

PRINCIPLE FOR DATA PRIVACY

FOR OPIC CHARACTER

Athens, 07-03-2018

Prot. No.: G/EX/1852/07-03-2018

A P O F A S H A . 23 / 2018

The Personal Data Protection Authority met, following his invitation of its President, at a regular meeting at its headquarters on 30-01-2018, following the 01-23-2018 meeting, in order to examine the case mentioned in the history of the present. Konstantinos Menoudakos, President of the Authority, and the regular members Konstantinos Christodoulou, as rapporteur, Antonios ymbonis, Konstantinos Lambrinoudakis, Pyridon Vlachopoulos, as well as the substitute member Emmanuel Dimogerontakis to replace regular member Eleni Martsoukou, who, although legally summoned in writing, did not attend due to obstruction.

The regular member Charalambos Anthopoulos and his substitute Grigorios Tsolias, although they were legally summoned in writing, they did not attend due to obstruction. the meeting, Theodora also attended, by order of the President, without the right to vote Toutziarakis, expert scientist – legal auditor, as assistant rapporteur, which withdrew after the discussion and before the conference and decision-making, and n Irini Papageorgopoulou, employee of the administrative affairs department, as secretary.

The Authority took into account the following:

With the no. prot. GN/EI /3484/29-11-2017 her application, as it was completed with the nos. prot. GN/EI /3634/14-12-2017 and GN/EI /3722/22-12-2017 documents, the bank "ATTICA BANK BANKING COMPANY" (hereinafter "bank ATTICA BANK"), notifies the Authority that it intends to securitize and transfer of a portfolio of approximately 13,000 non-performing maturities or

of canceled loans and credits pursuant to Law 3156/2003 to the company

special purpose vehicle (SPV) with the name "ABS METEXELIXIS S.A." located at

Luxembourg. in this context, and in accordance with Law 3156/2003, it is declared that in principle

manager of the securitized receivables, in the name and on behalf of ABS

METEXELIXIS S.A., will be the bank ATTICA BANK. Next, the ATTICA bank

BANK declares that it intends to inform (with the attachment to the above application

information text) the natural persons associated with the above requirements with

any capacity [such as, but not limited to, debtors/co-debtors, guarantors, real

debtors, special or universal successors of the above, assignees or proxies of the above

above, persons against whom a right to collection may be asserted

of the claim (e.g. third parties in whose hands it is possible to impose seizure or against

of which a right of set-off can be imposed), partners of legal entities

or legal entities, members of their collective management bodies, representatives etc], that the

personal data related to the above requirements will be forwarded by

bank ATTICA BANK

at ABS METEXELIXIS

S.A.

in the

frame

securitization/transfer of claims according to article 10 par. 21 of Law 3156/2003 and, according to

order and on behalf of the latter, to the management company with the name

"MANAGING COMPANY S.A." for the purpose of their management according to article 2 of the law.

4354/2015 (see also Decision 134/2017 Decision of the Authority).

the context of the examination of the above case, was present during the discussion before the Authority

on 23-01-2018 the ATTICA BANK, which orally presented its views, the

which he then submitted in writing (see no. prot. GN/EI /175/24-01-02-2018

written clarifications from ATTICA BANK). In particular, it was clarified that finally

actual/correct number of securitized non-performing accounts

of loans/credits amounted to 8,309 instead of the approximately 13,000 reported in from 29-

11-2017 request of ATTICA BANK and in the attached text

update. Of these approximately 120 have been terminated and 8,189 are overdue

served (beyond 90 days). Additionally, it was stated that the total number

of the debtors of the said securitized non-performing loans/credits

amounts to 6,608 debtors. It was also clarified that the foreign specialist company

purpose "ABS METEXELIXIS" is not related to

her

company "ARTEMIS

SECURITISATION" (see Decision 134/2017 of the Authority at its request

bank). Further, it is stated that it has not yet been assigned by the specialist company

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"ABS METEXELIXIS" purpose is the management of the said securitized/transferred

claims to a non-performing loan management company of Law 4354/2015, but the

this process will follow and is expected to be completed soon. End,

it is stated that, in the interim, under a relevant contract and power of attorney (which

after its translation are attached to the above written clarifications), the management

of said securitized/transferred claims, in the name and on behalf of

of "ABS METEXELIXIS" will be made by the transferring bank ATTICA BANK

in accordance with Law 3156/2003.

