

Athens, 25-02-2021 Prot. No.: 711 DECISION [5/2021] (Department) The Personal Data Protection Authority met as a Department at its headquarters on 20.01.2021 at the invitation of its President, in order to examine the case referred to in the history of the present. The Deputy President G. Batzalexis, obstructing the President of the Authority K. Menoudakos, and the alternate members of the Authority G. Tsolias, as rapporteur, and E. Papakonstantinou, in place of the regular members X. Anthopoulos and K. Lambrinoudakis, were present, respectively. who, although legally summoned in writing, did not attend due to disability. The regular member of the Authority S. Vlachopoulos, although legally summoned in writing, did not attend due to disability. Present without the right to vote were K. Karvelis and H. Latsiu, expert scientists-lawyers, as assistant rapporteurs, who left after the discussion of the case and before the conference and decision-making, and E. Papageorgopoulou, an employee of the administrative department affairs of the Authority, as secretary. The Authority took into account the following: With the no. prot. C/EIS/340/17.01.2019 his complaint to the Authority, A complains that after an emergency incident of his child on ..., as a result of which, he urgently visited the MITERA Hospital, he submitted the supporting expenses to his insurance company GENERALI HELLAS A.A.E., as well as the compensation notice form, where, in order to accept his claim for compensation, he would have to obligatorily consent in all its fields, and in particular a) to the access of the insurance company to the base 1 Kifisias Ave. 1-3 , 11523 Athens T: 210 6475 600 E: contact@dpa.gr www.dpa.gr prescription data and the EOPPY electronic prescription system using its AMKA, b) access to the medical file c) and access to both present, as well as in past or future medical examinations not only of his own but also of all the members of the insurance policy, while, as he claims, it should be sufficient for the compensation process only to submit the proofs expenses and the opinions of the doctors, not the deposit and the results of the examinations. Non-consent in any of the fields is a reason for non-compliance with the general and specific conditions of the insurance policy and the insurance coverage and compensation. Following his opposition, GENERALI argued that during the conclusion of the contract a full medical history check was not carried out and it did not carry out any check on the accuracy of the answers given to the questionnaire, and that this check is carried out on the first claim for compensation, which however, as the complainant claims, it is not accurate, as GENERALI carried out a thorough check of the accuracy of the answers given in the questionnaire, in fact it was also asked for test results related to what it stated in the questionnaire, as well as copies of the health records of all 3 insured persons family members. In the context of investigating the complaint, the Authority sent from 21.03.2019 and with no. prot. C/EX/340-1 document to provide clarifications to the complained insurance company GENERALI, which in no. prot. C/EIS/2642/08.04.2019

its response document stated the following: a) because the announcement of the complainant's compensation was received from the company's offices in X, a draft form that had been distributed around the middle of 2018 was accidentally used, for the purposes of the company's upcoming compliance with the GDPR, but it was not final, given that the passage of the implementing law of the GDPR was awaited, as well as the jurisprudential/interpretive developments surrounding the issue of health data, b) the form in question was used during the transitional stage of adaptation to the GDPR and therefore carries elements of the previous legislation, c) the company has already completely reformed the forms and procedures for submitting a request for compensation and the requested 2 consents, d) the company, observing the principle of minimization was satisfied only with the necessary data, which the complainant provided for the assessment of the specific insurance case, the company did not steal data, since there is always the option of non-consent, and in no case was the foreseen non-consent related to the rest of the operation of the insurance contract, e) the company pending the applicable law and in the context of its compliance, had chosen the legal basis for the consent for the processing of special categories of data of the subjects - its insured, moreover the relevant circular of the Ministry of Health accepts that insurance companies can invoke the said legal basis for receiving, in the name and on behalf of the subject, from health service provider, as controller of data related to his health, for the purpose of compensating the subject and f) in any case, no violation of the law took place. Following this, the Authority with no. prot. C/EX/4816/10.07.20 and C/EX/4817/10.07.20 calls respectively called the complainant and the complained insurance company GENERALI HELLAS A.A.E. to attend the meeting of the Authority on 15.07.2020, in order to discuss the above complaint. During the hearing on 15.07.2020, complainant A was present, while on behalf of the insurance company GENERALI HELLAS A.A.E. attorney Grigorios Lazarakos was present. A during the above hearing of 15.07.2020 but also with no. prot. C/EIS/5094/20.07.20 his memorandum stated the following: a) the subject of his complaint is not the initial rejection of the compensation request by GENERALI, but the requirement of consent in all fields of the consent statement and the statement of the personal data protection policy, which was included in the compensation announcement form he was given to fill out and sign, b) one of the fields in the consent statement stated that the insured must consent to access to the EOPPY electronic prescription system, using the AMKA, c) the electronic correspondence that has been forwarded to the Authority proves that both the 3rd employee, responsible for receiving and processing the application, and the DPO at the time stated that all fields must be filled in and consent granted, in order to the company proceeds with the processing of the complainant's application and the compensation of the incident, d) also, the letter received in s ..., which is signed by both the

