Athens, 03-12-2018

Prot. No.: G/EX/9679/03-12-2018

PRINCIPLE FOR DATA PRIVACY

FOR OPIC CHARACTER

A P O F A S H 71/2018

The Personal Data Protection Authority met, after

invitation of its President, in a regular meeting on 26.6.2018, subsequently

of the 08-02-2017 and 07-12-2016 meetings, in order to examine the

case referred to in the history of the present. Konstantinos appeared

Menoudakos, President of the Authority and regular members Konstantinos

Christodoulou, as rapporteur, Antonios Hymbonis, Pyros Vlachopoulos,

Konstantinos Lambrinoudakis, Charalambos Anthopoulos and Eleni Martsoukou.

the meeting, they also attended by order of the President, without

right to vote, Maria Alikakou, expert scientist – legal auditor, as

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

and making a decision, and Irini Papageorgopoulou, an employee of the department

of administrative and financial affairs, as secretary.

The Authority took into account the following:

With the no. prot. G/EI /4257/30.5.2017 his appeal, like this one

completed

with

the

under

no.

prot. G/EI /8244/16.11.2017

and

C/EI /9099/18.12.2017 documents, A complains to the Pre-Deposit Fund and

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of Loans (hereinafter TSI) for non-observance of due prior notification

regarding further processing of his personal data.

In particular, the appellant complains that in 2006 the TSI decided, without

previously to inform the applicant, to securitize a loan he had

received by the appellant from TSI in 1998. The appellant further claims that

the securitization in question was carried out by the TSI without any particular reason, as it was about

"healthy" loan.

The applicant was informed about the above securitization in 2016 by a random event

and specifically, when it requested from the TSI the reduction of its interest rates as above

loan agreement based on favorable arrangements. The applicant was informed by

the TSI that it was not entitled to more favorable treatment due to its securitization

of the loan agreement. When the appellant asked for clarifications from the TSI

regarding the securitization in question and in particular for the reasons thereof, the answer

that he received according to his claims from the TSI was that it was “sold as certain

loan".

the context of the examination of the above case, the Authority requested clarifications from the

TSI, which were submitted in writing (see prot. no. C/EX/4257-1/05-10-

2017 letter from the Authority to the TSI and no. prot. G/EI /7870/01.112017

the latter's answer). its above reply document, the TSI stated,

among other things, that in 2006 he decided on the transfer and securitization of the income

for the period 30.4.2016 - 28.8.2039 for 27,414 housing loans that

they were granted from 1.7.1988-30.6.2004. The said securitization was done on the basis of

provision of art. 9 Law 3453/2006 and was specified by the agreement of 29.8.2006

assignment by the TSI to the special purpose company "Grifonas Finance No. 1

Plc".

The TSI, regarding the non-obtaining of consent, claimed that a) it does not arise

issue of illegal processing of personal data due to non-receipt

consent, because personal information was not provided to the aforementioned company

borrower data. The physical file of the loans and other data

of service are still observed in the TSI, which remains

loan manager and prepares reports with statistics to the above

special purpose company, and the only element of specification is the number

account, b) the special purpose company is not a third party, c) even if

considered to be a transmission of personal data, the exceptions apply

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of the provisions of article 5 par. 2 e' and d' of Law 2472/1997 and d) in each

case, they are not affected by the satisfaction of TSI's legitimate interest

fundamental terms of the applicant's loan agreement with TSI.

