

PERSONAL DATA PROTECTION AUTHORITY Athens, 30-05-2018 Prot. No.: C/EX/4332/30-05-2018 A P O F A S I NO. 47 / 2018 (Department) The Personal Data Protection Authority met , at the invitation of its President, in a regular meeting on 05-09-2018, following the meeting from 03-21-2018 that took place as a postponement from the meetings dated 02-14-2018 and 03-07-2018 , in order to examine the case referred to in the present history. The Deputy President Georgios Batzalexis, in the absence of the President of the Authority Constantinos Menoudakos, and the alternate members Panagiotis Rontogiannis, Grigoris Tsolias, as rapporteur, and Evangelos Papakonstantinou, in place of the regular members Antonios Symvonis, Charalambos Anthopoulos and Konstantinos Lambrinoudakis, were present, respectively, who , although they were legally summoned in writing, they did not attend due to disability. Present without the right to vote were Theodora Toutziaraki, legal auditor - lawyer, as assistant rapporteur, and Irini Papageorgopoulou, employee of the administrative affairs department, as secretary. The Authority took into account the following: With his appeal to the Authority No. C/EIS/7837/29-11-2016, as completed, A complains about the non-satisfaction of his right of access to the data of specific telephone conversations with employees/partners of Alpha Bank, regarding his debt from a business loan. In particular, the applicant states that on ... he received a telephone harassment at his company's offices from the Bank, specifically from the manager of the store ... (B), who informed about the applicant's debt. However, this phone call, according to what was reported, was not answered by the appellant, who is the debtor, but by his uncle C, who has nothing to do with the debt in question and happened to be in the appellant's office. According to the applicant's claims, his uncle was fully informed by the bank employee about his financial situation, as well as about the consequences of not paying his obligation on time. The appellant claims that, with this action by the Bank, his personal data has been illegally processed and his business is also affected, as his uncle is also an indirect competitor (his son operates a similar business). For this specific incident, the appellant addressed the Bank's complaints department in writing with his request from ..., while subsequently, with his request from ... document submitted through the bank's electronic platform (message number...), he asked to receive copies a) the conversation of a Bank employee with a third party (his uncle) regarding the applicant's debt and b) the conversation of a Bank employee with the applicant himself regarding his complaint about the above incident. However, according to all the complaints, the Bank did not respond to these requests. In the context of examining the above case, the Authority requested clarifications from the Bank (prot. no. C/EX/9212/20-12-2017), which were submitted in writing (prot. no. C/EIS/396 /17-01-2018). The Bank admitted a) the delay in satisfying the right of access, arguing that it considered that it had been dealt with by the applicant's telephone conversations

with the Complaints Service, and b) the dissemination of the applicant's data to a third party, arguing that the person who answered the phone claimed to be the applicant's father, who is the guarantor of his business loan. Subsequently, Alpha Bank was legally summoned to a hearing during the discussion of the case before the Authority on 14-02-2018 with summons No. C/EX/1004/05-02-2018 and attended and was informed of the postponement of the debate and came again to the meeting of 03-21-2018. During the meeting, Alpha Bank answered questions from the members of the Department and presented its views, which it then developed thoroughly with its relevant memorandum (prot. no. C/EIS/2644/04-04-2018). In particular, the Bank clarifies that throughout the communication between the Manager of the Store ... and the applicant's uncle, C, no mention was made of the amount of the loan to be repaid. In addition, the Manager of the bank branch never came to the attention of any element that could lead her to question the identity of the interlocutor, since the person who answered the call falsely stated that he is the applicant's father and guarantor and did not stop the communication as he should have. According to the Bank's claims, the facts show that the specific telephone communication does not fall within the scope of Law 3758/2009 Debtor Information Companies for overdue claims and other provisions, as applicable, and therefore there is no question of recording it, because it was intended to inform the borrower. Regarding the satisfaction of the right of access almost a year after its exercise, the Bank states that on ... it informed the applicant in writing that the communication between the Director of the bank branch and C was not recorded for the above reason and at the same time forwarded to the applicant electronic copy of his conversation with the Complaints Department from ..., and repeats the claim that he did not respond to it in a timely manner because he believed that the matter had been addressed through a telephone communication on the same date. The Authority, after examining the elements of the case file, after hearing the rapporteur and the assistant rapporteur, who attended without the right to vote and left after the discussion of the case and before the conference and decision-making, and after thorough discussion, **CONSIDERED ACCORDING TO THE LAW** 1. In article 2 para. a' and c' of Law 2472/1997 define the concepts of simple data and their subject respectively, while in par. d' of the same article also defines the concept of processing, which includes "the use" and "any other form of disposal...". Subsequently, article 4 of Law 2472/1997 defines the basic principles of processing, while article 5 of the same law defines the individual conditions for its legality. In addition, in article 10 of the same law, the obligations of the data controller and the data processor are defined regarding the privacy and security of the data processing, from which it is expressly stated that an essential element of legal data processing is the taking of appropriate security measures and their control by the controller. The security measures must a) ensure that the data is