The Authority, after examining all the elements of the file, after hearing the rapporteur and

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

decision making, and after thorough discussion,

THOUGHT ACCORDING TO THE LAW

1. the article 2 par. a', b', c', g', h' and j' of Law 2472/1997, as applicable, define the concepts of simple and sensitive data, the subject thereof, the data controller, of the processor and the recipient, respectively, while in par. d' of the same article defines the concept of processing, which includes "transmission, ... or any other form of disposition. Subsequently, in article 4 of the same law, the basic ones are defined principles of the processing, while in article 5 the individual conditions for the its legitimacy. Furthermore, according to article 11 of the same law 2472/1997: "1. The one in charge processing must, during the stage of collecting personal data, to it divides the subject in an appropriate and clear manner for at least the following elements: a. his identity and the identity of any representative, b. the purpose of processing, c. the recipients or categories of recipients of the data, d. the existence of the right access s. 2. If the person responsible for the collection of personal data processing requires the consent of the subject, he must inform it specifically and in writing for the elements of par. 1 of this article as well as for his rights, in accordance with articles 11 to 13 of this law. With this, the person in charge processing informs the subject whether or not he is obliged to provide his assistance, based on which provisions, as well as for the possible consequences of its refusal. 3. If the data is communicated to third parties, the subject is informed of the

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from them.". The fulfillment of the above notification obligation is further specified with the no. 1/1999 Regulatory Act of the Authority for "In part subject to of data according to article 11 of Law 2472/1997" (Government Gazette B' 555/1999), as well as with the provision of of article 24 par. 3 of Law 2472/1997 which, although it is a transitional provision, reflects broader and permanent will of the legislator for the cases in which it is about "large number of subjects" (see Decision 24/2004 of the Authority), in combination with the

no. 408/1998 Regulatory Act of the Authority on "On the part of subjects processing of personal data by the Press" (Government Gazette B' 1250/1998) which it both specifies the concept of "a large number of subjects" by specifying that this applies when the number of these individuals is equal to or greater than one thousand (Article 1) as well as the manner in which this update must be made (articles 3 and 4). 1

2. Regarding the processing of personal data in the context of securitization

bank claim (see Annual Report of the Authority 2014, under 3.6.2.)², the Authority has judged that the transfer of debt information from a bank to a special purpose company may be considered necessary for the fulfillment of its obligation imposed by law, in accordance with article 5 par. 2 para. b of Law 2472/1997, and the terms and conditions that states article 5 par. 2 para. e', i.e. transmission absolutely necessary for the pursuit and collection of the relevant claims, which obviously prevails over the rights and interests of the debtors, without affecting their fundamental freedoms, as long as processed within the framework of law 3156/2003 by a limited circle of recipients. It has also accepted that the transfer agreement of the securitized entrepreneurs claims is registered in the public book of article 3 of Law 2844/2000 in summary which contains its essential elements (article 10 par. 8 of Law 3156/2003). From registration of the relevant agreement, the transfer of the securitized assets occurs claims, unless otherwise specified in the terms of the contract, and the transfer (assignment) is announced in writing by the transferor or the special purpose company to the debtor (article 10 par. 9 of Law 3156/2003). Furthermore, as an announcement is considered the registration of the contract in the public book of article 3 of Law 2844/2000 in accordance with the aforementioned provision of article 10 par. 8 of Law 3156/2003. therefore, the above registration of the contract in the public book is recommended according to article 10 par. 10 of the

1 it is noted that Regulation (EU) 2016/679 now explicitly promotes the principle of transparency of processing and subsequently strengthens the subject's right to information (see articles 5, 13 and 14 of

Regulation and corresponding reasons in its preamble).

