Athens, 25-10-2019

Prot. No.: G/EX/7315/25-10-2019

PRINCIPLE FOR DATA PRIVACY

FOR OPIC CHARACTER

A P O F A S H 39/2019

The Personal Data Protection Authority met, after

invitation of its President, to a regular meeting at its headquarters on 23-07-

2019, following the meetings of 03-19-2019 and 04-02-2019, for this purpose

to examine the case referred to in the present history. They attended o

President, K. Menudakos, and regular members K. Christodoulou, as rapporteur, A.

Hymn, . Vlachopoulos, K. Lamprinoudakis, C. Anthopoulos and E.

Martsoukou. they also attended the meeting by order of the President, without

right to vote, E. I. Tsakiridou, lawyer – expert scientist, as assistant

rapporteur, who left after the debate and before the conference and

decision-making, and E. Papageorgopoulou, an employee of the Department

of Administrative Affairs, as secretary.

The Authority took into account the following:

With no. prot. C/EI /1967/12-03-2018 document by Eurobank

Ergasias A.E. submits a treatment request against the no. 98/2017 of its Decision

Principle. specifically, the Authority with the aforementioned decision examined

those with no. prot. G/EI /1161/24-02-2015, G/EI /1163/24-02-2015, G/EI /4494/18-

07-2016, G/EI /5599/15-09-2016, G/EI /8175/12-12-2016, G/EI /1107/13-02-2017

complaints against Eurobank Ergasias A.E., which were forwarded

to the Authority from the General Secretariat of Trade and Consumer Protection. The

complainants claimed that they were unlawfully harassed in the context of information

debtors and that Eurobank Ergasias A.E. did not inform them about

providing their details to Debtors Information Companies.

The Authority, with the no. 98/2017 Decision, rejected the above complaints

and addressed to the applicant a recommendation regarding the manner of its fulfillment

obligation to inform its debtors, whose details are available at

Debtor Information Companies. In more detail, the Authority decided that henceforth

applicant, as lender and controller, should proceed with a special

individual information of its debtors about the availability of their data to

each specific Debtor Information Company, to provide a reasonable

period (e.g. indicatively, 10-15 days) before being available to exercise the

rights of access and objection and to ensure that this information

to be done in any convenient way, e.g. with integration of the relevant

information on the copies of accounts and in a conspicuous place thereof or through them

electronic mail (email), in all cases in which this

becomes possible, and especially since the relevant data has been granted to

controller from the data subjects. By the same decision

it was further clarified that the lender, as controller, must

updates again, in accordance with the above, every time their data

of his debtors are available to a different Debtor Information Company.

With the present application, Eurobank Ergasias A.E. requests its withdrawal

of the contested decision, complaining that with the aforementioned decision

were enacted, with incorrect interpretation and application of article 4 par. 4 n.

3758/2009 in combination with Article 11 of Law 2472/1997, disproportionate obligations in

burden of itself and the other creditors. The reasons for revocation of the offended party

of the Authority's decision, as claimed by the applicant, are mainly the following:

A) Incorrect interpretation and application of article 4 par. 4 of Law 3758/2009 in

combination with Article 11 of Law 2472/1997. Debtor Reporting Companies do not

are "third parties" within the meaning of article 2 paragraph i of Law 2472/1997, and therefore

there is no question of application of paragraph 3 of article 11 of Law 2472/1997, but

paragraph 1 of the same article applies, according to which it is sufficient for the bank to

inform data subjects about the recipient or the category

recipients. Likewise, the article refers to recipients or categories of recipients

13 of the General Data Protection Regulation (EU) 2016/679.

consequently, the contested regulations are in direct conflict with it

provision of paragraph 1 of article 11 of law 2472/1997, given that illegitimately

impose on the applicant, as controller, the obligation to inform

the data subjects, not only for the category of recipients

their data (the EEOs), but precisely and each time specifically for each one

specific company, to which it assigns its debtor information. According to

applicant, this regulation of the contested decision is based on an error

interpretation and application of article 4 par. 4 of Law 3758/2009, in combination with par.