With reference to the non-prior update, the TSI stated that borrowers

of the securitized loans were not updated individually, because no

the terms of the corresponding loan contracts were changed (e.g. interest rate,

duration and method of serving coke). In addition, the TSI claimed that the

the borrowers were informed through the registration of the relevant

of securitization in the public books kept at the Pawnbroker pursuant to it

article 11 of Law 2844/2000. he added that in the relevant contract of sale and

Transfer of Business Claims there is a note that "THIS

REGISTRATION IS CONSIDERED NOTIFICATION OF THE CONTRACT OF SALE OF

BUSINESSMEN

REQUIREMENTS

AND

OF

ACCESSORIES

REAL ESTATE AND DEBT CLAIMS TO ALL OF THEM

DEBTORS, WHOSE NAMES ARE INCLUDED IN THE ATTACHMENT

APPENDIX ACCORDING TO ARTICLE 10 PAR. 10 OF LAW 3156/2003". End,

in its above response document, the TSI states that on 26.10.2017

meeting of D. . of, it was decided to apply the reward policy and

to consistent borrowers with securitized loans based on article 11 of Law.

4490/20171.

Subsequently, the TSI and the appellant were legally summoned to a hearing on

discussion of the case before the Authority on 30.1.2018 with the no. first

C/EX/576/23-01-2018 and C/EX/575/23-01-2018 calls, respectively. the

meeting was attended by the TSI represented by Christos Kolyvos,

legal representative of the State Legal Council and judge

attorney of the Deposits and Loans Fund, the applicant as well as

power of attorney of the latter, Antonia Papadakis. During the meeting, the

according to the above representatives answered questions of the members of the Authority and

presented their views. The appellant developed his views thoroughly and

with a relevant memorandum filed within the deadline granted to him (see

1 according to the provision in question, the TSI may by decision of the D. . of applying it

consistent borrowers reward policy and to borrowers whose loans

were securitized based on no. 9 of Law 3453/2006.

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the no. prot. G/EI /.1161/09.2.2018 his memo). On the contrary, the TSI does not

filed a memorandum.

With his above memorandum, the appellant added, among other things, that the non

fulfillment of the obligation of prior information on the part of the TSI

deprived of the possibility to exercise his legal rights. In particular, Mr

applicant clarified that if he knew in advance about its securitization

loan agreement, would repay the loan in question on time, especially given that

at the time of the securitization he could redeem the balance of the loan

due to his financial situation at that given time.

The appellant claims that today, due to his difficult finances

status as a pensioner, and legally unable to make use of them

favorable provisions to reduce interest rates due to the aforementioned securitization,

he risks losing his only asset.

The Authority, after examining the elements of the case file, after hearing

the rapporteur and the assistant rapporteur, who was present without the right to vote and

withdrew after the case was discussed and before the conference and reception

decision, and after thorough discussion,

SEVEN E ACCORDING TO THE LAW

1. according to article 14 par. 12 of Law 2801/2000 the transfer is permissible

of TSI revenues, according to the more specific regulations defined by article 9 of Law.

3453/2006. Whereas, according to article 10 par. 1, 9, 10, 21, and 22 of Law 3156/2003

respectively: "1. For the purposes of this law Securitization of receivables is

transfer of business receivables due to sale with a contract drawn up

in writing between "transferor" and "transferee" in conjunction with the issue and

disposal, with a private depositor only, of bonds of any kind or form,

whose payments are made: [...] Insurance funds and insurance companies

organizations cannot participate in a private placement even through mutuals

funds or portfolio investment companies. [...] 9. From the entries

of the relevant contract in accordance with the previous paragraph is transferred

of the securitized receivables, unless otherwise specified in the terms of the contract,

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no transfer is announced in writing by the transferor or the specialist company

purpose to the debtor. With the announcement, the requirements on

which concern transfers 10. The registration of the contract is considered an announcement

of this in the public book of article 3 of Law 2844/2000, in accordance with the provisions

paragraph 8 of this article [...] 21. The processing of personal data

debtors to the extent necessary for securitization purposes

claims under this law are made in accordance with Law 2472/1997 (Government Gazette 50 A`). and

does not require prior permission from the Authority of Law 2472/1997 or its consent

debt […] 22. The transferor can give to a special purpose company

every element or data related to the claims and the respective debtors. The

the same applies to the special purpose company vis-à-vis the bondholders or

their representatives, as well as the persons participating in the procedures that

provided for by this law."