used only for the intended purpose and b) ensure a level of security commensurate with the risks involved in the processing and the nature of the data being processed, taking into account technological developments and cost (see, for example, Decision 1/2015 of the Authority). Furthermore, Article 12 of Law 2472/1997 establishes the subject's right of access to the data concerning him with the main purpose of ensuring the subject is accurate and lawful in the processing of his data (see recital 41 of Directive 95 /46/EC). Therefore, in order to satisfy the right of access, the invocation of a legal interest is not required, since it is assumed that the legal interest (even if moral) of the subject to obtain knowledge of information concerning him and which has been registered in a file kept by the person in charge processing, so that the basic principle of the law for the protection of personal data is carried out, which consists in the transparency of the processing as a condition of any further control of its legality on the part of the data subject (see, for example, Decisions of the Authority no. 71/2013, 72/2013, 98/2014, 149/2014, 48/2015, 71/2015, 16/2017, 32/2017, 33/2017).

2. According to article 4 paragraph 3 of Law 3471/2006 "Protection of personal data and privacy in the field of electronic communications", as applicable, "3. The recording of conversations and related traffic data is permitted when conducted in the course of a legitimate professional practice for the purpose of providing evidence of a commercial transaction or other communication of a professional nature, provided that both parties, after prior notification of the purpose of the recording, provide their consent.". As the Authority has judged (see Annual Report of the year 2006, p. 78, available on its website www.dpa.gr), when the recording of conversations is legal according to article 4 par. 3 of Law 3471 /2006, then prior consent of both parties is not required, but prior notification of the party that does not have the initiative of registration in accordance with article 11 of law 2472/1997 (cf. article 5 par. 2 of Directive 2002/58/EC in conjunction with recital 23 of the same Directive)1.

1. Recital 23 of Directive 2002/58/EC: "The confidentiality of communications should also be ensured during legitimate business practice. Whenever necessary and legally permissible, communications may be recorded for the purpose of proof of commercial transactions. Directive 95/46/EC applies during this process. Before recording, the parties to the communications should be informed about it, its purpose and the duration of storage. The recorded communication should be deleted as soon as possible and, in any case, at the latest at the end of the period during which it is legally permissible to challenge the transaction." It is clarified that, according to the additionally applied general principle of article 4 par. 1 of Law 2472/1997, the data should be kept for as long as necessary to achieve the above purpose. Furthermore, Law 3758/2009 "Debtor information companies for overdue claims and other provisions", as amended by Article 36 of Law 4038/2012 and in force, obliges lenders, when they themselves repeatedly inform debtors of the their