1 and 3 of article 11 of law 2472/1997. Not much rather, when the above method

interpretation of the provisions deviates from the observations that the Authority itself had

submit to the proposed amendments of Law 3758/2009 from 05-08-2011 (see the

with no. prot. C/EX/5417/05-08-2011 document of the Authority, in particular the comment of the Authority

regarding the proposed regulation of article 4 par. 5 of Law 3758/2009, according to

whereby, in view of the fact that Debtors Information Companies act as

you were performing the processing on behalf of the lenders, the Authority clarifies

that "The lender may assign the information to the company that owes

to inform the debtor of this transfer at the latest before the first

communication with him"). With the said observations, it was enough for the Authority to

context of achieving the goal of adequately informing the debtor about the

availability of his data, his updating by the Company itself

Notification of Debtors. According to the claims of the applicant, none

absolutely justified, the Authority, with the contested decision, deviated drastically

from her said position, which reinforces the incorrect and unjustified

nature of the offending regulations. And the relevant requirements of the laws

2472/1997 and Law 3758/2009 are fully satisfied with the updating of

debtors for the said category of recipients (EEO), in any convenient way

(e.g. through movements of their accounts).

B) The conditions set by the contested decision are not suitable for

the debtors are duly and promptly informed about the availability of the data

them to Debtor Information Companies, while it has no practical difference for

the debtor the information about the name of the specific Company

Debtors' Update, given that even before the specific update they have

the possibility to exercise all the rights provided by Law 2472/1997.

In addition, the increased obligation to inform the offended parties

regulations, is not specifically justified in relation to current market data,

on the basis of which debtors are now fully aware of the market practice in

in relation to the assignment of debtors' information by lenders to Companies

Notification of Debtors. The relevant publicity is fully guaranteed by

the kept Register of the specific companies, which is a public book

and is kept at the Ministry of Development in electronic form, and access to

this is done free of charge (Article 7 of Law 3758/2009, see the website of the Greek Tax Agency).

C) The conditions imposed by the contested decision are unnecessary and
disproportionate to the intended purposes, as they require the
employment of sufficient human resources on the part of the lenders and
at the same time the development of new systems (systemic changes), with enormous
cost for the bank, in order to produce the absolutely specific and
repeated/permanent information that the Authority's decision imposes.
The applicant finally points out the high percentage of customers who, due to non
updated information is not possible to locate and therefore n
informing them becomes practically impossible. It also claims that the natural
persons may have different contractual relationships with the same bank (e.g.
debtor, guarantor), for a multitude of products (e.g. housing, consumer,
credit cards) and that the fact that banks divide debts into
buckets and carry out continuous exchanges of EEOs with multiple criteria
(buckets, product, etc.), makes it practically impossible to continuously update them
debtors from the banks for each company to which they assign it
informing the debtor. Since these products are monitored by
different addresses of the banks, it is not even possible in practice
(systematically) to make at least one centralized update per bank for
all banking products, moreover, not even the debts are settled at the same time
super days. With these data, according to the claims of the applicant, h
contested decision establishes a regulation of a disproportionate nature in
in relation to the intended purpose of fully informing the debtors according to

article 4 par. 4 of Law 3758/2009.
The Authority, with the no. prot. C/EX/1958/13-03-2019 call to hearing, called

Eurobank Ergasias A.E. to support her application. He also called

the Hellenic Banking Association to present its views. its meeting

Beginning on 04-02-2019 (postponed from 03-19-2019), they were legally present from

part of Eurobank Ergasias A.E. Petros Frangiskos (with AM D A

…), Maria Hatzimina (with AM D A …) and A, […] of Operational Management

Risk of Retail Banking Product Delays, on its part

of the Hellenic Union of Banks, Ioannis Mourgelas (with AM D A ...) and ofia

Fotopoulos (with AM D A ...) and on behalf of Alpha Bank SA. (similarly

member of EET) Elina Georgili (with AM D A ...).

