCIAL - RESEARCH AND SURVEYING SOLE REPRESENTATIVE IKE (hereinafter, INCOSER or data controller). Therefore, from the common characteristics of all the complaints and the respective complained telephone numbers, the Authority did not contact Microbase again for the following (d' - j') complaints - for which indeed, as it appears from in what follows, the company being complained about is INCOSER. Subsequently, the Authority, in the context of examining the aforementioned complaints, sent to INCOSER the first number C/EX/1342-2/10-04-2019 (for the complaints under items b' and c'), C /EX/2332-1/14-05-2019 (for the complaint under item d), G/EX/3218-1/06-06-2019 (for complaints under items e and f), C/EX/3906-1/11-07-2019 (for complaints under items g and h) and C/EX/4560-1/27-07-2020 (for the complaints under items i' and i') documents, asking for its opinions on the complainants, while also requesting information on the general procedures that the company follows for the carrying out telephone promotions, i.e. how the numbers to be called are selected, if all the calls it makes are automated without human intervention, as well as the procedures it follows to examine whether the subscribers/owners of the numbers to be called have declared that they are not wish to receive calls for promotional purposes. It is pointed out that because the company did not respond to the above documents of the Authority, in each new document of the Authority, a relevant reminder was also made of the relevant precedents. INCOSER finally responded in its entirety, for all the aforementioned complaints, with document No. G/EIS/6506/25-09-2020. In said document, it states the following: A. The company with the name "INFO COMMUNICATION SERVICES ADVERTISING - PROMOTIONAL-COMMERCIAL - RESEARCH AND PUBLISHING SOLE INDIVIDUAL IKE" 6 has as its statutory purpose, among other things, the carrying out of promotional actions by telephone, with clear conditions of participation, which were communicated in detail to the participants. In the context of its above statutory purpose, until the end of 2019, the company carried out promotional actions on the basis of published written terms of participation for each promotional action, filed with a notary public and posted on the company's website for the purpose of informing the public, for the entire duration of each promotional energy. The terms of the promotions generally stated, among other things, the following: "Participation in the Promotion is carried out by submitting valid contact information, in one of the following ways: (1) through entries/postings on the internet, specifically either on the website _____ or on other sites, where there is a relevant post by the Organizing Company, or (2) through the special participation forms, which bear the name of the

Organizing Company and are distributed by its representatives, or (3) through the special telephone number ____, with a local charge. In particular, for the validity of their participation, the participants should respectively for each of the above-mentioned ways: (1) fill in the special Promotion Participation Form "_____", which is available on the _____ site, indicating mandatorily and in the manner complete and true of the following information: first name, last name and telephone number, or (2) state in a complete and true manner the following information: first name, last name and telephone number on the relevant entry form, which will be granted by a representative of the Organizing company and will be completed by the Participant himself or by the representative of the Organiser, at the discretion of the Participant, or (3) to state the following information in a mandatory and complete and true manner: name, surname and their phone number to the organizing company's voicemail, which will answer 24-hour phone calls to the specialist telephone number ____, with a local charge." (...) "The Organizer considers that each participant is the owner and has exclusive control of the e-mail address he declares". "During the Promotion, all valid, in accordance with the above mentioned, Declarations of Participation, will be collected in a special 7 file (Excel) of the Organizing Company and will receive a serial number, and Beneficiaries will be informed about the next stages of the Promotional energy. This file will be destroyed after the Promotion has ended." "Each Beneficiary will be informed free of charge, through a call from the telephone center of the Organizing Company to the mobile or landline number that he has declared during his participation under Article 4, that he is a Beneficiary of the Promotional gifts and must confirm that he wishes and accepts the gifts to which he is entitled. If he accepts the gifts, he will be informed during the same communication about the number to call to be informed about the method of receipt (...)" "All participants acknowledge, declare and expressly and unconditionally accept that: (a) their personal information in this promotion cannot belong to a third natural or legal person, but to themselves, (b) they are over 18 years of age and have legal capacity, (c) their personality is not insulted or diminished in any way by their participation in the promotion in question of the Organizer, in which they will participate with their personal data, (d) they do not infringe personal data or the right of the personality of any third party, (e) do not infringe the intellectual property rights of any third party, (f) expressly consent to the Organizer using and processing their personal information (name, phone, email address) for the sole purpose of serving the Promotion, (g) provide their consent and authorization to the Organizer for the promotion of the Promotion and of its results through print and electronic media and the internet throughout its duration. The Organizing Company reserves the right to use and publish any news item related to the conduct of the Promotion." "Privacy. By participating in the Promotion, each participant expressly declares and accepts that his/her personal

