

Supervision of the Department of Employment's supervision of a data processor

Date: 15-12-2022

Decision

Public authorities

No criticism

Supervision / self-management case

Data processor

Basic principles

The Ministry of Employment's department's supervision of a data processor did not give rise to criticism.

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Summary

The Danish Data Protection Authority has carried out a written inspection of the Ministry of Employment's department's supervision of one of the department's data processors.

The Danish Data Protection Authority found no basis for overriding the Ministry of Employment's department's assessment that the ministry's supervision of data processor VIVE had taken place in accordance with the data protection rules.

In the assessment, the Danish Data Protection Authority emphasized that the Ministry of Employment's department supervises VIVE by asking for answers to a number of questions that the department has adapted based on the specific content of the data processing agreement, and that the department then asks in-depth questions if necessary.

It also appears from the Danish Data Protection Authority's guidance on supervision of data processors that supervision where the data controller himself conducts documented supervision of the data processor is a way in which the data controller can carry out appropriate supervision when the data processor processes sensitive or confidential information about many data subjects on behalf of by the data controller.

Decision

1. Written supervision of the Ministry of Employment's supervision of data processors

The Ministry of Employment was among the authorities that the Data Protection Authority had selected in the autumn of 2021 to supervise under the Data Protection Regulation[1] and the Data Protection Act[2].

The Danish Data Protection Authority's supervision was a written supervision which focused on the Ministry of Employment's supervision of data processors.

By letter of 9 November 2021, the Norwegian Data Protection Authority notified the Norwegian Ministry of Employment. In this connection, the Danish Data Protection Authority requested to be sent a list of data processors to whom the Ministry of Employment entrusts sensitive and/or confidential information.

The Ministry of Employment appeared on 30 November 2021 with a list of the ministry's data processors.

On the basis of the list, the Data Protection Authority chose to start by checking the Ministry of Employment's supervision of the ministry's data processor Socialtilsyn Hovedstaden.

However, the Ministry of Employment stated by letter of 18 January 2022 that Social Supervision Hovedstaden ceased to be a data processor for the ministry on 1 January 2022.

On this basis, the Danish Data Protection Authority chose to carry out an inspection of the Ministry of Employment's supervision of the data processor VIVE.

On 19 April 2022, the Danish Data Protection Authority requested the Ministry of Employment to provide information on: the ministry's plan for its supervision of VIVE, including considerations about frequency and what is being supervised, whether the ministry has supervised VIVE, and how the ministry has followed up any completed inspections of VIVE.

On that basis, the Ministry of Employment sent a statement on the matter on 9 May 2022.

## 2. Decision

After a review of the case, the Danish Data Protection Authority finds no basis for overriding the Ministry of Employment's assessment that the ministry's supervision of the data processor VIVE takes place in accordance with the rules in the Data Protection Regulation, Article 5, subsection 2, cf. subsection 1.

Below follows a closer review of the information that has come to light in connection with the written inspection and a justification for the Data Protection Authority's decision.

## 3. Case presentation

The Ministry of Employment has stated that the purpose of the treatment is to carry out an analysis of the recipients of the temporary child benefit and their children's deprivation and financial situation, including how the temporary child benefit has

affected their experience of this. On the basis of pseudonymised questionnaire data and register data, VIVE performs statistical analyses. The processing includes information about recipients of the temporary child benefit in the form of information about age, gender, level of education, social security numbers and significant social problems.

The Ministry of Employment has also stated that if special conditions (risks) do not apply, the ministry conducts annual inspections of their data processors. The Ministry of Employment has not assessed that there was a reason to deviate from that cadence in relation to VIVE.

Supervision of the Ministry of Employment's data processors typically begins in the second quarter. The supervision of VIVE is carried out on the basis of a template for a management statement, which the Ministry of Employment sends to the data processor. The Ministry of Employment adapts the template beforehand based on the specific content of the data processing agreement with instructions. The template contains a number of questions that VIVE must answer. VIVE fills in the template, signs and sends it back to the ministry. The Ministry of Employment will then ask in-depth questions if necessary. The procedure for using the management statement is laid down in the data processing agreement.

In addition, the Ministry of Employment has stated that the supervisory authority has not yet supervised VIVE. This is because the ministry entered into the data processing agreement with VIVE on 10 August 2021, and VIVE will therefore only be included in the supervision for 2021, which will begin in the second quarter of 2022. The Ministry of Employment has further stated that there has been nothing in the processing, which has triggered the need for earlier supervision than planned.