Legal Counsel and the DPO, does not mention that the wrong form was filled in, and states that there must be consent "...for the lawful processing of the personal data necessary for the assessment of your request , but also the general smooth operation of the insurance policy and the provision of the coverage and services provided for in it...", e) during the hearing, GENERALI admitted that the form he was asked to sign and consent to all fields was not final, it was subsequently amended and that the condition for access to the Medical File via AMKA has been removed, so he admits that he should not have been forwarded the said form and asked to consent to all fields, including of this with the consent for access to the Medical File via AMKA, however this particular form was used for some time and some insured persons consented to the access to the their Medical File, while they did not have to, f) if they had not opposed the consent, GENERALI would have obtained consent for access to the Medical File of the insured, in violation of the principle of proportionality g) access to the Medical File through AMKA should have been at a time until the conclusion of the insurance policy, and as the access is global and not limited in time, it should not be done after the conclusion of the insurance policy, as the insurance company will also have access to medical personal data after the time of conclusion of the contract which is not entitled to be processed, and h) both insurance companies and diagnostic centers rely on the Circular of the Ministry of Health of July 2018, where medical data is incorrectly not separated, so all medical data are treated the same, while they should to separate the medical data that is absolutely necessary in order to make it successful of the incident for any communication with the Insurance Agency, at the level of approvals and coverages for compensation and the 4 remaining medical data that should not be requested and which are not necessary for the execution of an insurance contract for incident management and compensation. The attorney general of the insurance company GENERALI HELLAS A.A.E. during the above hearing of 15.07.2020, but also with no. first C/EIS/5314/29.07.20 his memorandum stated the following: a) the complainant does not invoke or prove illegal processing of his personal data by GENERALI, b) no influence on the company's initial decision not to cover the complainant's compensation request exercised his non-consent in some of the consent fields contained in the Form Notice of Compensation submitted by the complainant on ... to the company, as evidenced by the fact that he was fully compensated for the insurance event he reported, although he refused to give his consent in some of the fields of the special form, c) the relative delay in payment of insurance compensation is due to the fact that the complainant did not follow the procedure provided for in his insurance policy, d) despite the fact that the insured did not follow the procedure provided for in his insurance policy, the company was content with the information provided to it and based on this it was compensated , never asked him or "extorted" additional

data from him, e) the completion of all consent fields of the Declaration of Consent was and is optional, always within the framework of the applicable legislative and regulatory framework and the non-consent did not affect the coverage of the insurance event and f) the application of the principle of minimization of imprints i with clarity in the relevant internal procedures of the company. In particular, as it appears from the relevant form of the "Procedure for Direct Reimbursement of Hospital Expenses", the documents collected are related to the coverage of the specific insurance risk, and in no case is general consent requested for complete access to the medical file of an insured person or to the electronic file health insurance expense held at EOPPY. 5 The Authority, after the hearing procedure and the examination of the elements of the file and after hearing the rapporteur and the assistant rapporteurs, who left after the discussion of the case and before the conference and taking a decision, after a thorough discussion, OUGHT AGREE BY LAW 1. Because, from the provisions of Articles 51 and 55 of the General Data Protection Regulation (Regulation 2016/679) and Article 9 of Law 4624/2019 (Official Gazette A' 137) it follows that the Authority has the authority to supervise the application of the provisions of the GDPR, this law and other regulations concerning the protection of the individual from the processing of personal data. In particular, from the provisions of articles 57 par.1 item. f of the GDPR and 13 par. 1 item g' of Law 4624/2019 it follows that the Authority has the authority to deal with A's complaint against the insurance company GENERALI HELLAS A.A.E. and to exercise, respectively, the powers granted to it by the provisions of articles 58 of the GDPR and 15 of law 4624/2019. 2. Because Article 5 of the GDPR defines the processing principles that govern the processing of personal data. Specifically, it is defined in paragraph 1 that personal data, among others: "a) are processed lawfully and legitimately in a transparent manner in relation to the subject of the data ("legality, objectivity, transparency"), b) are collected for specified, explicit and legitimate purposes and are not further processed in a manner incompatible with these purposes, c) are appropriate, relevant and limited to what is necessary for the purposes for which they are processed ("data minimization"), (...)" 3. Because, according to the provisions of article 5 paragraph 2 of the GDPR, the data controller bears the responsibility and must be able to prove his compliance with the principles of processing established in paragraph 1 of article 5. As the Authority¹ has judged, with the GDPR a new compliance model was adopted, the central dimension of which is the principle of 1 See Authority decision 26/2019, paragraph 8, available on its website. 6 accountability in the context of which the controller is obliged to plan, implement and generally take the necessary measures and policies, in order for the processing of the data to be in accordance with the relevant legislative provisions. In addition, the controller is burdened with the further duty to prove by himself and at all times his