data will be collected and used by the Organizer for their processing 8 through automated or non-automated means, either by the Organizer or by any other person appointed by the Organizer for the purpose of the above processing by order and on its behalf in the context of this. The personal details of the winners of the Promotion, in their capacity as such, will be retained by the Promoter and will be used exclusively for the purposes of the Promotion. In any case, the personal data of the participants will be kept in accordance with the current Greek legislation, Law 4624/2019 on the Personal Data Protection Authority and the General Regulation for the Protection of Personal Data - Regulation (EU) 2016/679 of European Parliament (GDPR). The participants will have the right to confirm, modify or correct, limit or even delete all their personal data kept on file at any time and without charge in accordance with the terms of the current Greek legislation, Law 4624/2019 on the Data Protection Authority of a Personal Nature and the General Regulation for the Protection of Personal Data-Regulation (EU) 2016/679 of the European Parliament (GDPR) as applicable by contacting the organizer's controller, at the email WebSuperMarketDeal@gmail.com or at the contact phone _____ with urban charge. The exercise of the rights of limitation, opposition and/or the right of deletion, if they concern data that is necessary for the implementation and/or continuation of this promotional action, implies either the non-possibility of participation, if exercised before the implementation of the Promotional Action, or the automatic cancellation of participation in it if they are exercised at any stage of the Promotion. The Organizer expressly declares and undertakes to follow the processing authority of the minimum personal data and the above data collected, are processed exclusively and only for some of the above purposes herein. Furthermore, it declares that it has taken all the necessary measures, technical, organizational, legal, in order to ensure the protection of these data (...)" 9 As INCOSER states in its above document, from the above basic terms they arise briefly, according to its claims, the following: 1. Participation in the promotion was done at the initiative of the participant, in one of the ways expressly provided for. Therefore, the participant voluntarily declared his information by filling in a relevant form, in which, among other things, he indicated the desired contact phone number. 2. In order for a participation to be considered valid, all the minimum required information should be mentioned, i.e. first name, last name and telephone number, so that if necessary the owner can be identified. 3. Valid entries were collected in an electronic file so that communication could take place, with which participants were informed about the next stages of the promotion. The above files were kept only for as long as the 4. respective promotional action lasted. Then they were destroyed. The same was true for the declarations of participation. 5. The communication was made to the number that the participant himself had declared, giving his consent to said communication for the purpose of the

promotional action. A special telephone number was assigned to each promotion, so that 6. complaints could be voiced. Each participant declared that they consent to the processing of their personal 7. data, including their phone number, for the purpose of serving the promotion. 8. A special telephone number was designated for the purpose of serving the exercise of the right of objection. The participants could confirm, modify or correct, limit or even delete all their personal data at any time and without charge by contacting the Organizer's data controller, at a certain e-mail or phone number. 10 9. Each participant was informed of the conditions before submitting his participation, at which point he declared that he knows that if he participates, he does so voluntarily and furthermore that he unconditionally accepts the conditions under which it is carried out, i.e. the telephone communication. B. Regarding the above-mentioned complaints, INCOSER states, for essentially all cases (except for the one specified in the complaint), that they are unsubstantiated and should not be accepted because the complainants do not provide evidence of the calls, while also in no case was the right of objection exercised. For some special cases in some complaints, the company provides some additional clarifications as follows: i) For the under item. b complaint, states that the date of the call shown in the screenshot attached to the complaint (ie 2019) is different from what it states within the complaint (and states verbatim "therefore it is not clear what exactly the complaint is about which we are called to answer"). ii) For the under item. With the complaint, the company considers that the truth of the statements is not confirmed because the complainant's signature is missing, as well as it is technically and practically impossible, if one takes into account the way in which the calls are made, that is, sequentially through an automated system, to be made three calls within 90 minutes. iii) For the under item. in the complaint, which is the only one for which the company does not state that evidence is missing from the complainant, it states that it assumes that there was a technical error. iv) For the item g complaint, the company mentions, in addition to the more general questioning of the content of the complaint in analogy with its allegations and for the others - in addition to the under par. f - complaints, that the complainant's reference to the company's complaint line being down ("not calling") is an arbitrary conclusion because at some point his call may not have been forwarded for technical reasons. Furthermore, the company states that a search on the internet in the service of 11888 – OTE Information (<https://www.11888.>) shows that the number in question belongs to M and not to Θ, who is mentioned as the complainant, and therefore the complainant has no legal interest in making the complaint, as he is not the owner of the telephone line. v) For the item the complaint, the company states, in addition to the more general questioning of the content of the complaint in analogy with its allegations and for the others - beyond the under item. f - complaints, that the answer NO is complained of in item 8 of the complaint form regarding

