Athens, 10-10-2022 Prot. No. 2515 A P O F A S H 32/2022 (Department) The Personal Data Protection Authority convened via teleconference, at the invitation of its President, in a regular meeting in the composition of the Department at the headquarters on 19.1.2022 at 10:00 a.m., in order to examine the case referred to in the history of the present. Konstantinos Menudakos, President of the Authority and the regular members, Konstantinos Lambrinoudakis and Charalambos Anthopoulos, were present as rapporteur. The meeting was attended, by order of the President without the right to vote, Maria Alikakou, legal expert, as assistant rapporteur and Irini Papageorgopoulou, employee of the Administrative Department of the Authority, as secretary. The Authority took into account the following: With no. prot. C/EIS/1092/10.02.2020 his document A (hereinafter "applicant") submitted an application for treatment against her with no. 32/2019 of the Authority's Decision. With the said decision, the Authority examined the no. first G/EIS/8420/23.10.2018 complaint and the one with no. prot. C/EIS/2687/09.04.2019 his supplementary memorandum against the anonymous company "EKO ABEE" (hereinafter "each"). Specifically, the Authority partially accepted the above complaint, while rejecting the part of it regarding the unfair processing of the complainant's personal data through the "alteration of the quality" of his social security data as evading the Authority's competence. In particular, regarding the non-satisfaction of the complainant's right of access to the personal data concerning him, the Authority considered the following in its above decision: "Regarding (i) the above primary documents, from which Kifisias originates 1-3, 11523, Athens, Tel: 210 6475600, Fax: 210 6475628, contact@dpa.gr | www.dpa.gr obligation of the complainant to cover and pay the due cost of his past service and (ii) the notifications of ETEAPEP to EKO ABEE regarding debts from the complainant's insurance, the Authority considered that these were granted to the complainant as part of full copy of his personal file. With reference to the requested documents (i) of the group insurance policy between EKO ABEE and ALICO and (ii) the decision of the Board of Directors of EKO ABEE of 29.3.2002, the Authority considered that it did not appear that these documents include personal data of the complainant , so that the GDPR applies. With regard to the complainant's access to his evaluations, the Authority instructed the complained EKO ABEE to comply with the complainant's request and proceed with their immediate provision to the complainant, in case he had not been granted all of them." Subsequently, with regard to the above request for treatment, the Authority issued its decision No. 48/2020, in which it partially rejected the said request as unfounded and postponed its examination regarding the part that referred to the non-granting of applicant from each of the accounting documents for payment of debts that the said employer company had to the ETEAPEP auxiliary fund and which concerned him in order to request further clarifications from the above company. In particular, with regard to the

documents in question, which according to the applicant's claims contained his personal data, it was not clear from the Authority's decision no. 32/2019 whether they had finally been granted to the applicant and, therefore, there was ambiguity as to satisfy the right of access to said documents. Then, with its document No. C/EX/1092-2/31-12-2020, the Authority requested further clarifications from the defendant regarding the alleged non-satisfaction of access to the disputed documents. The defendant responded with case number C/EIS/574/22.1.2021, confirming the above finding of the Authority that the disputed documents had not been granted to the applicant, pointing out that the original appeal had been correctly rejected of the applicant with the contested decision of the Authority for the reason that these "do not constitute A's personal data, nor do they contain his personal data, as they are merely certificates of payment of sums owed by our company to ETEAPEP. Therefore they are corporate documents, which Page 2 of 9 are outside the scope of the legislation for the protection of personal data [...]". Following this, the Authority invited the parties to a hearing at its meeting on 31.3.2021 which took place via video conference. At the meeting in question, the applicant, A, was present, who developed his views orally, as well as B, the data protection officer of the defendant, in order to provide clarifications on issues raised by the President and the members given that the person in charge protection officer is not able to represent the data controller in accordance with the provisions applicable to the institution of the protection officer1. Subsequently, the parties submitted their memorandums No. C/EIS/2459/14.4.2021 and C/EIS/2562/14.4.2021, respectively, to the Authority, within the deadline set at the above meeting. According to the memorandum with the original number C/EIS/2562/14.4.2021, the defendant notified the Authority of her decision not to grant the requested documents to the applicant, and this, because she insists on her initial position that the said documents documents do not contain personal data and that, in any case, the applicant could obtain them through the document presentation process. In addition, the defendant provided with her above-mentioned memorandum and following a relevant request from the Authority a model of the requested accounting document, pointing out in support of her main claim that no personal data of the applicant are included and that "the only mention to the applicant is limited to the justification of the deposit, which reads as follows "EKO-ABEE OFEILI GIA A". The applicant, during the above hearing, and also with the relevant memorandum, maintained what was mentioned in his application, namely the non-granting on behalf of each of the aforementioned disputed documents, while he repeated what he had already supported both in his initial complaint, as well as in the subsequent application for treatment, issues, 1 See Guidelines on Data Protection Officers, OE A29, as last revised and approved on 5 April 2017, pp. 22-23. In addition, see and the Authority's press release (No. Prot. C/Eξ/568/23.1.2021)