2. the article 2 par. a' and c' of Law 2472/1997 define the concepts of simple

of data and of their subject respectively, while in item. d' of the same

article also defines the concept of processing, which includes "

collection, ..., preservation or storage, ..., use, ..., deletion, destruction. ».

Furthermore, according to article 4 of Law 2472/1997, the basic principles of

processing, while article 5 of the same law defines the individual conditions

for its legality and in article 11 of the same law it is provided that: "1. THE

data controller must, during the stage of personnel data collection

character, to inform the subject in an appropriate and clear manner about the following

at least elements: a. his identity and the identity of any representative

of, b. the purpose of processing, c. the recipients or categories of recipients thereof

data, d. the existence of the right of access. 2. If for the collection of

of personal data, the data controller requests his cooperation

subject, must inform him specifically and in writing about the elements of par. 1

of this article as well as for his rights, according to articles 11 to

and 13 of this law. With this, on one hand, the data controller

informs the subject whether or not he is obliged to provide his subscription, with

based on which provisions, as well as the possible consequences of its refusal. 3. If the

data is communicated to third parties, the subject is informed about the communication

before them." The fulfillment of the above notification obligation

is further specified with the no. 1/1999 Regulatory Act of the Authority for

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the "Data Subject Update pursuant to Article 11 of Law 2472/1997" (Official Gazette

B´ 555/1999), as well as with the provision of article 24 par. 3 of Law 2472/1997 which,

although it is formulated as a transitional provision, it expresses the will of the legislator

to establish a permanent regulation for the cases in which it is "big

number of subjects" (see Decision 24/2004 of the Authority), in combination with the

no. 408/1998 Regulatory Act of the Authority on "Informing subjects

processing of personal data by the press" (Official Gazette B'

1250/1998) which specifies both the concept of "a large number of subjects"

stipulating that this applies when the number of these individuals is equal or greater

of the thousand (article 1) as well as the way in which the update must be made

she (articles 3 and 4)2.

3. With reference to the issue of the mandatory or non-obtaining of his consent

data subject, i.e. the borrower, for its securitization

of his loan, the Authority has already judged3 that the consent of the subject does not

is a condition for the processing to be permitted, since, according to the article

10 par. 21 and 22 of Law 3156/2003 on the securitization of receivables, it is not required

permission of the Authority, nor consent of the debtor for the processing of personal data

data debtors to the extent necessary for the purposes

securitization of receivables, and the special purpose company, to which the

claim, like the other parts of the process, has the right to draw

data on the receivables and the corresponding debtors from the

Issuing bank (Financial Institution, such as TPS).

Furthermore, the transferring bank or other financial institution

transmits the relevant data to the special purpose company not only having

right to this, but also an obligation (pursuant to article 456 of the Civil Code which

also applies in this particular case).

Therefore, the transmission of the debtors' details by the assignor

financial institution is necessary to fulfill its obligation

which is imposed by law, in accordance with article 5 par. 2 para. b of Law 2472/1997.

But also the status of the acquiring company as a special purpose company - which

2, it is noted that Regulation (EU) 2016/679 now explicitly promotes the principle of transparency

of the processing and subsequently strengthens the subject's right to information (see articles

5, 13 and 14 of the Regulation and corresponding recitals in its preamble).

3 (See Annual Report of the 2014 APDPH, points 3.6.2., available online on the website

of the Authority www.dpa.gr)

notably, it has been set up specifically and exclusively for securitization and not

required by the above law to be a credit or financial institution –

establishes in her person the subscription of an overriding legal interest for her

transmission of debtors' data. In particular, in addition, the

aforementioned terms and conditions stipulated by article 5 par. 2 para. e' of the law.

2472/1997, i.e. transmission absolutely necessary for the pursuit and collection of
related claims, without change, as was necessary to the original beneficiary
of these claims bank, which obviously prevails over the rights and
interests of debtors without prejudice to their fundamental freedoms,
since the processing is carried out within the framework of Law 3156/2003 by a limited circle
recipients. It goes without saying that the transmission must be limited to the absolute
necessary elements for the purpose of securitization.

