

Ref. N.: 11.17.001.009.225

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15 May, 2023

Mr XXXXX
Director
Crowd Tech Ltd

(c/o Data Protection Officer)

Decision
Unsolicited calls and erasure request

Further to the exchange of communications between Cyprus SA (the Commissioner for Personal Data Protection) and Crowd Tech Limited concerning a complaint involving Trade360.com, we would like to bring to your attention the following assessment of the Commissioner.

Summary of the Case

2. A complaint was lodged on the 20th of November, 2020 in Poland against Athena Investments Dom Makerski S.A. ("the processor"). The complainant claimed that the processor processed his data without a legal basis, since he has never provided them with his phone or personal information, nor has he given them his consent for marketing calls. The complainant clarified that only contact with the processor was by telephone, and any request to delete his personal data, ended immediately the recorded conversation, so that the request could not be registered. He did not take any other steps to solve the situation with the processor.

2.1 The Polish Supervisory Authority contacted the processor and the processor answered that it had received the complainant's data from the company Crowd Tech Ltd ("the controller") on 31.08.2020. They processed the complainant's data (name, surname, telephone number and email address) on behalf of the controller. The legal basis for processing was Article 28 of Regulation 2016/679. The purpose was to present the services offered by the controller and they have called the complainant by phone on 01.09.2020 and 20.11.2020, informing him that they were acting on behalf of the controller. According with the processor, the complainant did not request deletion of his data, he simply stated that he was not interested in the services offered to him. They did not receive any written request from the

complainant (in writing or by an e-mail) addressed to the DPO. The processor presented to the Polish SA part of the processor's agreement with the controller, in support of its position. Then, the complaint was transmitted by the Polish SA to the Commissioner for Personal Data Protection (Cyprus SA), to be handled as a local case, since the controller is an investment company registered in Cyprus.

2.2 Before investigating the complaint, we asked clarifications from the Polish SA. The complainant (through the Polish SA) clarified that he was not a client of the controller, that the call was on his private phone number and that he exercised his rights towards the processor asking the erasure of his personal data from their database.

2.3 During the investigation of the complaint with the controller, the controller initially clarified the following, presenting relevant documentations to establish its positions:

- There was indeed a call between the processor and the complainant.
- The complainant was considered to be lead (potential client) as he never activated any trading account with the controller and thus no contractual relationship was established between them.
- His information was provided by the complainant, via online marketing/landing pages and banners to either a partner, affiliate or the company. During this process, leads may then share their information via their account registration through landing pages and banners. The aforementioned registration of the complainant occurred from a specific (given) IP address through a specific landing page via which the complainant accepts to receive further marketing calls. The complainant entered his information and submitted over a click of a button via the Polish Website as seen over a screenshot which the controller provided. According with the screenshot, the information of the complainant entered the system on the 28.8.2020 07:28 from a specific IP Address, using the trade360_pl site. The legal basis was consent, since any data subject can freely register over a landing page/website and submit registration details by a click of a button.
- The processor handles any GDPR-related data subject request by directly forwarding such request towards their DPO's email address. With respect to the case of the complainant, the processor notified the controller via email and the controller proceeded with unsubscribing the complainant from their records. The complainant was unsubscribed on 15.12.2020, i.e. the day of receipt of the request from processor. Relevant print screen was provided. Moreover, the controller provided us with their Clients Data Subjects Request Registry, confirming by this, the way they have handled the specific request.

2.4 The above clarifications were forwarded to the complainant through the Polish Authority. The complainant however insisted that he has never been a customer of the controller, wondering how the controller linked the click on the button to his phone number and his consent to phone contact, indicating that there was a very low probability that he used the button on August 28, 2020 at 7.28, because he was probably still asleep at this time, saying that he has reached out the processor asking to delete his personal data on 20 November 2021 and on 22 November 2021 he received a reply about their deletion, providing a photo of an email received by

the processor, and wondering if the processor has a copy of his request to delete his personal data, because his request was made later than indicated by the processor. He insisted to his complaint, because he thought the explanations provided as insufficient and the evidence provided as incomplete.

2.5.1 We informed the controller regarding the complainant's response and the controller replied that the complainant was categorized as per the company's internal procedure as a potential client since he entered his information over a landing page (Polish Website) and submitted his registration details. They had used the submitted data to contact him via their processor. This is the standard process followed for all leads. As far as the technical registration details they presented relevant screenshot indicating site of registration, date and time, and complainant's details. The complainant was not, at any time, categorized as a customer since he never proceeded further with registering a trading account. Actual identification of a person registering an account takes place in a Know-Your-Client (KYC) process and by that any successful request converts into an activated account and therefore prospective client turns into an actual client.