regarding the prohibition of representation of controllers by data protection officers before the Authority, available on the website (https://www.dpa.gr/index. php/en/enimerwtiko/press-releases/representation- of the Authority www.dpa.gr controllers-dpa). Page 3 of 9 for which the Authority, however, has already decided with its decisions No. 32/2019 and 48/2020, respectively. The Authority, from the hearing procedure, from the elements of the case file, as well as from the memoranda submitted to the Authority and after hearing the rapporteur and the assistant rapporteur, who left after the discussion of the case and before the conference and the taking a decision and after a thorough discussion, IT WAS CONSIDERED IN ACCORDANCE WITH THE LAW 1. Because, article 2 par. 8 of Law 3051/2002 on the "Constitutionally enshrined independent authorities, amendment and completion of the public sector recruitment system and related regulations" which was issued pursuant to Article 101 A of the Constitution states that "8. Against the executive decisions of the independent authorities, a petition for annulment may be filed before the Council of State, as well as the administrative appeals provided for in the Constitution and the legislation. Legal aid against the decisions of the independent authorities can also be exercised by the relevant Minister". Article 24 par. 1 of Law 2690/1999 (KDiad.) stipulates that "If the relevant provisions do not provide for the possibility of exercising, according to the next article, a special administrative or adversarial appeal, the interested party, for the restoration of material or moral damage to his legal interests caused by an individual administrative act may, for any reason, upon his application, request, either from the administrative authority which issued the act, its revocation or amendment (remedial request), or, by the authority that is in charge of the one that issued the act, its annulment (hierarchical appeal)". In the true sense of the provision, the request for treatment aims to revoke or modify the individual administrative act in question for its legal or factual defects that go back to the regime under which it was issued. 2. Because, with the above provisions of article 24 KDDiad. establishes the right of every "interested" administrator, who has suffered material or moral damage from an individual administrative act, to appeal against the authority that issued the act in question before resorting to judicial protection (simple administrative appeal, otherwise Page 4 of 9 request for treatment). This is an "informal" administrative appeal in contrast to the standard "special" and "individual" appeals of article 25 of the Civil Code. The appeal in question requests the revocation or modification of the above-mentioned individual administrative act, in order to restore the material or moral damage of the applicant caused by the administrative act in those cases where the law does not provide for the possibility of exercising the above appeals of article 25 KDDiad1. 3. Because according to article 4 par. 1) GDPR "personal data": any information relating to an identified or identifiable natural person ("data subject"); an

identifiable natural person is one whose identity can be ascertained, directly or indirectly, in particular by reference to an identifier identification, such as name, [...]'. Moreover, according to article 5 par. 2 regarding the principles that must govern the processing of personal data "The controller bears the responsibility and is able to demonstrate compliance with paragraph 1 ("accountability").". Furthermore, according to article 15 regarding the right of access and in particular paragraph 3 thereof "the data controller shall provide a copy of the personal data being processed.". 4. Because the disputed documents are personal data of the applicant. In particular, from the above-mentioned model of accounting documents that the defendant herself presented following a relevant request from the Authority during the above meeting of 31.3.2021, it is clearly demonstrated that the documents in question contain personal data of the applicant consisting in particular of his name in Latin characters. 5. Because in the present case, in accordance with the Authority's decision no. 48/2020, it was not established that the applicant's right of access was satisfied by the defendant to his personal data and in particular to the requested accounting documents for payment of debts had the defendant, as the employer company of the applicant, to the ETEAPEP auxiliary fund, and, therefore, as regards this part the request for treatment is considered valid and for this reason it is examined. 6. Because the concept of personal data has occupied several times, both the Article 292 Working Group and the Court of Justice of the European Union3, in particular, in relation to the right of access. The European Data Protection Board (EDPB) has considered the concept of personal data in relation to the right of access in its recent Guidelines on the right of Access4. According to this text, the decision on which information constitutes personal data rests with the data controller. The data controller, therefore, must evaluate and be able to recognize which information, from those processed in relation to the data subjects, constitute the latter's personal data. This assessment is directly linked to the right of access. And this, because the controller's judgment that the information he is processing does not constitute personal data can easily lead to the non-satisfaction of the right of access. However, such judgment should be based on substantial evaluation and documentation by the controller within the framework of the principle of accountability and, in particular, in cases where the information does not directly identify a natural person and therefore, such judgment may be difficult. When, however, it is obvious that the information constitutes the personal data of a natural person, because it directly identifies him, and even more so, if they are basic identifying elements of the natural person's identity, such as his name and surname, then it can easily be concluded that the data controller deliberately refuses to satisfy the right of access. The fact, moreover, that a data controller cannot assess that the name of a natural person constitutes his personal data is particularly burdensome for him, for the reason that apart from being expressly mentioned as

