

Ref. N.: 11.17.001.009.019

SENT BY EMAIL and BY CERTIFIED MAIL

To: XXXX
CC: XXXX

19 October, 2021

Data Protection Officer
Crowd Tech Limited
P.O. Box 53244
3301 Limassol

Dear Sir,

FINAL 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

A complaint was lodged in Poland against the controller Crowd Tech's (Trade360.com), a company whose main establishment is in Cyprus. The complaint was transmitted to the Commissioner for Personal Data Protection (Cyprus SA), to be handled as a local case.

We recall that the complaint concerns the controller's failure to comply with the erasure request of Mr. XXXX and the withdrawal of the data subject's consent on 25.11.2020.

Investigation by CY SA

Cyprus SA contacted with the controller on 11.2.2021 and requested various information, and more particularly for this complaint:

1. The source of the data of the complainant.
2. The legal basis of processing for the calls made to the complainant.
3. If the processing was based on consent, specific evidence.
4. The reason why the erasure request of the complainant was not complied by the controller.

Crowd Tech explained the following:

1. The source of the data of the complainant was him, when he registered over landing page on 20.7.2020 09:20 from the IP address XXXX (specific evidence provided such as screenshots of the registration information stored into their systems).
2. The legal basis of processing was consent. The data subject entered the information and submitted it over a click of a button in order to be further contacted, during the registration process.
3. Specific landing page with the link of the process, provided.
4. The reason of non-compliance with the erasure request is that the complainant's claimed request for data erasure was never clearly stated or provided in writing. It was just mentioned over the said calls without clearly clarifying the initial request, while at the same time the caller (Service Provider of Crowd Tech) informed the complainant that the initial request could not be found into their systems. Furthermore, the complainant never gave the opportunity to the Service Provider to service and assist. Instead there was cut off in phone conversations.

The complainant on 13.7.2021, provided CY SA with an unofficial translation (throughout the Poland Authority and the IMI system) of the conversation he had on the 25.11.2020 at 13:58, with the caller, an employee of the Controller's Service Provider (i.e. the Processor). Within the conversation, the complainant withdraws any consent given, saying that he does not want to be called anymore and would like his data to be erased (Art. 6(1)(a) and Art. 17(1)(b) of the GDPR). He specifically said: *"But the last time we talked, I asked you to erase my data from your database. I would like to exercise the right to be forgotten. That was about to be done and nobody should not be calling me anymore".* The Processor's employee replied that she did not have this kind of information into their systems. The complainant responded that he has recorded the specific conversation and will proceed and send it to the right place, thanking the Processor's employee and saying that he will talk to her later. Then the Processor's employee replies, "Talk to you later".

According to the content of the complaint, the complainant received another two calls. One on the same day (25.11.2020 at 14:24 from another person belonging to the Processor's team) and one the next day (26.11.2020 at 12:37 from a third person belonging to the Processor's team). The Polish Authority did not provide us with the content of those two conversations, even though they seem to be attached in mp3 format on the original complaint. Within the written complaint sent, the complainant also expressed the following:

"...despite the notification company Trade360 ... about my request to realize my right to be forgotten still I revive harassing phone calls from persons claiming to be employees of Trade360 and inciting me to invest in the FOREX platform. I have records of three last conversation with them (attachments). In each situation I informed that earlier I demand my right to erasure my personal data."

In a complementary letter of the complainant to the Polish Authority on 14.12.2020, the complainant says:

"... I am not able to say whether the obtained data comes from me or was obtained in a different way than from me, therefore I am not able to determine which article of the

GDPR is appropriate here. I was not informed during telephone calls where my data came from”.

Within the transcript we have been provided on 13.7.2021 the Processor’s employee says to the complainant:

“... I’m calling to you from the firm Trade360... lately we have been talking about the investing through the trading platform. Could you please tell me, if you can talk right now?”. The complainant did not refuse that they have talked through the trading platform. What the complainant said after that, is that the last time they have talked, he asked his data to be deleted from the database.

Throughout the investigation of the complaint, the Controller clarified to us that the complainant was registered as a client on 20.07.2020 from the IP address XXXX through a landing page with the following link: <https://lp.trade360.com/pl/t14/stock/tesla/ffv/?TLID+9472>. Screenshot was attached. Actual identification of a person registering an account takes place in a Know-Your-Client (KYC) process and by that any successful process becomes an activated account and therefore prospective client turns into an actual client. As regards physical person consent, any data subject can freely register over a landing page and submit registration details by a click of a button, therefore a clear affirmative action to be further contacted. The Controller use submitted data to contact registered persons. The Controller’s position was that the complainants claimed request for data erasure was never clearly stated or provided in writing. In the contrary, it was just mentioned over the said calls without clearly clarifying the initial request, while at the same time the Processor’s employees were informing the complainant that no such request could be found into their systems. The complainant never gave the opportunity to the Processor’s agents to service and assist. The complainant has been requested to give more information in order to track his deletion request, he never replied, and the call was disconnected.