the question of whether it is a recorded call, is not true, as the communication is automated and recorded. vi) For the item complaint, the company states that since the complainant herself states that she registered her phone on multiple online supermarket pages, including her own, she admits that she participated in the promotion and therefore requested the communication and therefore all what she complains contradicts her actions. Furthermore, the company mentions, as an additional claim, that in the relevant complaint form of the Authority which was completed by the complainants, it is stated that "in order to document the complaint you must either be registered in the register of art. 11 to your provider (in which case 30 days must have passed) or you have exercised the right to object specifically to the controller (advertiser)". Based on this, the company comments on the cases of the complaints for which the complainants state that their telephone numbers were registered in the "opt-out" register of their provider, pointing out that either the date of registration in the register is not indicated in the complaint (under item e complaint), either that thirty days had not passed since the date of registration of the number in the register (under item d complaint) or finally that the period of time that had passed since the registration in the register (../2020) until the call was made (/2020) it was small and there is a possibility that the relevant file had not been updated (under item i' complaint). C. Finally, INCOSER states that the calls were made on its behalf in the context of its business activity, while the telephone numbers came from the entries made by the owners of the said telephone numbers themselves, declaring participation in the respective promotional actions, based on the relevant aforementioned conditions. Therefore, according to INCOSER's claims, the owner of the number also granted his express written consent for communication with him according to article 11 par. 1 of Law 3471/2006. The call made to the number stated during the submission of participation was initially automated whereby the participant was informed that he could participate in the promotion for which he had registered by pressing the 1 button to find out more information, free of charge. The called party could then either press key 1 and be connected to a representative of the company, who in real time would give him the necessary and/or additional information requested, or leave the call. In the event, therefore, that he proceeded by pressing button 1, which of course again states that he expressly wishes and consents to the communication, he would be connected and the representative would recall the necessary information, such as company name, purpose of call, possibility to express objections/complaints, and right of objection, method of receiving the gift, which the invitee already knows having accepted the terms of the promotion. According to the company, no charge is imposed on the participant in the promotion during this stage. All participants were given the opportunity to withdraw their participation at any time and to object in a clear and defined way, both in the terms of the

