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Vs

████████████████████

COMPLAINT

Reference is made to the complaint (registered internally with file number CDP/IMI/LSA/27/2018) received from the Berlin Commissioner for Data Protection and Freedom of Information (the “concerned supervisory authority“ or “CSA“) concerning ██████████ (“the complainant“) who is alleging that ██████████ (“the controller“ or “██████████“) breached his data protection rights, as enshrined under the General Data Protection Regulation ¹ (“GDPR“ or the “Regulation“). The complainant contended that the controller was still processing his personal data for the purposes of sending him marketing communications despite the fact that he has revoked his consent.

In particular the complainant wanted to have confirmation from the data controller that his first email dated 30^h November, 2017, by which he revoked his consent to use both his email addresses and his mobile phone number for the purpose of sending marketing communication, had been received by the controller.

It has to be noted that when the complaint was lodged for the first time with the Office of the Information and Data Protection Commissioner (“IDPC“ or “Commissioner“), on the 13th of September 2018, the IDPC requested the controller to confirm that its main establishment was in Malta. Despite the controller’s positive answer, following a preliminary investigation, it transpired that the controller had just an office registered in Malta but it did not have its main establishment within the Maltese territory. The CSA was informed of this outcome of the preliminary investigation.

On the 23rd July 2019 the CSA informed this Office of the change of the data controller’s registered address. From an unannounced IDPC visit to the new data controller’s premises to deliver a request for submission by hand, it transpires that currently the controller has an office and some employees in Malta. However, during this visit it was not possible to establish whether the Malta office is in fact the

¹ Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

controller's main establishment as when we asked for the data protection officer, at that time, he/she was not present.

INVESTIGATION

As part of the investigation process, on the 13th of September 2018 the Commissioner requested the controller through an email to confirm that its main establishment was in Malta. Following its positive reply, the Commissioner requested the controller to put forward its submissions on the allegation raised by the complainant, through a registered letter dated 11th October 2018. As the submissions, that were received through email, only contained information that was already known, which was part of the complaint, further submissions were requested on the 25th of March, 2019. In view that no reply was forthcoming, a reminder in the form of registered mail was sent on the 8th April, which according to MaltaPost plc, was not delivered "*due to addressee not available*". Eventually our investigations led to another different e-mail address for the controller, and another e-mail was sent on the 23rd of April. A reply was received through email on the 2nd of May, 2019. Further documentation was requested on the 26th July 2019 to which a reply was received on 1st of August, 2019.

The Commissioner notes that the long time it has taken for the Controller to be contacted and eventually reply to all the requests made by his Office, and the fact that even though the Commissioner had to resort to using registered mail and still no reply was forthcoming, it is being highlighted that the controller's degree of cooperation with this Office is not in line with what is expected under the GDPR.

The submissions included the following principal arguments:

- The controller confirmed that they were not able to find the first email sent by the complainant on the 30th of November 2017 on their server, and therefore cannot confirm whether this email was ever received or otherwise. The controller also stated that there is a possibility that the email, in case it was received, was not dealt with properly and, this might be the reason why it is not stored on its system. In any case the controller did not comply with the complainant's request within the legal time and, as a consequence, the complainant was still receiving marketing communications after the 30th of November, 2017;
- For privacy and security reasons the controller requires registered customers to get in contact by using the email address provided when opening their accounts. The email address used by the complainant when opening his account was [REDACTED]. When sending the email on the 30th of November, the complainant used this email address. It has to be noted that the complainant has other four (4) email addresses namely: j [REDACTED].

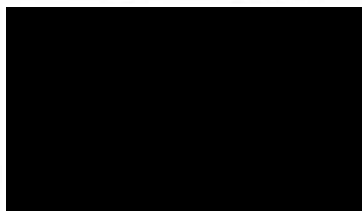
DECISION

On the basis of the foregoing, the Commissioner considers that the data controller did not have adequate procedures in place to deal with the complainant's request to exercise his right to object to processing operations, resulting with the complainant actually being deprived of this right. Furthermore, the Commissioner views that there was lack of co-operation in dealing with this case. Subsequently the controller is found to be in violation of Articles 21 and 31 respectively of the GDPR, and after giving due regards to the circumstances contemplated under Article 83.2 of the GDPR and taking into account Article 83.1, [REDACTED] is hereby being served with an administrative fine of fifteen thousand Euro (€ 15,000).

The Commissioner also considers that the controller's inability to deal with the data subject's complaints, in particular, the lack of procedure to handle the right of erasure request, led to the sending of unsolicited communications to the complainant. The controller is therefore also found to be in breach of regulation 9 of Subsidiary Legislation 586.01 of the Laws of Malta and pursuant to regulation 13 thereof, the data controller is hereby being served with an administrative fine of two thousand Euro (€ 2,000) for this violation.

The administrative fines shall be paid to the Commissioner within twenty-five (25) days from receipt of this decision.

A copy of this decision is also being sent to the Berlin Commissioner for Data Protection and Freedom of Information



Saviour Cacia
Information and Data Protection Commissioner

Today, the 10th day of October 2019