The Controller provided an excel file to our office, containing all the data subject’s requests, the way those were submitted, and the department handling the requests. All the requests were submitted either through email or through the chat platform. Almost all the requests were handled by the Customer Support department and some from their Compliance Department/DPO.

The Controller affirmed that the complainant’s request has been handled, as soon as the complaint was received by our Authority on 11.2.2021. Within the excel file provided it is stated that the complainant’s request for data erasure was fulfilled on 11.2.2021 by their Compliance Department/DPO.

At this stage, it should be said that both the Controller and the Processor are companies authorized and regulated by the Cyprus Securities and Exchange Commission. Under art.17(7)(6) and 17(7)(h) of the national Law 87(I)/2017, an investment company is obliged to keep records of all services and activities provided, and transactions undertaken by it, which shall be sufficient to enable the Commission to exercise its supervisory functions for a period of five years and, where requested by the Commission, for a period of up to seven years. There are also other regulatory obligations (for example anti money laundering “AML”) which might prevent a company from completely deleting a data subject’s data (please see Art. 17(3)(b) of

GDPR). However, an investment company can fulfil a data subject's request, not to be further contacted by phone.

Although we do not know the content of the other two conversations made between the complainant and the Processor's employee, we believe that the Processor should have assisted the complainant to his request, even though this was not made in writing. The complainant clearly expressed his wish not to be further contacted and clearly claimed his right to be forgotten. Therefore, the complainant's request for deletion was successfully lodge on 25.11.2020. The Processor did not act on behalf of the Controller, despite the fact that within their Service Agreement the Processor warrants that "it will immediately inform the Company if in its opinion an instruction infringes the law and/or any data protection regulations" or the fact that within the same Service Agreement, the Controller undertakes full responsibility "to its customers for any action or omission on the part of the Contractor" (i.e. the Processor).

Therefore, when the complainant expressed his oral request, the Service Provider and consequently the Controller, had a duty under Art. 12(2) and Art. 24 to facilitate the exercise of his rights by implementing the appropriate technical and organisational measures to handle such oral requests. The oral request owed not to be neglected and the data subject should be assisted with the fulfilment of his request. The Processor's employee was either not properly trained or the Controller's directions to the Processor regarding the data subject's requests, were not clearly stated.

Consequently, when the complainant's data was finally deleted on 11.2.2021, the Controller did not comply with the deadline established in Art. 12(3) of the GDPR for response within one month from receipt of the request. Additionally, when the complainant withdrew his consent on 25.11.2020, the Controller did not have any other legal basis for the processing after the erasure request. Therefore, the Controller processed complainant's personal data unlawfully, according to Art.6(1)(a) of the GDPR, and did not take any measures regarding the complainant's request when the personal data were no longer necessary in relation to the purposes for which they were collected (i.e. to contacting registered persons) (Art. 17(1)(b)). Finally, the Controller had a duty under Art. 24 of the GDPR, to implement appropriate technical and organisational measures to ensure and to be able to demonstrate that processing is performed in accordance with the Regulation.

Commissioner's view and corrective actions

Having in mind all the above, as well as the fact that the Controller, within the Service Agreement, is deemed fully and unconditionally liable towards its clients, for any action or omission taken on the part of the Processor when providing services to the Controller, I find the Controller liable for violations of the Articles 6(1)(a), 12(2), 12(3), 17(1)(b) and 24 of the GDPR.

Under the powers vested to the Commissioner for Personal Data and having in mind all the facts of this case, the Commissioner **issues a reprimand to the Controller - Crowd Tech Limited**, pursuant to Art. 58(2)(b). For this conclusion, the Commissioner takes into consideration the fact that the data subject's request was finally fulfilled. It also takes into consideration the cooperation of the Controller, throughout the whole process of the investigation.

The Commissioner additionally **orders the Controller - Crowd Tech Limited**, to implement appropriate technical and organisational measures so as to ensure that all the data subject's requests are recognized and handled appropriately by its staff. The Controller shall inform the Commissioner, within a period of 3 months after receiving this decision, regarding the measures taken for the fulfilment of the above order.

Commissioner
for Personal Data Protection