such in the aforementioned article 4 of the GDPR, in addition, both the GDPR and the previous EU Directive 95/46 contain a particularly broad definition of the concept of "personal data". In conclusion, the controller cannot refuse to satisfy the right of access 2 Indicatively, Opinion 4/2007 on the definition of personal data and Opinion 5/2014 on Anonymization Techniques are mentioned. 3 The Case of the Court of Justice of the European Union C-434/16, Peter Nowak v Data Protection Commissioner, 20 December 2017 is cited as an example. 4 EDPS Guidelines 1/2022 on the right of access, available on the EDPS website (https://edpb.europa.eu/system/files/2022-01/edpb_guidelines_012022_right-of-access_0.pdf). Page 6 of 9 unreasonably limiting the definition of personal data. Besides, finally, the different treatment of the exercise of a right in relation to certain types of personal data, which, however, has not been provided for by the GDPR, can be introduced exclusively by law and in accordance with the provisions of article 23 GDPR5. 7. Because the defendant admits that it has not granted the applicant the disputed documents for the sole reason that they do not contain the applicant's personal data. However, this claim is manifestly unfounded, pretentious and possibly misleading in order to avoid or justify the non-satisfaction of the applicant's right of access to date, as after and from the presentation of the above document it becomes indisputable that the requested disputed documents undoubtedly contain personal data of the applicant. The defendant could easily have reached this conclusion from the beginning, as no special evaluation or special knowledge is required to recognize that the name of a natural person in Latin characters constitutes information concerning him and, consequently, his personal datum. In fact, the above-mentioned article 4 para. 1) GDPR explicitly states that the "name" of a natural person constitutes an identifying element of identity and, therefore, his personal data. 8. Because, further, the defendant claimed that the present application is groundless claiming that the contested decision had deemed that the applicant's right of access had been satisfied and, therefore, there was no reason for the Authority to review the matter in question . In particular, with regard to the issue of the granting of the accounting documents in question, the defendant, as stated in her above memorandum, considered that this had been implicitly rejected with the aggrieved party. The claim, however, is based on an incorrect version because, as mentioned above, with its decision 48/2020, the Authority postponed the examination of the application for treatment with regard to the part that referred to the applicant's failure to provide all accounting documents in order to clarify whether these documents contained the applicant's personal data and whether as such they were ultimately granted to the applicant given that these data did not clearly emerge from the Authority's decision numbered 5 O.P. Page 7 of 9 32/2019 . 9. Because, according to the above, the Authority considers that there is a case to exercise its corrective powers according to article 58

paragraph 2 of the GDPR in relation to the established violation of article 15 paragraph 3 of the GDPR. 10 Because further the Authority, in determining the sanction, took into account the criteria for measuring the fine defined in article 83 par. 2 of the GDPR, paragraph 5 item. a' and b' of the same article that apply to the present case and Guidelines 4/2020 of the EDPS for the application and determination of administrative fines for the purposes of the GDPR6, as well as the actual facts of the case under consideration and, in particular: a) the nature of the violation concerning a right of the GDPR, b) the fact that the data controller had been informed by the Authority of his obligations in relation to the satisfaction of the right of access in the context of examining the initial complaint, for which the contested notice was issued with no. 32/2019 decision of the Authority, c) that the data subject was not in a position to claim his rights against the company, d) that an administrative sanction has been imposed in the past by the Authority on the controller with no. 7/2019 decision of the Authority, e) that the above documented violation of the GDPR is not attributable to the negligence of the data controller, who did not satisfy the right even after the intervention of the Authority during its examination with case number C/EIS /8420/23.10.2018 of the applicant's complaint. Based on the above, the Authority unanimously decides that the defendant, as data controller, should be imposed on the defendant, for the above-mentioned established violation, the administrative sanction referred to in the present ordinance, which is judged to be proportionate to the gravity of the violation in question. 6 The text is available on the EDPS website (https://edpb.europa.eu/system/files/2022- 05/edpb_guidelines_042022_calculationofadministrativefines_en.pdf). Page 8 of 9 For these reasons, the Authority: A. Imposes on EKO ABEE in accordance with articles 58 par. 2 item. i' and 83 par. par. 5 item. b GDPR for the violation of article 15 par. 3 GDPR the effective, proportionate and dissuasive administrative fine that is appropriate in the specific case, according to its special circumstances, amounting to ten thousand (10,000.00) euros, andB. Gives an order to EKO ABEE in accordance with articles 58 par. 2 item. 3 GDPR

to adequately satisfy the applicant's right of access to the contentions

documents.

The President The Secretary

Konstantinos Menudakos Irini Papageorgopoulou