Subsequently, Eurobank Ergasias A.E. also submitted a written memorandum (with

no. prot. G/EI /3015/22-04-2019), in which he further developed the following:

1. The obligation to provide increased/specialized information to debtors about the

making their data available to a specific information company is against it

in articles 10-12 of Directive 95/46/EC, 11 Law 2472/1997 (and the guidelines

lines on the issue of transparency of the Article 29 Working Group),

1 par. 2 of no. 1/1999 of the Regulatory Act of the Authority, of which

it is inferred that the obligation in question consists of informing in relation to them

recipients or the categories of recipients, even in the event that the

subject to exercise the right of access by requesting additional information

regarding the processing of his personal data. In addition, the

GDPR which repeals the previous Directive 95/45/EC, apart from the above,

acknowledges the obligation of compliance by the file controller only

of the categories of recipients to whom they are to be personally communicated

data (see article 30 par. 1 para. d GDPR). Based on the current legislation

framework, therefore, the bank informs the debtors accordingly

the application and signing of loan contracts, while at the same time on its website

there is an information form regarding the processing of personal data

of data, which also includes information on the provision of data to

Debtor Information Companies. The bank sent this form to

its customers by e-mail message, while a corresponding post

was included in e-Banking, in other relevant parts of the website, as well

during ATM transactions. Besides, it is impossible to update about

the specific recipient of personal data when signing a loan

contract, as the task of informing debtors is directly intertwined with the

period of time during which the latter become overdue, interval at

which the recipients working with the bank may be

different from those with whom he collaborated at an earlier stage. e

in any case the data subjects may have access to

names and in the details of the EEOs, through the special Registry of article 7 of Law.

3758/2009, while the same law (article 6 par. 2) introduces an obligation in the said

companies to inform debtors about their full details already

from the first contact with them.

2. The obligation imposed on the bank by its contested decision

Authority, to provide the data subject with the details of the specific company

update 10-15 days before making his data available to them,

in order to be able to exercise access rights and

objection, is contrary to articles 11 n. 2472/1997, 2 and 5 thereof with no. 1/1999

Regulatory Act of the Authority, and 13 GDPR, according to which the information

is carried out during the data collection stage and not at a later stage,

regardless of the possible characterization of the information companies as third parties.

Further information is provided only in the case of processing

data for a different purpose, which is not the case in this case,

since the provision of the data to the EEO constitutes processing for the same purpose,

i.e. the execution of the loan agreement and the collection of the debts that

derive from it.

3. The obligation of the companies to wait for a reasonable period of time before the

their communication with the data subjects on the one hand contravenes article 4

par. 4 of Law 3758/2009, according to which the telephone communication with the EEO for

the debtor is allowed to be informed after 10

days from the day it became overdue, on the other hand it is against the

principle of clarity, since it does not specify the exact time period according to

which the bank must wait for, on the contrary, it defines a range of days as well

indeed indicatively, ignoring the strict regulation of the briefs

deadlines within which the EEOs act.

4. The obligation introduced by the contested decision contradicts the principle

of proportionality, because it is neither convenient nor necessary for the service

of the intended purpose, which it exceeds. cutting the protectors

provisions of the European and national legislation on personal data are

to protect the subject from the uncontrolled by the person in charge

processing availability of his data to third parties and to be aware of them

in advance who will be the recipients of his data, so that he can judge whether

desires their disposition and to understand for what purpose the

processing of his data. However, it is common knowledge that her assignment

communication with the debtor in EEO is a standard policy of all banks, h

which is followed with the knowledge of the data subject, in case

overdue debt to safeguard the interests of the financial institution

institution. The debtor has been informed of the possibility of disposing of the data

of him in EEO, if he becomes overdue in the repayment of the debts

of, already from the signing of the loan agreement and subsequently repeatedly

in any convenient way (updates on the movement of accounts, updates

during a transaction, website updates, etc.). The need

assignment by lenders (in this case banks) to EEO of the update

of the debtors for the existence of their and her overdue debts

negotiation of their repayment terms, which of course presupposes the

disposal of the relevant data of the debtors, has also been recognized by

legislator with the issuance of Law 3758/2009. He is known to the debtor and

purpose of processing his data (see article 3 par. 3 Law 3758/2009).

consequently, the knowledge on the part of the debtor of the specific EEO each time, h

which becomes the recipient of his personal data, lacks importance and

legal consequences, because an EEO makes no difference for the debtor

on the other EEO.