2.5.2 The deletion request reached them on 15.12.2020 through their processor. They executed the deletion request immediately and unsubscribed him from every means of communication. The request was handled within the thirty (30) days deadline to respond. Their business is based on real facts and not on guessworks, such as the one that the complainant is referring to (possibly sleeping). They also presented an unofficial translation of the phone call between the complainant and the processor, which indicated that the request for deletion was made by the complainant on 20.11.2020 and a year later, as it seems, the complainant returned with another email (20.11.2021) as arises from the communication between the processor and the complainant. Furthermore, the initial deletion request was made on 20.11.2020 to the processor and the complainant's second position is contradicting with his initial complaint, indicating 20.11.2020 as the date of the deletion request. Furthermore, the controller informed us that they have terminated their Agreement with the processor as from 31.08.2022.

2.6 We communicated the reply of the controller to the Polish Authority, which came back with the request to clarify the meaning of the document provided by the controller titled "AccountManagerDashboard_....", containing the complainant's name. According to their views, this document showed that the controller continues to process the complainant's personal data in the form of his first name, the name of the individual user number and locational data in the form of the place (country) where the complainant was present on 28 August 2020 at the time of use of the trade360.pl website.

2.7 In response to the above, the controller clarified that this document has been provided as evidence for registration details of the complainant. The information is stored into their systems and protected by the various security mechanisms according to ISO 27001 standard, continuous monitoring, etc. They also clarified that they are obliged by the MiFiD, MiFiR and national Law 87(I)/2017, as amended, (Article 17(6) and 17(7)), to keep records for clients or potential clients for at least 5 years and, where requested by the competent authority, up to seven years.

Therefore, there is a legal obligation which prevents the controller to delete the data. However, they have unsubscribed the data subject from their communication list and he has never been contacted again by any means. The controller furthermore stressed the fact that the complaint was filed the same date as the complainant's request for deletion

2.8 Having examined the controller's privacy policy, we also noticed that the data subject is informed that when they sign up/register to a trading account (both live/demo), the controller may collect personal data such as name, surname, date of birth, gender, phone, etc. The complainant at this case, was categorized by the controller as a potential client since, according with the evidence sent, he entered his information over a landing page and submitted his registration details. The complainant did not dispute the given I.P. address which was used to enter the information to the website.

Legal basis

3. Based on Article 12(3) of the GDPR the "The controller shall provide information on action taken on a request under Articles 15 to 22 to the data subject without undue delay and in any event within one month of receipt of the request....".

3.1 According to Article 17(1)(c), the data subject can request from the controller the erasure of his personal data when the data subject objects to the processing pursuant to Article 21(2), i.e. for direct marketing purposes. The controller can refuse to delete data for compliance with a legal obligation which requires processing by Union or Member State law to which the controller is subject (Article 17(3)(b)). However, "Where the data subject objects to processing for direct marketing purposes, the personal data shall no longer be processed for such purposes." (Article 12(3) of the GDPR).

Assessment

4. From the facts of this case, it seems that the complainant received two calls from the processor. Then, the complainant requested verbally the deletion of his data on the 20.11.2020, i.e. the date of the second call received. The processor sent the request to the controller on the 15.12.2020 and the controller unsubscribed the complainant from all its communication list at the same day. From what the controller said, the complainant's data could not be totally deleted since there is a legal obligation which prevents the controller from deleting them. The controller is an investment company which is obliged by the MiFiD, MiFiR and national Law 87(I)/2017, to keep records for clients or potential clients for at least 5 years and, where requested by the competent authority, up to seven years. The complainant was classified as potential client when on the 28.8.2020 07:28 provided his information through the trade360_pl site. When registering to the website, a data subject provides his personal information, and as per the privacy policy, the data subject is informed that when they sign up/register to a trading account (both live/demo), the controller may collect personal data such as name, surname, date of birth, gender, phone, etc. Since the date of the complainant's deletion from the

controller's communication list, the complainant did not receive any other marketing call.

Conclusion

5. Having in mind the results of the investigation, which showed that the complainants request was handled in due time and in respect of Article 12(3), 17(1)(c) and 21(3) of the GDPR, I find no reason to take any further actions or enforce any corrective power.

Commissioner
for Personal Data Protection