promotion and at the start of the conversation with the company representative. As long as the person called told the representative that he did not want to receive communications, despite his initial explicit consent to them, he was automatically removed from the relevant list. The declarations of participation, the files with the details of the participants and the way of exercising the right of access 13 invited – record of outgoing calls were kept for the duration of the promotion, i.e. until the gifts were received, and then they were deleted, as the purpose of observing the file. No use other than that covered by the purpose of the promotional activity was made. Given that the calls were made mechanically, after registering the number of the participants on an electronic basis, it is possible that among the numerous registered calls, an error in the number has crept in, due to either due to a wrong entry of the number in the electronic database, i.e. due to human error, or due to a technical problem of the system that performs them automated calls. As a measure of extra diligence, the staff was trained at regular intervals, so that they knew the applicable legislation and the company's procedures. The process was not supervised by an experienced supervisor every day. Finally, as the company states, numerous calls were made in the context of each promotional activity, so the nine (9) complaints alone, which according to the company's claims are not substantiated, prove that the company followed a correct procedure. D. In its above response, INCOSER also attaches the VAT statements of the company for the months from January 2020 to June 2020. Subsequently, the Authority invited INFO COMMUNICATION SERVICES – ADVERTISING – PROMOTIONAL – COMMERCIAL – to a hearing. RESEARCH AND POLLS SOLE REPRESENTATIVE IKE at the meeting, via teleconference, of the Plenary Session of 31-03-2021 (see call with prot. no. C/EXE/850/16-03-2021). During the meeting of 31-03-2021, Mr. Nikos Petropoulos, lawyer (AMDSA ...) was present as a representative of the data controller, who submitted a request to postpone the discussion, which was accepted, with a new date for the discussion of the case being set on the 23 -4-2021. The meeting of 4-23-2021 was attended by Ms. Ioanna Kamarinopoulou, lawyer (AMDSA ...), as representative of the controller. After the meeting, the data controller was given a deadline to submit a memorandum, which he submitted, within the set deadline, with the document No. C/EIS/3392/24-05-2021 on the 14th. The following are mentioned in the memorandum in question: a) The data controller from time to time carried out promotions of various products and services by telephone, with clear terms of participation that were communicated in advance to the participants. He has stopped the activity in question since the end of 2019, while to this end he submits, with his memorandum, indicative VAT statements of the company for the months of November and December 2019. The company, as mentioned during the hearing of the data controller before the Authority, it has been dormant since

then and remains active with a view to future activation of any of these activities. It is pointed out that during the hearing of the data controller the question was raised regarding the under item. j complaint, which concerns a call made during the period in which the company is allegedly inactive, and the representative of the controller replied that it was a mistake, without further clarification being given neither during the hearing nor with the subsequent document his memorandum. b) The controller, at the start of his activities, had notified the Authority of his processing operations. He reiterates in his memorandum that the promotional actions were carried out only to people who had registered their participation, having recorded their details on a special form or coupon, thus consenting to communication with them. It also mentions that this claim is confirmed - according to the data controller - by the under item. i' complaint, since the complainant states that she declared participation via the internet. After the end of each promotion, the details of the participants are deleted. Further, the controller states that in the calls to each participant two options are given, either to contact a representative by selecting the button with the number "1" or to request deletion of their details from the lists by selecting the button with the number "2". c) Regarding the individual complaints, nothing additional is stated in the memorandum, in relation to what the data controller had initially stated in his original document. 15 d) During the hearing of the controller, the question of his possible relationship with the company PLUS REAL Advertisement was raised, given that according to a search in the General Commercial Register (GEMI), the two companies show the same natural person as Management, have similar activities , while the representative of the data controller during his hearing before the Authority also represented, at the same meeting and for another case, the company PLUS REAL Advertisement. Both at the hearing and with the controller's subsequent memorandum, it was stated that the two companies in question have different headquarters, different facilities, numbers and infrastructure, and with regard to the specific activity carried out by each independently, statements were submitted with the memorandum VAT of both companies for September 2019, from which it follows that they operated in parallel and not consecutively. The Authority, after examining all the elements of the file and those discussed in the 23-04-2021 meeting, after hearing the rapporteur and the clarifications of the assistant rapporteurs, who (assistants) left after the discussion and before the conference and the taking a decision, and after thorough discussion, **CONSIDERED ACCORDING TO THE LAW 1.** From the provisions of articles 51 and 55 of the General Data Protection Regulation (Regulation (EU) 2016/679 – hereinafter, GDPR) and article 9 of law 4624/2019 (Government Gazette A' 137) it follows that the Authority has the authority to supervise the implementation of the provisions of the GDPR, this law and other regulations concerning the protection of the individual from the processing of personal data. 2.

