

(Department) The Personal Data Protection Authority met in composition Department at its headquarters on 21.04.2020 upon the invitation of its President, in order to examine the case referred to in the present history. The Deputy President G. Batzalexis, obstructing the President of the Authority K. Menoudakos, and the alternate members of the Authority G. Tsolias, as rapporteur, E. Papakonstantinou, and E. Dimogerontakis, in place of regular members X. Anthopoulos, K. Lambrinoudakis and E. Martsoukou, respectively, who, 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/784/31.01.2019 his complaint to the Authority, A, through the representative and father of B, complains that in order to receive the insurance compensation from his hospitalization as a minor child, at the time of the occurrence of the insurance event, in private clinic METROPOLITAN GENERAL, the insurance company NN requested the consent of the adult brother of C for access to the electronic medical file and the processing of his sensitive personal data, in order to establish whether or not the conditions for providing insurance coverage were met, which consent he refused to give grant. In the context of investigating the complaint, the Authority sent from 04.04.2019 and with no. prot. C/EX/784-1 document to provide clarifications to the complained insurance company NN, which in no. prot. C/EIS/3588/20.05.2019 its response document stated the following: a) in the process of collecting and processing the personal data of the insured for the purpose of managing and fulfilling the obligations of the insurance contract concluded, other personal data are also included , which are either disclosed during the examination of the request for insurance coverage, or obtained from third-party providers of primary or secondary health services, after obtaining the written consent of the insured, b) the company informed the complainant on ... and also on ..., together with the insurance premium payment notices of his insurance policy for the way of collecting and managing his personal data but also for his rights, in accordance with the provisions of the GDPR, and c) with no. ... initial life insurance application through which B, policyholder of the insurance policy and father of the then minor insured A, expressly and in writing provided his consent for the collection, processing, maintenance and operation of a file of personal simple and sensitive personal data of himself and his of his son, in accordance with the provisions of Law 2472/1997. Following this, the Authority, with summons Nos. G/EX/1221/13.02.20 and G/EX/1222/13.02.20 respectively invited the complained insurance

company NN and the complainant to attend the meeting of the Authority on 26.02.2020, in order to discuss the above complaint. During the hearing on 26.02.2020, the complainant B and his lawyer Vasiliki Lazarini were present, while on behalf of the insurance company NN the attorneys-at-law Angeliki Kavouropoulou, Vassilis Giannakopoulos and Athanasios Kyratsis were present. During the above hearing on 26.02.2020, B stated that following the hospitalization of his then-minor child A at the private clinic "Metropolitan General"..., he was asked by the insurance company NN to sign a document, which concerned his consent for the right of access of insurance company or the company "METNET HELLAS Anonymous Commercial Services Company", which has taken over by order and on behalf of the complained insurance company NN the management of compensations to its insured, in the electronic file of his son, as well as his license for the processing of his son's sensitive personal health data, in order to establish whether or not the conditions for providing insurance coverage are met. The attorneys of the insurance company NN during the above hearing of 26.02.2020, but also with their memorandum of 17.04.2020 stated the following: a) legal processing basis for access to the personal data of special categories contained in the electronic file of the subject of the data kept by EOPYY constitutes the consent of the data subject in accordance with article 9 par. 2a of the GDPR, which is requested by the NN once only throughout the validity of the insurance contract upon the occurrence of the insurance risk, given for a limited period of 30 days from the signing of the relevant form and during this period the cooperating doctors of the company enter the electronic file in question only once within the above period, b) the consent form of the subject for access to his electronic file held by EOPYY includes the provision of authorization of the insured to the company's doctors to check on his behalf his registrations and the provision of consent to the company and Mednet to process his personal data for the purpose of investigating his compliance with his legal and contractual obligations, c) in case the relative consent from an insured, access to the electronic records of the EOPYY is carried out by a professional doctor, who informs the company as a whole about the records that are objectively essential for the assessment of the insurance risk data or incidents d) any refusal to grant access to the electronic file that observed by the EOPYY has as a direct consequence the refusal of insurance benefits on the part of the company and e) in the present case, the company proceeded to pay insurance benefits, even though the disputed consent was not given. The Authority, after the hearing and consideration of the elements of the file and after hearing the rapporteur and the assistant rapporteurs, who withdrew after the discussion of the case and before the conference and decision-making, after a thorough discussion, OUGHT AGAINST THE 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 implementation 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 the complaint of A, through the representative of B, against the NN insurance company 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 model of compliance was adopted, the central dimension of which is the principle of accountability in the context of which the data controller is obliged to plan, implement and generally take the necessary measures and policies, in order for the processing of data to be in accordance with the relevant legislative provisions. In addition, the data 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 par. 1 of the Charter of Fundamental Rights of the European Union, article 9A of the Constitution and the recital 4 of the GDPR, the right to data protection of a personal nature is not absolute, but must be assessed in relation to its function in society and to be weighed against other fundamental rights, according to the principle of proportionality. The GDPR respects all fundamentals rights and observes the freedoms and principles recognized in the Charter, in particular respect for private and family life, residence and communications, the protection of personal data, freedom of thought, conscience and religion, the freedom of expression and information, the

business freedom, the right to an effective and impartial remedy

court and cultural, religious and linguistic diversity.