The disputed measure, in so far as it obliges the bank to provide to

debtors a reasonable period of 10-15 days from notification to disposition

of the data, for exercising the rights of access and objection, no

it is neither convenient nor necessary. Because, right of objection at the disposal of

data in EEO cannot be validly exercised, while the right of access

exists and can be exercised at any time by the subject against him

controller from the start of the processing until its end,

a fact about which the debtor has been repeatedly informed. Besides, in n. 3758/2009, further safeguards are foreseen (specific framework for the legal update of EEOs). The determination of additional deadlines for the exercise of the above rights is manifestly unnecessary. Furthermore, the determination of the obligation to wait for the above period of time from update until the availability of the debtors' data in EEO is too early the intended purpose, as it leads to burdening the debtors with interest, the which run, during the above period of time, given that the debt has become overdue.

5. Also, the obligation to wait during the above period of time may has incalculable consequences for their management and collectability of bad loans, given that a good part of the debtors do not have or do not have have declared an e-mail address to the bank. Also, only n delay during the above period of time, the exact duration of which is unstated, it can make it difficult to collect the loan. Finally, it will make it impossible to transfer cases between partners EEO, which is carried out on the basis of their evaluation on specifics quantitative and qualitative criteria.

6. The obligation established by the contested decision implies a huge one organizational and financial costs for the bank.

7. Finally, following the above, the applicant Bank to replace him imposed with the contested act of measure, proposes the following: a) to posted in the personal data section of its website update with the following information: i) that the details of overdues are available debtors in EEO and

ii) the names of those cooperating with it

financial institution EEO, b) to reform the messages in the periodicals

updates, so that the collaborating EEOs are notified and c) to

similarly reform the letters of delay sent by the bank to

debtors. The applicant also informs that she has already posted on her website

the collaborating Debtors Information Companies and that it has taken measures

improvement of the system of notifying customers to the

above direction.

In addition, the Hellenic Banks Association filed the no. prot. G/EI /3029/22-

04-2019 reminder of third party intervention in favor of Eurobank Ergasias A.E. -

based on the apparent legitimate interest he has from article 1 par. 4 b' thereof

of its Statute to represent the interests of all its members - and against it

of the contested decision of the Authority (with no. 98/2017). the memo in question

EET developed the following claims:

1. The Debtors Information Companies of Law 3758/2009 are widespread as

in the national as well as in the European legal order, already before the economic one

crisis, when their operation was more limited. According to the above legislation,

these are mainly public limited companies that have as

exclusive purpose of out-of-court informing the debtors of the existence

overdue debts. The supervision of these companies belongs to the Ministry

of Development (see also Decision no. 49/2001 of the Authority) and for the legal

for their operation, their previous registration in the specialist is necessary

Register kept in the aforementioned Ministry. Furthermore, the simultaneous assignment of

of the same debt to different companies is prohibited in contrast to

its successive assignment to several companies. The obligation, then, that introduces

the contested decision to inform customers regarding the specific one

company that will take over their case in case of overdue debts

and not only in terms of the absolutely specific category (Government Law n. 3758/2009, see

special Register of the Ministry of Development), is contrary to the regulatory framework

for the protection of personal data, which recognizes the

obligation to disclose only the categories accepted even in

case of exercising the right of access (articles 10-12 of Directive 95/46/EC

and 41 of its preamble, 6 in combination with article 11 of Law 2472/1997, with no.

1/1999 Regulatory Act of the Authority, recommendation of the Authority with no.