According to article 4 par. 7 of the GDPR, which has been in force since May 25, 2018, the controller is defined as "the natural or legal person, public authority, agency or other body that, alone or jointly with others, determines the purposes and the way of the processing of personal data". 16 3. The data controller, in the context of compliance with the principle of legitimate and lawful processing of personal data (Article 5 para. 1 of the GDPR), must, in accordance with Article 12 para. 1 of the GDPR, receive the appropriate measures to provide the data subject with any information referred to in Articles 13 and 14 of the GDPR, in order to inform the data subject that it is going to process its data in a legal and transparent manner, while in addition it must be in a position per at any time to prove his compliance with these principles (principle of accountability according to article 5 par. 2 of the GDPR). The obligation to inform the data controller is analyzed in articles 13 (regarding the information provided if the personal data is collected from the data subject) and 14 (regarding the information provided if the personal data has not collected from the data subject) of the GDPR. 4. 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, for the issue in question, the rule of prior consent was initially chosen (see the previously enforced form of Article 11 of Law 3471/2006). However, 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 in general 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, 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 17 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, when the amended - more favorable for data controllers - provision came into force, telephone calls with human intervention, in view of the above purposes, are allowed, unless the called party has declared that they do not wishes them ("opt-out" system). Advertisers, as long as they carry out telephone promotions with human intervention, must receive from all providers updated copies of the Registers of article 11 of Law 3471/2006 and ensure that they have available the subscribers' statements made up to thirty days before the making of the telephone call (see also

Decisions no. 62-67/2016 of the Authority). Moreover, according to article 13 of the above Law 3471/2006, the control of compliance with the provisions of this law belongs to the Authority. 5. For calls in any case, without human intervention (automated calls), as expressly required by article 11 par. 1 of Law 3471/2006, the prior consent of the subscribers is required - even if these numbers are not registered in the "opt-out" register of their provider. It should also be pointed out that the provision for automated calls, according to implementation of Directive 2002/58/EC, has been in force since the start of application of Law 3471/2006 but also of the earlier Law 2774/1999, i.e. it was not affected by the subsequent amendment of Law 3471/2006. After all, automated calls are a fairly invasive means of promoting products and services, as by their nature, the recipient of the communication does not easily have the possibility to be informed and exercise his rights, as in the case where the communication is carried out by human intervention. 6. Exceptionally, in accordance with article 11 par. 3 of Law 3471/2006, e-mail contact details obtained legally, in the context of the sale of products or services or other transaction, may be used for the direct promotion of similar products or services of the supplier or to serve similar purposes, even when the recipient of the message has not given his consent in advance, provided that he is provided in a clear and distinct manner with the possibility to object, in an easy way and free of charge, in the collection and use of his electronic data and this during the collection of contact data, as well as in every message, in case the user had not initially objected to this use. Furthermore, it is pointed out that short text messages (SMS) are also e-mails according to the definitions of Law 3471/2006 and Directive 2002/58/EC. the subject 7. Furthermore, the controller must satisfy the other rights of the data subjects, in particular the rights of information (Article 13 of the GDPR regarding information provided if personal data is collected from the data subject and Article 14 of the GDPR regarding information provided if the personal data has not been collected from the data), access (Article 15 of the GDPR) and objection (Article 21 of the GDPR). This means, with regard to the obligation to inform, that when making a telephone call, the data controller must inform about his identity and the identity of his representative, not conceal or falsify the caller's number and inform about the purpose of the processing and for the possibility of exercising the above rights. Also, with regard to the right to object provided for in Article 21 of the GDPR, the controller must, in order to comply with the obligation deriving from said provision, take care, if a called subscriber expresses his objection to receiving calls by the specific data controller (and/or his representative), to follow a clearly defined procedure that ensures that this number will be excluded from any telephone promotional/advertising action by the data controller in the future (see no. 62- 67/2016 Decisions of the Authority, but also Decision no. 127/2017 of the Authority). 8. In the specific cases, based on the above, it appears that the