4. With reference to the issue of mandatory or non-prior notification of
borrowers, as data subjects, in case of loan securitization,
the Authority has accepted the following in relation4:

The contract for the transfer of securitized business receivables
is registered in the public book of article 3 of Law 2844/2000 in a summary that
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 specialist company
purpose to the debtor (article 10 par. 9 of Law 3156/2003). Further, as an announcement
is considered the registration of the contract in the public book of article 3 of n.
2844/2000, in accordance with the aforementioned provision of article 10 par. 8 of the law.
3156/2003. therefore, the above registration of the contract in the public book constitutes
according to article 10 par. 10 of Law 3156/2003 announcement of the assignment agreement
to the debtor of no required written notice of the assignment by
I transferred a company or the special purpose company to the debtor (so does the
decision 2391/2011 BR ATH).

Therefore, given that the more specific provisions on securitization
requirements state that the registration is sufficient and valid as an announcement (information).

of the relevant contract in the public book (see Annual Report 2014, 3.6.2.

4 (see in particular recent decisions of the Authority with no. 23/2018 and 33/2018).

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Securitization of bank claims), it must be accepted that it is not required in

this case in accordance with the special provisions and other previous ones

individual update. is recommended, however, at the time of collection

given the controller who proceeds to securitize the claim

of, i.e. the bank or other financial institution, to include in

content of the update, in which it proceeds, according to article 11 par. 1 of the law.

2472/1997, as a category of recipients, the special purpose companies for the case

securitization of receivables and, in any case, the task of securitization

of the claim the above controller or the special purpose company must

to inform the debtor individually (e.g. by sending the relevant

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

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

securitization of receivables remove the obligation to update article 11 par. 3 n.

2472/1997 only as necessary to implement their content and not the

the obligation to inform5. This is also in accordance with the obligation

information, as provided for in Directive 95/46/EC (see article 11), the

which Directive was incorporated into Greek law by Law 2472/1997, but also now with

the General Data Protection Regulation (EU) 2016/679 (see articles 12,

13 and 14).

5. the case at hand, the personal data of the applicant which

linked to the loan agreement received from TSI in 1998 were granted

from the TSI to the special purpose company "Grifonas Finance No. 1 Plc" with

establishment in London in the context of securitization / transfer of receivables

according to article 10 par. 21 of Law 3156/2003. And yes, although it was not necessary by law

consent for the securitization, in accordance with what is mentioned above

paragraph 3, however, for the said securitization there was an obligation of the TSI to

inform the applicant beforehand about the transmission of his personal data

of data to the receiving special purpose company as set out in paragraph 4.

As a result, the applicant, as a data subject, due to the non

informing him, he did not have a reasonable period of time before

disposal of his data to the aforementioned special purpose company in order to

effectively exercise the rights of access and objection in accordance with

5 See and 2828/2014 BR ATH.

articles 12 and 13 of Law 2472/1997, as well as to carry out any other legal

action to protect his property.

In view of the above, the Authority, taking into account the seriousness of his violation

of article 11 of Law 2472/1997 which was proven and of the insult caused by

she in the subject judges that it should be imposed on the Pre-Deposit Fund and

Loans, as a data controller, the one provided for in article 21, paragraph 1, paragraph a

of Law 2472/1997 sanction referred to in the ordinance.

FOR THIS REASON

The beginning:

1. deems that the Deposit and Loan Fund, as responsible

processing, he should have previously informed the applicant A about

the securitization of his loan agreement for the reasons that

refer to the rationale of the present

2. imposes on the Deposits and Loans Fund, as responsible

processing, for non-compliance with the aforementioned previous obligation

informing the applicant A and for the reasons mentioned in

reasoning of the present, the sanction of the warning, pointing out that

henceforth it should inform the borrowers accordingly and before

from the securitization of their loans.

The president

The Secretary

Constantinos Menoudakos

Irene

Papageorgopoulou