overdue debts, to record the content of every telephone communication with the debtor and to keep the relevant data compulsorily for one (1) year from the last communication (article 9 par. 6 in conjunction with article 8 of Law 3758/2009) . 3. In this case, the recorded conversations of the applicant with the employees of the Bank constitute in principle simple personal data of their subject (article 2 letters a' and c' of Law 2472/1997 in combination with Article 2 paragraph 3 of Law 3471/2006). The recording of the above data by the Bank constitutes automated processing (article 2 letter d in conjunction with article 3 paragraph 1 of Law 2472/1997, where for the characterization of a processing as automated it is sufficient that it is also partially automated). This processing is permitted, as it is carried out in the context of legal professional practice for the purpose of providing evidence of communication of a professional nature (Article 4 par. 3 of Law 3471/2006 in conjunction with Article 11 of Law 2472/1997). Furthermore, the Bank has notified this processing to the Authority (see no. prot. GN/EIS/1680/07-07-2016, as supplemented by no. prot. C/EIS/8305/15- 12-2016 data), as he has a legal obligation as a controller in accordance with article 6 in conjunction with article 7A par. 1 para. b' sec. 3 of Law 2472/1997, where it is expressly provided that banks are not exempted from the relevant obligation. The appellant, as the subject of the data, has the right to access the data concerning him and contained in all of these recorded conversations (Article 12 of Law 2472/1997), while the Bank, for its part, as the controller, did not fulfill its obligation to respond in writing within the prescribed period of fifteen (15) days. In particular, the appellant exercised the right of access with his request from ... document submitted through the bank's electronic platform (message number ...), requesting to receive copies of a) of the conversation of a Bank employee with a third party (his uncle) Article 5 par. 2 (confidentiality of communications) of Directive 2002/58/EC: "Paragraph 1 does not affect any legally permitted recording of conversations and related traffic data when they are carried out in the course of legitimate professional practice for the purpose of providing evidence of a commercial transaction or any other communication of a professional nature". regarding the applicant's debt and b) the conversation of a Bank employee with the applicant himself regarding his complaint about the above incident. The Bank, for its part, responded with its letter of ... following the intervention of the Authority, as is also mentioned in the history of the present (see the Authority's document No. C/EX/9212/20-12-2017 to the Bank and No. C/EIS/396/17-01-2018 the latter's response, as well as No. C/EIS/2644/04-04-2018 memorandum). It follows from the above that the Bank unreasonably delayed satisfying the applicant's right of access, as it responded after almost one (1) year. And the Bank's claim, that the delay in response is due to its bona fide perception that the matter had been dealt with through the applicant's telephone communication with the Complaints Department, cannot be accepted, as the applicant's

request was made in writing and was definite and clear (sent copies of two specific conversations), while the Bank neither fulfilled its respective obligation to respond in writing with clarity and completeness (regarding the non-recording of the first conversation and the sending of the second recorded conversation) nor communicated its response to the Authority, informing the person concerned that he can appeal to it (see article 12 par. 2 and 4 of Law 2472/1997). Therefore, Alpha Bank did not satisfy the subject's right of access under the terms of Article 12 of Law 2472/1997. 4. With reference to the reported incident of dissemination of the applicant's data to a third party (see article 10 in conjunction with articles 4 and 5 of Law 2472/1997), from the elements of the case file it cannot be easily proven the exact content of from ... a conversation between an employee of the Bank and the applicant's uncle, since it was not recorded in the context of Law 3471/2006 or Law 3758/2009, in order to draw a safe conclusion regarding the personal data allegedly disseminated. Moreover, it must be observed that if indeed the applicant's uncle happens to be his indirect competitor, as the applicant himself claims, according to common experience and logic the applicant would not have allowed his uncle to remain alone in the office of his business in his absence, since he even considers that any information of a professional/commercial nature that reaches his specific relative may harm him in business. However, given that the Bank, as the data controller, is burdened with the obligation to take the appropriate organizational and technical measures for the security of the data and their protection, among others, against prohibited dissemination or access and any other form of unlawful processing (see article 10 par. 3 of Law 2472/1997), taking into account the special nature of the data in question as related to a debt from a loan agreement, the recommendation must be addressed to it, during telephone communication with its customers, to take care of the identification of the interlocutor before proceeding to a conversation regarding data of transactions or debts of the same or of persons connected with his transactions or debts (e.g. natural persons who have the status of guarantor, pledgee or mortgage debtor, etc.). The Authority, taking into account the seriousness of the violation of Article 12 of Law 2472/1997 that was proven and the offense caused by it to the data subject, as detailed above, considers that it should be imposed on Alpha Bank, as responsible processing, the sanction provided for in article 21 paragraph 1 subsection b of Law 2472/1997 referred to in the ordinance and which is proportional to the gravity of the violation and the offense of the applicant from it, as well as to address it in accordance with with article 19 par. 2 item c' of Law 2472/1997 the recommendation referred to in the ordinance. THE AUTHORITY FOR THESE REASONS 1. Imposes on Alpha Bank a fine of ten thousand (10,000) Euros for failure to fulfill its obligation to respond to the applicant within the prescribed period in violation of the right of access pursuant to Article 12 of Law 2472/1997 . 2. Addresses a recommendation

to Alpha Bank, during telephone communication with its customers, to take care of the identification of the interlocutor before proceeding to a conversation regarding data of transactions or debts of the same or of persons connected with his transactions or debts (e.g. natural persons who have the status of guarantor, pledgee or mortgage debtor, etc.). The Deputy President The Secretary George Batzalexis Irini Papageorgopoulou