complained company carried out, as a controller, 19 automated telephone promotions, as well as promotions via short text messages (SMS). Therefore, the legality of carrying out said promotional actions is ensured if the above considerations have been observed. 9. From the examination of the elements of the case file, it emerges in particular that the data controller makes automated calls to promote products and services, without the prior specific consent of the data subjects. And this, because the basic claim of the data controller that the automated calls are made only to those who have given express prior consent to this, is unfounded because it is not confirmed by the data it cites, for the following reasons: a. For none of the complaints did the controller provide evidence that it had obtained the prior consent of the called subscriber. On the contrary, the controller stated that he considers the complaints inadmissible, without actually examining them. However, in all complaints detailed information is listed by complainants (at least the called and calling numbers, but also the date and time of the calls). As the Authority has already judged, and in fact before the entry into force of the GDPR (see for example Decision no. 66/2016 of the Authority), when the called subscriber is the recipient of nuisance that he has not requested, the only thing he can do for the proof of this in the event that he wants to make a complaint, is to limit himself to external elements of the call and to a reference to its content (phone number of the call, time and day of calls, advertiser and additionally, person with whom he spoke, if he has stated, or other elements of the spoken conversation). Where the complainant provides full details, the advertiser (controller) should be able to demonstrate that it did not make the call or that it was made in accordance with the conditions of lawful processing, i.e. in this case, demonstrate that it had obtained the previous consents . 20 This is also fully in line with the principle of accountability (Article 5 para. 2 GDPR), according to which the controller bears the responsibility of being able to demonstrate compliance with the principles of lawful processing of personal data. In the cases of complaints, the data controller did not carry out a substantive control of the complainants, since he did not examine whether the disputed calls were actually made and, in the affirmative, whether he had received prior consent. In fact, it is worth mentioning that for the under g complaint, the controller checked the public electronic telephone directory 11888 to check the details of the complaining subscriber, instead of checking their internal consent files. It should also be pointed out that, as the Authority has already prescribed in this regard (see, for example, the aforementioned Decision No. 66/2016), in order for the controller to be able to investigate any complaints of the data subjects, he will must take care to keep information necessary for the investigation of any complaint. In this particular case, the consents of the data subjects should be kept for a reasonable period of time to serve the above purpose – much more so in the present case, in which the controller knew, from the Authority's

documents, of the existence of complaints submitted to the Authority. Therefore, the deletion of the data of the participants, which the data controller claims to carry out after the end of the respective promotional action, cannot justify his inability to prove that the promotional actions were indeed carried out to users for whom he had received a special consent to this. b. The very process described by the data controller regarding the general way of obtaining consent of the data subjects does not ensure that the consents obtained are valid. And this is because no check is made as to whether the person who registers his data in the consent form is indeed who he claims, both when filling out paper forms and when filling out electronic forms (see also in this regard Directive 2/2011 of the Electronic Consent Authority, which specifies the conditions for obtaining valid electronic consent). Besides, the risk of filling in personal data by another third party and not by the subject thereof is also acknowledged by the data controller himself in his initial response to the Authority, in the context of examination of the under item. 1st complaint (see what is mentioned above regarding the case no. C/EIS/9369/26-11-

2018 document), while in the information text on the processing of personal data that takes place it is expressly stated that the company considers that each participant is the owner and has exclusive control of the e-mail address he declares. From this it follows that the company does not carry out any accuracy control of the data declared. Therefore, even if it is accepted that he obtains consents according to the procedure he describes (for which, however, he did not provide any evidence), these consents cannot be valid according to what is described above. 10. The data controller did not adequately inform the data subjects of his identity, since – as can be seen from the complaints – none of the complainants was able to name the company because there was no such information (with the exception of the complaint under item g. which, however, concerns the sending of SMS, as well as the complaint under item 1, where - despite the fact that the company is named as the complainant - it does not appear that during the relevant telephone promotion was given information about its identity of the controller).

11. In addition to automated phone calls, it arises – based on under item g' complaint - that the company also sends out briefs text messages (SMS) of a promotional nature. And in this case,

22

as with the automated phone calls, it does not appear that he had obtain the prior consent of the recipient of the message, nor that he was involved

the exception of article 11 par. 3 of Law 3471/2006 for sending such messages without prior consent.

12. In addition to the lack of legal processing conditions regarding carrying out promotional actions, as described above, the controller does not have, as can be seen from his data of the case file, complaints review procedures, since it did not take place – such as mentioned above – in a substantive examination of the complaints. Further, to in support of this, it is worth mentioning that for the under item. i' complaint, the controller interprets the complainant's report regarding the that he attempted to make online purchases from various supermarkets as her statement that she also attempted to make a purchase from the controller, although from the complaint no statement can be inferred with this content, but on the contrary the complainant declared ignorance about the supermarket allegedly advertised by the controller.