2 Available online at www.dpa.gr / Annual Reports.

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3156/2003 announcement of the contract of assignment to the debtor no written document required

announcement of the assignment by the transferred company or the special purpose company to

the debtor.³ Therefore, as the Authority has further accepted, given that the more specific

claims securitization provisions state that it is sufficient and effective as notice

(update) the registration of the relevant contract in the public book must be accepted

that it is not required in this case according to the special provisions and of another kind

previous individual update. Beyond that, however, the Authority pointed out that it is recommended

at the time of data collection the data controller (the bank which

subsequently proceeds with securitization of its claim), to include in its content

information provided, according to article 11 par. 1 of Law 2472/1997, as a charge

recipients, the special purpose companies in the case of securitization of receivables and,

however, when securitizing the claim, the assigning bank or

the special purpose company must inform the debtor about this individually (e.g. with the

sending his relevant account). And this because, from the systematic interpretation of

of the aforementioned provisions, it follows that the more specific provisions for securitization

requirements remove the obligation to update article 11 par. 3 of law 2472/1997 only

as necessary to implement their content and not the obligation itself

information.⁴ This is also in line with the obligation to inform, such as this

provided for in Directive 95/46/EC (see article 11), which he incorporated into the Greek

Law 2472/1997.

3. With Law 4354/2015 (Government Gazette A' 176 16.12.2015) Management of non-performing loans,

wage regulations and other urgent provisions implementing the agreement

d of fiscal objectives and structural reforms, as amended and in force,

two new categories of companies were introduced into the Greek legal order, namely "Companies Management of Claims from Loans and Credits (E.D.A.D.P.) and the "Companies of Acquisition of Claims from Loans and Credits (E.A.A.A.D.P.)". From its provisions of this law in combination with PDTE 118/19-05-2017 (Government Gazette B´ 1764/22-05-2017) Framework for the establishment and operation of loan receivables management companies and appropriations of Law 4354/2015 - Replaces PEE 95/27.5.2016, it follows that the Companies Claims Management are special purpose legal entities, which are obliged have a specific organizational structure and recorded procedures for it

3 See 2391/2011 BR ATH.

4 See and 2828/2014 BR ATH.

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exercising their activity (see also Decision 87/2017 of the Authority). Yes, the specific Companies have the possibility of refinancing claims in the context restructuring of the loan or credit. Therefore, the management of claims from Claims Management Companies is identified, first of all, with the corresponding management that will carried out by a credit institution, it is limited, however, to management operations, the which have been determined in advance in the "management delegation agreement requirements". specifically, Claims Management Companies are allowed to undertake, on behalf of the contracting bank, the legal and accounting follow-up of the claim until full or partial payment of the debt. For the purpose this, the Claims Management Companies are authorized, among other things, to sign instead payment receipts and debt settlement contracts and in general to bind the commissioning bank vis-à-vis third parties, to exercise legal remedies and to take any other legal action for the collection of receivables under management, as non-beneficiary parties, as well as to hire Debtor Information Companies which operate in accordance with Law 3758/2009.

4. In this case, the personal data of natural persons associated with overdue claims to ATTICA BANK in any capacity [such as, indicatively, debtors/co-debtors, guarantors, debtors in rem, special or general successors of the above, successors or proxies of the above, persons against whom it is possible to assert a right to collect the claim (e.g. third parties in the hands of of which attachment may be imposed or against which it is possible to right of set-off is imposed), partners of legal persons or legal entities, members of their collective management bodies, representatives etc], are allowed to be granted by the bank ATTICA BANK in the company ABS METEXELIXIS S.A. by installing it Luxembourg in the context of securitization/transfer of claims according to article 10 par. 21 of Law 3156/2003 (see paragraph 2 above). Furthermore, since, as stated, the data will be subject to further processing in the context of real and substantive nature of activities of the company ABS METEXELIXIS S.A. in Greek Territory through its partnership with a domestic company, applicable to the processing this is Greek law according to article 3 par. 3 item. a' of Law 2472/1997 (see article 4 par. 1 item a' of Directive 95/46/EC, Opinion 8/2010 of the Article Working Group 29 on the applicable law, WP 179, 16-12-2010 and WP 179 update, 16-12-2015, as well as CJEU C-230/14, Weltimmo decision). Besides, the company ABS METEXELIXIS S.A.

