



SUMMARY OF HELLENIC DPA'S DECISION NO 26/2019

The Hellenic Data Protection Authority, in response to a complaint, conducted an ex officio investigation of the lawfulness of the processing of personal data of the data subjects — employees working at *'PRICEWATERHOUSECOOPERS BUSINESS SOLUTIONS LIMITED LIABILITY BUSINESS AND ACCOUNTING SERVICE PROVIDER SA'* trading as *'PRICEWATERHOUSECOOPERS BUSINESS SOLUTIONS SA'* (PWC BS). According to the above complaint the employees were required to provide consent to the processing of their personal data.

The DPA decided that in order for personal data to be processed lawfully, i.e. in compliance with the requirements of the General Data Protection Regulation (GDPR) No 679/2016, all the conditions with regard to the application of and compliance with the principles set out in Article 5(1) of the GDPR should be met.

The identification and choice of the appropriate legal basis under Article 6(1) of the GDPR is closely related both with the principle of fair and transparent processing and the principle of purpose limitation, and the controller must not only choose the appropriate legal basis before initiating the processing -documenting this choice internally in accordance with the principle of accountability-, but also inform the data subject about its use under Articles 13(1)(c) and 14(1)(c) of the GDPR, as the choice of each legal basis has a legal effect on the application of the rights of data subjects.

The principle of accountability constitutes the core of the compliance model adopted by the GDPR. Under this principle, the controller should implement the necessary measures to comply with the principles set out in Article 5(1) of the GDPR and demonstrate their effectiveness, without the DPA having to submit individual — specific questions and requests to assess compliance while exercising its investigative powers.

It should be noted that, due to the fact that this is the initial period of the GDPR's application, the Hellenic DPA submits specific questions and requests, while exercising its investigative powers in order to facilitate the documentation of accountability by controllers.

The principles of lawful, fair and transparent processing of personal data pursuant to Article 5(1)(a) of the GDPR require that consent be used as the legal basis in accordance with Article 6(1) of the GDPR only where the other legal bases do not apply so that once the initial choice has been made it is impossible to swap to a different legal basis. In case the data subject withdraws his or her consent, it is not allowed to carry on the processing of personal data under a different legal basis. Where the legal basis of consent is properly applied, in the sense that no other legal

basis is applicable, refusal of consent or its withdrawal is equivalent to an absolute prohibition on the processing of personal data.

Consent of data subjects in the context of employment relations cannot be regarded as freely given due to the clear imbalance between the parties.

In this case, the choice of consent as the legal basis was inappropriate, as the processing of personal data was intended to carry out acts directly linked to the performance of employment contracts, compliance with a legal obligation to which the controller is subject and the smooth and effective operation of the company, as its legitimate interest.

In addition, the company gave employees the false impression that it was processing their personal data under the legal basis of consent, while in reality it was processing their data under a different legal basis about which the employees had never been informed. This was in violation of the principle of transparency and thus in breach of the obligation to provide information under Articles 13(1)(c) and 14(1)(c) of the GDPR.

Where the controller has doubts concerning the lawfulness of the processing, the controller must remove those doubts before processing or refrain from processing until the doubts have been removed.

Finally, the DPA found in this case that the controller had violated the principle of accountability pursuant to Article 5(2) of the GDPR as, on the one hand, the company did not meet its relevant obligation and in particular the DPA's request to provide internal documentation regarding the choice of the legal basis used. On the other hand, the company transferred its compliance obligations to its employees by asking them to sign a statement according to which they acknowledged that their personal data kept and processed by the company was directly related to the needs of the employment relationship and the organisation of work and that their data was relevant and appropriate in the context of the employment relationship and the organisation of work.

In view of the above, the Hellenic DPA concluded that PWC BS as the controller:

i. has unlawfully processed the personal data of its employees contrary to the provisions of Article 5(1)(a) indent (a) of the GDPR since it used an inappropriate legal basis.

ii. has processed the personal data of its employees in an unfair and non-transparent manner contrary to the provisions of Article 5(1)(a) indent (b) and (c) of the GDPR giving them the false impression that it was processing their data under the legal basis of consent pursuant to Article 6(1)(a) of the GDPR, while in reality it was processing their data under a different legal basis about which the employees had never been informed.

iii. although it was responsible in its capacity as the controller, it was not able to demonstrate compliance with Article 5(1) of the GDPR, and that it violated the principle of accountability set out in Article 5(2) of the GDPR by transferring the burden of proof of compliance to the data subjects.

In view of the above, the DPA decided that there was no need to examine the rest of the principles set out in Article 5(1) of the GDPR or to investigate any other processing operations subsequent to the unlawful collection of personal data.

The Hellenic DPA, after ascertaining the infringements of the GDPR, decided that in this case it should exercise the corrective powers conferred on it under Article 58(2) of the GDPR by imposing corrective measures, and that it would order the company in its capacity as the controller within three (3) months:

- to bring the processing operations of its employees' personal data as described in Annex I submitted by the company into compliance with the provisions of the GDPR;
- to restore the correct application of the provisions of Article 5(1)(a) and (2) in conjunction with Article 6(1) of the GDPR in accordance with the grounds of the decision;
- to subsequently restore the correct application of the rest of the provisions of Article 5(1)(b)-(f) of the GDPR insofar as the infringement established affects the internal organisation and compliance with the provisions of the GDPR taking all necessary measures under the accountability principle.

Moreover, as the above corrective measure is not sufficient in itself to restore compliance with the GDPR provisions infringed, the Hellenic DPA considered that, based on the circumstances identified in this case and under Article 58(2)(i), an additional effective, proportionate and dissuasive administrative fine should be imposed in accordance with Article 83 of the GDPR, which amounts to one hundred and fifty thousand Euros (EUR 150,000.00), taking into account the published financial statements of the company for the period from 01-7-2017 to 20-6-2018, according to which its net turnover was EUR 41,936,426.00.