5. Because, in principle, article 9 par. 1 GDPR introduces a prohibition

processing information falling under special categories of data

personal, i.e. personal data concerning,

among others, health. Subsequently, paragraph 2 of the same article states that:

"Paragraph 1 does not apply in the following cases: a) the subject of

data has provided express consent to the processing of this data

of a personal nature for one or more specific purposes, unless

Union or Member State law provides that the prohibition referred to

in paragraph 1 cannot be removed by the data subject, b) h

processing is necessary for the execution of a contract of which the subject of

data is a contracting party or to take measures at its request

of the data subject before the conclusion of the contract (...).

1 See Authority decision 26/2019, paragraph 8, available on its website.

6. Because, in the case under consideration, from the information in her file

case, it follows that the insured at the occurrence of the insurance

case, according to Article 7 of Law 2496/1997 (Government Gazette A' 87), refused to provide

positive declaration of intent to the NN insurance company, as responsible

processing, in accordance with the provisions of article 4 par. 7 of

GDPR, in the insurance company's relevant form entitled "Consent for

access to the electronic file" and content: "I hereby notify

to my insurance company NN Hellas my AMKA ... and I provide it

my consent to access – from today and for one (1) month – to

my electronic file (maintained by EOPYY) through the partners with

that of doctors as well as the permission to process my sensitive personal

data itself or the company "METNET HELLAS Anonymous Trading Company Services", which has taken over by order and on its behalf the management of compensations/coverages to its insured, exclusively for the investigating my compliance with my legal and contractual obligations and the payment or non-payment of the conditions for providing insurance coverage". Then the refusal to provide a positive declaration of intent on behalf of the insured it appears that no personal processing was carried out data from the complained NN insurance company, nor transmission of these to the company "METNET HELLAS Anonymi Emporiki Etairia". Services", while the insurance company accepted the insurance coverage case, despite the refusal to provide a relevant positive declaration of his will insured. Consequently, from the evidence of the case file, it appears that there was no violation of the rights of the insured - subject of data from the NN insurance company.

7. Because, further, from the evidence of the case file, regarding the practice followed by the complained insurance company for the coverage of the insured event upon occurrence of the insured event risk arises, firstly, regarding the involvement of the company "METNET HELLAS Anonymous Commercial Services Company" in insurance management compensations/coverages that the Authority has decided with decision 09/20112 that the the said company is the one performing the processing according to article 4 para. 8 of the GDPR,
2 Available on the Authority's website.

which processes personal data on its behalf affiliated insurance company, which is the data controller according to article 4 paragraph 7 of the GDPR and carries all the obligations arising from him. Therefore, the insurance company NN to the extent that it uses the

METNET HELLAS Anonymous Commercial Service Company for the management of
of insurance indemnities and coverages must inform them
insured, in accordance with the provisions of article 13 of the GDPR.

Secondly, regarding the declaration of intent in the insurance application, the Authority with
the decision 46/20113 has judged that the consent to provide information
interested insured from any source only concerns the data that
exist at the time of its conclusion and not in what may arise in
later time from the entry into force of the insurance contract. THE
appeal on behalf of the insurance company NN with the from 17.05.2019 and with
No. prot. APDPH G/EIS/3588/20.05.2019 response of, in response of the under no.
prot. C/EX/784-1/04.04.2019 of the Authority's document, as well as in the from 04.03.2020
and with no. prot. APDPH C/EIS/2739/21.04.2020 her memorandum (p.3) in
declaration of intent in the initial insurance application for its coverage or not
insurance case upon the occurrence of the insurance risk raises
issues of legality of the specific processing, as defined
in the provisions of article 5 par. 1 item a', b' and c' of the GDPR. Third, relative
with the issue of the NN insurance company's access to the System
Electronic Prescribing for the management of compensations/coverages
to the insured, the Authority with decision 138/20134 has prescribed
special conditions regarding the processing of health data. In view of
above and given that the Association of Insurance Companies has submitted to
the Authority for approval Draft Code of Ethics, in which they are involved
and the above issues, which can be used as evidence for the
proof 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
reserves the right to judge the legality of the processing described above

in relation to the consideration of the above Draft Code of Ethics.

3 Opinion 6 of decision 46/2011, available on the Authority's website and SC decision 292/2019 (sec. 10).

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

FOR THOSE REASONS

The beginning

a) rejects the complaint of A against the insurance company NN, for the

reasons mentioned in the rationale of the present and

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