G/EX/4744/12.7.2013, 13-15 GKPDI).

2. specifically, since 1995, when Directive 95/46/EC was adopted until today

under the GDPR, the position on the content of the update is permanent,

of both the EU and the national legislator: for his information

subject for the recipients of his personal data, the reference is sufficient

in the recipient category.

3. Also, according to the above legislation, the obligation to inform is not one

continuous update, but has a specific time point of fulfillment that

is the stage of collecting personal data. When one is drawn up

long-term agreement (such as a loan or credit agreement), the borrower

it is updated during the collection of its data, and an update is carried out

and through periodical letters. However, these updates are also issued

reports are sent, i.e. their status is reflected in them

due on the date of issue of each information note. after all,

it is not possible for the bank, like any lender, to know if and when it will

default occurs, before the actual payment date has passed.

Informing subjects about the category/s of recipients of their data

is absolutely sufficient (see relevant provisions of the Directive, Law 2472/1997 and GDPR).

After all, the exact same choices were made in the law and regarding the right

access (see article 12 par. 2 b of Law 2472/1997, article 12 par. a of the Directive

96/46/EC, par. 41 of the preamble of the Directive). Even when the subject of

data requests additional information on the processing carried out

of his personal data in order to ensure in particular their accuracy

and the lawful character of their processing, the legislator again considered that the

reference to recipient category is sufficient. And under the strictest framework

of the GDPR, no changes have been made to the information of subjects regarding

the recipients of their data. Even when the subject exercises the

right of access to be more fully informed about its features

processing of his personal data, the data controller is sufficient to

of notifying the recipients or categories of recipients, to whom

personal data has been disclosed or is about to be disclosed

(article 15 par. 1 c) GDPR). That is, according to the Regulation, the person in charge

processing, even if it has already disclosed the subject's data,

and therefore their recipients can be absolutely specific, when it

to exercise the right of access it is sufficient to inform the subject about it

category or categories thereof and not necessarily for acquaintances

specific recipients. These settings are valid throughout time, were and are

completely conscious choices of the legislators that are consistent with the transactions

practices and the functioning of the economy and cannot be changed by

the national legislature, directly by provision of law or indirectly by means of a mandate arrangement.

4. The purpose of protecting customers' personal data in specific case is served by clarifying the category accepted in such a way that the subject understands the scope and content her. and the case under consideration, the category of recipients, GEO n. 3758/2009, is absolutely specific. It is about for specific ones, absolutely specified companies, which in order to operate must be included in public Register, which is kept at the Ministry of Development and is accessible from anyone.

5. The justification of the selective, significantly restrictive, application of the updating the relevant provisions of the law and now of the GDPR with thinking that the activity of the EEOs is considered more burdensome for the debtors, based on an arbitrary criterion. In addition, the subjects in the specific case they have breached obligations, which they assumed, and became overdue, and informing them verbally, by telephone, for the purpose of their awareness, under the guarantees of Law 3758/2009 is the mildest action of the lender. EEOs were the first of the tools legislated for to strengthen the arsenal in the fight to limit the underserved of loans and credits, which is not only ongoing, but its happy outcome is more urgent than ever. The exemption of the country's banking system from excessive collateral is a condition for financing the economy and therefore for economic development.

6. The reasonable waiting obligation introduced by the contested act period of time financially burdens the bank, but also the debtor,

whereas it contradicts article 4 par. 4 of Law 3758/2009. Further, as to the exercise

of the rights of the subject there is no time limit, the right does not

objection is exercised in this case only against the bank (which observes all

data in relation to the debt and its evolution) and only in relation to any

errors, e.g. as to the amount due. The determination of other deadlines

for the exercise of rights for the protection of personal data,

it would not only lack a legal basis, but would also create confusion mainly

regarding the starting point of the new deadline. Since he can't

legally and factually to enforce the update for each specific EEO, instead

of the aforementioned category, the question of when would inevitably arise

this new deadline begins, to which there is only one answer: the beginning of it

due date, i.e. the impractical passing of the due date of payment, which

doubtless the lender and the debtor know. As long as this is it

obvious, it is equally obvious that the two terms with the same starting point

only confusion and legal uncertainty can cause, but also to

limit the effectiveness of actions for the recovery of the

delay of dues. Also, the increase of overtime workers' rights

debtors at the expense of lenders but ultimately also their informed customers

credit institutions, would contradict the provisions of article 7 par. 2

f of the Directive, of article 5 par. 2 par. e of Law 2472/1997 and now of the article