#### 4. Reason for the Data Protection Authority's decision

It follows from the data protection regulation article 28, subsection 1, that a data controller may only use data processors who can provide the necessary guarantees that they will implement the appropriate technical and organizational measures in such a way that the processing meets the requirements of the data protection regulation and ensures protection of the data subject's rights.

Of the data protection regulation, article 24, subsection 1, it appears that the data controller must implement appropriate technical and organizational measures to ensure and to be able to demonstrate that the processing is in accordance with the regulation.

The data controller must thus be able to demonstrate that the data processor provides sufficient guarantees for the implementation of technical and organizational measures that meet the requirements of the data protection regulation and

ensure protection of the data subject's rights. This detection must be possible throughout the treatment process over time, which i.a. can be done by controls.

This appears from the data protection regulation's article 5, subsection 1, letter a, that personal data must be processed legally, fairly and in a transparent manner in relation to the data subject ("legality, fairness and transparency").

Furthermore, it follows from the regulation's article 5, subsection 1, letter f, that personal data must be processed in a way that ensures sufficient security for the personal data in question, including protection against unauthorized or illegal processing and against accidental loss, destruction or damage, using appropriate technical and organizational measures ("integrity and confidentiality").

In addition, it follows from the data protection regulation article 5, subsection 2, that the data controller is responsible for and must be able to demonstrate that Article 5, subsection 1, is observed.

Article 5, subsection 2, contains an accountability principle which – in the Danish Data Protection Authority's view – means that the data controller must ensure and be able to demonstrate that personal data is processed for lawful and reasonable purposes and that the data is processed in a way that ensures sufficient security for the personal data in question – also when the data controller asks another party (a data processor or sub-processor) to process the information on its behalf.

Lack of follow-up on the processing of personal data by data processors and sub-processors will – in the opinion of the Danish Data Protection Authority – basically mean that the data controller cannot ensure or demonstrate that the processing complies with the general principles for the processing of personal data, including that the data is processed on a legal, fair and transparent manner in relation to the data subject ("lawfulness, fairness and transparency"), and that the information is processed in a way that ensures sufficient security for the personal data in question, including protection against unauthorized or illegal processing and against accidental loss, destruction or damage, using appropriate technical or organizational measures ("integrity and confidentiality").

In October 2021, the Danish Data Protection Authority published new, practically applicable guidance on how data controllers can carry out such inspections[3]. It appears from the guidance that the greater the risks there are for the data subjects in the processing by the data processor, the greater the demands placed on the data controller's supervision of the data processor. This applies both in relation to how the data controller must carry out supervision and how often this must take place.

It is further clear from the guidance that a supervision where the data controller himself conducts a documented supervision of

the data processor is a way in which the data controller can carry out appropriate supervision when the data processor processes sensitive or confidential information about many data subjects on behalf of the data controller. This can e.g. happen by the data controller sending a written questionnaire to the data processor and following up on the answers.

After a review of the case, the Danish Data Protection Authority finds no basis for overriding the Ministry of Employment's assessment that the ministry's supervision of the data processor VIVE takes place in accordance with the rules in the Data Protection Regulation, Article 5, subsection 2, cf. subsection 1.

The Danish Data Protection Authority has therefore emphasized that the Ministry of Employment supervises VIVE by asking for answers to a number of questions, which the Ministry has adapted based on the specific content of the data processing agreement, and that the Ministry of Employment then asks in-depth questions if necessary.

The Danish Data Protection Authority thus finds no reason to override the Ministry of Employment's assessment that the ministry's supervision of VIVE in the form of a template for a management statement and any follow-up to the response constitutes an appropriate supervision of the data processor.

[1] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons in connection with the processing of personal data and on the free exchange of such data and on the repeal of Directive 95/46/EC (general regulation on data protection).

[2] Act No. 502 of 23 May 2018 on supplementary provisions to the Regulation on the protection of natural persons in connection with the processing of personal data and on the free exchange of such information (the Data Protection Act).

[3]

[https://www.datatilsynet.dk/Media/637710957381234368/Datatilsynet\\_Vejledning%20om%20tilsyn%20med%20databehandlere\\_oktober-2021.pdf](https://www.datatilsynet.dk/Media/637710957381234368/Datatilsynet_Vejledning%20om%20tilsyn%20med%20databehandlere_oktober-2021.pdf)