compliance with the principles of article 5 par. 1 GDPR. 4. Because, in accordance with article 8 paragraph 1 of the Charter of Fundamental Rights of the European Union, article 9A of the Constitution and recital 4 of the GDPR, the right to the protection of personal data is not absolute, but must be assessed in relation to its function in society and weighed against other fundamental rights, in accordance with the principle of proportionality. The GDPR respects all fundamental rights and observes the freedoms and principles recognized in the Charter, in particular respect for private and family life, residence and communications, protection of personal data, freedom of thought, conscience and religion, freedom of expression and information, business freedom, the right to an effective remedy and an impartial tribunal and cultural, religious and linguistic diversity. 5. Because Article 9 para. 1 GDPR introduces, in principle, a ban on the processing of information that falls under special categories of personal data, i.e. personal data concerning, among other things, health. Subsequently, paragraph 2 of the same article states that: "Paragraph 1 shall not apply in the following cases: a) the data subject has provided express consent to the processing of such personal data for one or more specific purposes, unless the law of the Union or a Member State provides that the prohibition referred to in paragraph 1 cannot be lifted by the data subject, b) the processing is necessary for the performance of a contract to which the data subject is a party or to take measures pursuant to a requirement of the data subject before the conclusion of the contract (...). 7 6. Since, in the case under consideration, from the data of the case file and the hearing procedure, it appears that the complainant insured in the insurance company GENERAL HELLAS A.A.E. upon the occurrence of the insurance case, according to Article 7 of Law 2496/1997 (Government Gazette A' 87), he refused to provide a positive declaration of intent to the insurance company, as a data controller, in accordance with the provisions of Article 4 para. 7 of the GDPR, where, in order for his claim for compensation to be accepted, he would have to obligatorily consent to all the fields of the compensation announcement form and in particular a) to the insurance company's access to the prescription database and the EOPPY electronic prescription system with use of his AMKA, b) access to the medical file c) and access to both present and past or future medical examinations not only of his own but also of all members of the insurance policy. Following the refusal to provide a positive declaration of intent on behalf of the insured, it follows that no processing of personal data was carried out by the complained insurance company, while the insurance company accepted the coverage of the insurance case, despite the refusal to provide a relevant positive declaration of intent by the insured. Consequently, from the data in the case file, it appears that there was no violation of the rights of the insured - data subject by the insurance company GENERALI HELLAS A.A.E. 7. Because, further, with regard to the declaration of intent in the

insurance application, the Authority by decision 46/20112 has judged that the consent to provide information of the interested insured from any source only concerns the information that exists at the time of its conclusion and not in any that may arise at a later time from the entry into force of the insurance contract. Consequently, the issue of consent as a legal basis in the initial insurance application for the coverage or not of the insurance case upon the occurrence of the insurance risk raises issues of legality of the specific processing, in accordance with the provisions of 2 Opinion 6 of decision 46/2011, available at website of the Authority and decision SC 292/2019 (sec. 10). 8 provisions of article 5 par. 1 item a', b' and c' of the GDPR. Regarding the issue of the insurance company's access to the Electronic Prescribing System for the management of compensations/coverages to the insured, the Authority with decision 138/20133 has prescribed special conditions regarding the processing of health data. In view of the above and given that the Association of Insurance Companies has submitted to the Authority for approval a Draft Code of Ethics, which also addresses the above issues, which can be used as evidence of its compliance with the GDPR, if approved by the Authority, in accordance with the provisions of article 24 par. 3 of the GDPR, the Authority, as it already ruled with decisions 21/20 and 22/20, reserves the right to judge the legality of the above described processing in relation to the examination of the above Draft Code of Ethics. FOR THESE REASONS Authority

a) rejects A's complaint against GENERALI insurance company

HELLAS A.A.E., for the reasons mentioned in the rationale of this and

b) reserves the right to examine the practice as a whole and to judge

on the legality of the processing of their personal data

insured under the insurance contract for the management of

compensations/coverages to the insured in the context of its examination

draft Code of Ethics of the Association of Insurance Companies that it has

submitted for approval to the Authority, in accordance with the provisions of its provision

article 40 par. 5 of the GDPR.

The Deputy President The Secretary

George Batzalexis

Irini Papageorgopoulou

3 Opinion 3 decision 138/2013, available on the website of the Authority.