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is allowed to grant this data to a domestic company for external purposes assignment of claims management in the context of Law 4354/2015 (see article 5 par. 2 item a', b' and e' of Law 2472/1997 in combination with Law 4354/2015 and Decision 87/2017 of Authority). in this context, both the company ABS METEXELIXIS S.A. as well as the mainland claims management company constitute two new recipients of the above personal data within the meaning of article 2 par. i' of Law 2472/1997, for which the subjects must be informed in accordance with article 11 of the same law. In view of

above, provided

a) the pending provision of data regarding overdue claims they have

securitized concerns a large number of subjects (6,608 debtors according to the declaration of

Bank), of which it is likely that many have changed their residential address and

have not informed the Bank, and, therefore, the individual and timely paper

updating them becomes difficult, while also entailing costs in time,

beyond the expense of paying fees in the cases in which it will become

necessary to send individual postal letters,

b) the specific national company that will be assigned the

management of the above claims according to article 2 of Law 4354/2015, by order and for

account of the company ABS METEXELIXIS S.A.,

c) the claims-related rights of the subjects and the fundamental ones

their freedoms are not, in the first place, affected by said processing,

there is a legal case of information through the press regarding the granting of

personal data related to claims that have become overdue and have

securitized by ATTICA BANK to ABS METEXELIXIS S.A.,

in accordance with the more specific conditions mentioned in the operative part of the present

decision, while there is no legal case of information through the press regarding it

provision of the same data by the company ABS METEXELIXIS S.A. on the mainland

company for the purpose of managing the above claims in accordance with Law 4354/2015,

as the latter has not yet been defined. Additionally, for the same category of data

personalized electronic update must be carried out via e-mail

post office (e-mail), in all cases, in which the relevant data (addresses

e-mail) have been granted to the Bank by their subjects

data and, therefore, electronic updating becomes possible.

5. In the opinion of a member of the Authority, the request under consideration should be rejected and to further investigate both the nature of the partnership between the ABS company METEXELIXIS S.A. and the national company that will undertake the management of the above requirements in accordance with Law 4354/2015 as well as the possible damage to the subjects of data. specifically, regarding the obligation to inform their subjects data, according to the opinion of the minority, it is not enough to inform them through the press about the following reasons: a) The circulation of newspapers today is submultiples of the number of data subjects of the processing in question, so these will not be informed in reality, while b) even those who will read the relevant information they cannot readily recognize that concerns them (e.g. guarantors, mortgage debtors etc).

The Authority, taking into account all the elements of the file,

FOR THOSE REASONS

1. Accepts in part, by majority, the submitted request for the media informing the persons related to overdue claims to ATTICA BANK regarding the provision of their data to the ABS company METEXELIXIS S.A. due to securitization.

2. Unanimously rejects the submitted request for press information of persons related to overdue claims to ATTICA bank BANK regarding the disposal of their data by ATTICA BANK, acting by order and on behalf of ABS METEXELIXIS S.A., in the country company with the purpose of outsourcing the management of these claims, as well this second recipient is not specifically defined.

3. In particular, for all receivables that have been securitized up to and including the issue date of this decision, grants, by a majority, permission to update the subjects of the data through the press regarding the disposition of the relevant

data from the bank ATTICA BANK to the company ABS METEXELIXIS S.A.

due to securitization, according to the no. 1/1999 Regulatory Act of the Authority, with the following conditions:

3.1. The text of the submitted update plan should be amended so that the categories of receivables that have been securitized are clearly stated (e.g.

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all terminated contracts up to a certain date and all the overdue receivables that will be reported with specific data for each of the contract, classified by Bank branch) in this case the subjects of the data to be able to easily recognize that it concerns them.

3.2. The said update to be published on five (5) nationwide circulation newspapers with the largest circulation, both in print and online electronic versions thereof.

3.3. The said update should also take place through the five (5) online of news sites with the highest traffic in Greece.

3.4. This information should also be posted on the Bank's website and to be reproduced on the website of the Hellenic Banking Association.

3.5. To carry out, also, personalized electronic updating, through electronic mail (e-mail), in all cases in which this becomes possible and especially if the relevant data has been granted to Bank of data subjects.

The president

The Secretary

Konstantinos Menudakos

Irini Papageorgopoulou

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