6 par. 1 f of the GDPR and therefore with the principle of proportionality.

7. Even if it is accepted that in the regulatory powers of the Authority,

in accordance with article 19 par. 1 of Law 2472/1997, the possibility was also included

to amend a clear provision of the law with its decision, this regulatory one

jurisdiction no longer exists under the GDPR regime. Also, even

if it is accepted that it could be amended without national or Union law h

permanent provision of all legislation to date on its content

information (initial and after exercising the right of access) to

direction of Decision 98/2017, this would entail extremely disproportionate

effort and excessive cost (see references), so that it would

issue of proportional application of the provision of sec. b' of par. 4 of article 14

GDPR.

8. Finally, EET proposes the following solution to improve the information of

customers: First, posting of data by each credit institution

of the EEOs with which it cooperates each time, with their full details, on

his updates to his clients (candidates and active) to refer

on his website. Still, bearing in mind that it is unknown if and when one

debtor will become overdue, and despite the fact that the obligation

information is exhausted, according to EET, when it is carried out during the collection of

data, a periodic annual reminder could be made to

borrowers, through the above information notes, that in case

overdue, the bank has the right to assign the relevant update

of an overdue debtor in one of the EEOs cooperating with it, which each time

listed on its website. In this way, each customer will be able to

knows, at any time during the validity of the loan agreement or

credit, from which now small group of such companies will be chosen the company that

will take over his out-of-court notification in case of default. and these

in fact, the Hellenic website will be able to refer to the posts as well

Union of Banks, ensuring the maximum possible publicity and the maximum

possible limitation of the scope of the specific category.

summarizing, EET claims that Decision 98/2017 with the specific

content, which establishes, according to its claims, the above regulations

regulations, does not apply under the GDPR and that it is necessary to

be revised in the above direction (see the proposal which

developed).

The Authority, after examining all the above elements, after hearing him

rapporteur and the assistant rapporteur, who left after the debate and before

by conference and decision-making, and after thorough discussion,

SEVENTH ACCORDING TO THE LAW

With the considered application for treatment, the applicant Bank requests its revocation

Decision 98/2017 of the Authority, claiming that with this decision,

with incorrect interpretation and application of article 4 par. 4 of Law 3758/2009 in

combination with article 11 of law 2472/1997, disproportionate obligations at the expense of

itself and the other creditors. Furthermore, the Bank and the intervening EET

list a series of arguments based on the applicable provisions to

support this claim. In particular, as shown in the application

treatment, the views they presented during the Authority meeting and the

pleadings which they submitted, the applicant and the intervener seek the

review of the legal correctness of the contested decision, without

new factual evidence is provided, critical to its implementation

legal status in force at the time of its issuance. After all, the affected crisis

of the above decision, in which for the disposal of the debtors' data

of to a specific Debtor Information Company the Bank must

proceeds, in any appropriate way, to their special individual information, which

must be repeated when the debtors' details are made available to

different Debtor Information Company, and to provide a reasonable time before

from the disposition to exercise the rights of access and objection, no

is based on an assessment of real data, but on their interpretation

applicable provisions. With these data, its review is not justified

case.

FOR THOSE REASONS

The Authority rejects the request for treatment of the anonymous banking company with the

name "Eurobank Ergasias Anonymi Eteriale" against the Decision

98/2017 of the Authority.

The president

The Secretary

Constantinos Menoudakos

Irini Papageorgopoulou