13. The data controller seems not to have - as it should - clear knowledge of its legal framework, since it claims that the complaining subscribers either not had registered their number in the "opt-out" register of their provider or that the registration of this had been made or in a short period of time before its realization call or in an unspecified period of time. However, as mentioned above, automated telephone calls are not permitted promotional actions without prior consent even if the called number is not registered in the provider's "opt-out" register of. Besides, even if it were permissible to make such calls to numbers which were not registered in the "opt-out" register, the person in charge processing should receive on a monthly basis the registers from all of them providers – something it does not appear that he did, since he does not make any relevant

report. And the controller's claims about due diligence through training the staff at regular intervals so that they are aware of it applicable law and company procedures, for which no relevant documentation is provided, however, they are unproven.

23

14. The controller reports that the number of complaints is small.

However, one must take into account the fact that, according to common experience, it does not all those who receive calls in violation of

provisions of article 11 of Law 3471/2006, while indicatively it is pointed out that for

the company's phone numbers are available on the Internet

where subscribers report receiving such spam calls, with

content corresponding to that reported by the complainants¹. Besides, with

given that the company is dormant (see VAT returns for months of 2019

and 2020 that it has submitted with its pleadings), it could not possibly have existed

increase in complaints in recent months

(although, as

mentioned above, there was one complaint during the period as well

deactivation of the controller's activities, for which

no clear explanation was given). In any case, the number of complaints does not

may constitute in itself, for the case in question, a criterion for the

assessment of the extent of the violation since, as mentioned above, the person responsible

processing in no case received valid consents in the context

of his activities.

15. The data controller clearly aimed at financial benefit from art due processing.

16. Furthermore, the controller did not always respond in a timely manner to

of the Authority's documents with which complaints were sent to him and requested his views (see in particular the complaints under items b' - j', for which o controller sent his answers cumulatively after the no. prot. C/EX/4560-1/27-07-2020 document of the Authority - i.e. in time beyond the year from the first related one, with no. prot. C/EX/1342-2/10-04-2019, document of the Authority with to whom the original complaints had been forwarded). Besides, despite the documents of the Authority, the same activity was still carried out by controller, without complying with the conditions of legal processing of personal data.

1 See indicatively <https://www.white-pages.gr/> and <https://www.white-pages.gr/> (last accessions: 2021)

24

17. The Authority, taking into account the above found violations of the articles 13 and 14 of the GDPR and article 11 of Law 3471/2006 and taking into account on the one hand that the controller: i) intended to obtain financial benefit from said processing for as long as the company was active (after it existed charge for users if they made the appropriate key selection to proceed further), ii) did not have a procedure for examining / satisfying the complaints of data subjects, iii) did not respond in a timely manner to documents of the Authority by continuing the processing without taking them into account observations of the Authority and iv) was not aware of the relevant legal framework, as well as that ten (10) complaints were submitted to the Authority against the person in charge processing and on the other hand, the fact that the company is now inactive, judges that the conditions for enforcement against her are met, based on article 58 par. 2 i' of the GDPR as well as article 21 par. 1 item b' of Law 2472/1997 (which remains in force according to article 84 of Law 4624/2019) the administrative sanction

of a fine, referred to in the operative part of the present, which in each case is considered - by virtue of Article 83 of the GDPR - effective, proportionate and dissuasive.

The beginning

FOR THOSE REASONS

It imposes on INFO COMMUNICATION SERVICES ADVERTISING – PROMOTIONAL – COMMERCIAL - RESEARCH AND SURVEYS SOLE REPRESENTATIVE IKE, as responsible processing, the effective, proportionate and dissuasive administrative money fine that is appropriate in the specific case according to the special ones circumstances thereof, amounting to thirty thousand euros (30,000.00) euros, for the above established violations of articles 13 and 14 of Regulation (EU) 2016/679 and Article 11 of Law 3471/2006, in accordance with Article 58 para. 2 i of the GDPR in combination with article 83 par. 5 of the Civil Code, and with article 21 par. 1 item b' of Law 2472/1997, in conjunction with Article 13 par. 4 of Law 3471/2006 and Article 84 of Law 4624/2019.

25

The president

Konstantinos Menudakos

The Secretary

Irini Papageorgopoulou

26