

Deliberation SAN-2020-006 of September 3, 2020 National Commission for Computing and Liberties Legal status: In force  
Date of publication on Légifrance: Tuesday September 22, 2020 Deliberation of the restricted formation no SAN-2020-006 of September 3, 2020 concerning the rectorate XLa National Commission for Computing and Liberties, meeting in its restricted formation composed of Mr Alexandre LINDEN, President, and Mrs Anne DEBET, Sylvie LEMMET and Christine MAUGÜE, members; Having regard to Convention No. 108 of the Council of Europe of 28 January 1981 for the protection of individuals with regard to the automatic processing of personal data; Having regard to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 relating to the protection of personal data and to the the free movement of this data; Having regard to law no. 78-17 of 6 January 1978 relating to data processing, files and modified freedoms, in particular its articles 20 and following; Ordinance No. 2014-1329 of November 6, 2014 relating to remote deliberations of administrative bodies of a collegial nature; Having regard to Decree No. 2019-536 of May 29, 2019 taken for the application of Law No. data processing, files and freedoms; Having regard to deliberation no. 2013-175 of July 4, 2013 adopting the internal regulations of the National Commission for Data Processing and Freedoms; Having regard to deliberation no. 2020-037 of April 2 2020 relating to the organization of the deliberations of the National Commission for Computing and Liberties during the state of health emergency linked to covid-19; Having regard to decision no. 2019-213C of October 25, 2019 of the President of the National Commission for Computing and Liberties to instruct the Secretary General to carry out or have carried out a verification mission of all the processing carried out by or on behalf of the rectorate of Z; Having regard to the decision of the President of the national committee nal de l'informatique et des libertés appointing a rapporteur before the restricted formation, dated March 12, 2020; Having regard to the referral [...] received by the National Commission for Information Technology and Freedoms on August 8, 2019; the report of Mrs. Dominique CASTERA, reporting commissioner, notified to the rectorate of X on June 3, 2020; Having regard to the written observations of Mr. [...], secretary general of the academy, for the rector of X and by delegation, received on July 3 2020; Considering the other documents in the file; Were present remotely, during the restricted training session of July 16, 2020 which was held by videoconference: Mrs. Dominique CASTERA, commissioner, in her report; As representatives of the rectorate of X:- [...] The Restricted Committee adopted the following decision:I. Facts and procedure a complaint concerning the sending by Mrs Y, MP for [...], letters of congratulations to the 2019 baccalaureate diploma winners in her constituency. In response to the letter from the complaints department dated September 20, 2019, Mrs. , that his team had been made the recipient, at his request, of an Excel file from the services of the rectorate of Z – which has

been replaced since January 1, 2020 by the rectorate of X – containing the contact details of the department's baccalaureate graduates . Mrs. Y also informed the CNIL that a member of her team had processed the surnames, first names and postal addresses of the graduates from her department present in the file for direct mail purposes, for half a day, and then proceeded to destroy said file. Finally, Mrs Y indicated that she had sent a letter of congratulations to graduates every year since her election in 2017. By decision no. 2019-213C of October 25, 2019, the President of the CNIL commissioned a verification mission with the rectorate of Z. This mission was carried out on documents, the rectorate having replied on November 18, 2019 to a letter from the CNIL of October 30, received on November 4. It results from the investigations carried out by the services of the Commission that the service in charge of the rectorate's examinations and competitions sent to Mrs. Y, on July 18, 2019, in the form of an Excel format file attached as an unencrypted attachment (not protected by password) of an e-mail , the surnames, first names, dates of birth, postal addresses, names of educational establishments, baccalaureates obtained and any mentions received from 11,856 high school students from the department of [...] winners of the 2019 baccalaureate. The delegation was informed that the s data came from the automated processing of personal data relating to the management of school exams and competitions called OCEAN, created by a decree of April 22, 2013. He was also told that only the data of high school students who had consented to the transmission of their data to a local authority when they registered for the exam had been transmitted. Madame Y and the services of the rectorate on the occasion of this communication. However, the rectorate's data protection delegation had not been consulted prior to the transmission of this personal data. In addition, it appears from the information brought to the attention of the CNIL that the volume of personal data transmitted exceeded the scope of the elected representative's request. Indeed, the latter only asked to receive the surnames, first names, mentions in the baccalaureate and postal addresses of the baccalaureate holders in its constituency. On this point, the delegation was told that, due to lack of time, the rectorate services had sent the MEP a global list, leaving the latter the freedom to sort out the data from the aforementioned OCEAN processing . Thus, the rectorate indicated to the CNIL that the imminence of the departures on leave of the agents made it more difficult to extract the data relating only to the baccalaureate holders domiciled in [...]. It also emerges from the information provided that a file containing the data of the winners who obtained the mention Very good throughout the department of [...] was sent in 2018 to Mrs Y, even though the latter had limited her request to the contact details laureates who have obtained the mention Very good in their only constituency. For the purposes of examining these elements, the President of the CNIL appointed Mrs. Dominique CASTERA as rapporteur, on

March 12, 2020, on the basis of article 22 of the amended law of January 6, 1978. At the end of her investigation, the rapporteur had a bailiff notify, on June 3, 2020, the rectorate of X a report detailing the breach of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 relating to data protection (hereinafter the Regulation or the GDPR) which it considered constituted in this case. This report proposed to the restricted formation of the Commission to pronounce to the against from the rectorate of X a call to order, for its ignorance of article 5-1-a) of the Regulations, which provides for the obligation to process personal data in a lawful manner. He also proposed that this decision be made public but that it no longer allow the rectorate to be identified by name at the end of a period of two years from its adoption. The letter notifying the report indicated to the rectorate that it had a period of one month to communicate its written observations. justice, June 15, 2020. On July 3, 2020, the rectorate of X produced written observations. During the restricted training session of July 16, 2020, the rapporteur maintained the proposals made in her sanction report.

II. Reasons for decision

1. On the applicable law

The restricted training recalls that the personal data transmitted to Mrs Y by the services of the rectorate of Z come from the automated processing of personal data relating to the management of examinations and school competitions called OCEAN, created by the decree of April 22, 2013. The implementation of OCEAN processing is subject, since May 25, 2018, to compliance with the requirements laid down by the GDPR. Consequently, the GDPR being applicable to the facts of the case, the Restricted Committee assesses the breaches of the regard to this text.

2. On the determination of the data controller

Article 4-7) of the GDPR defines the data controller as the natural or legal person, public authority, service or other body which, alone or jointly with others, determines the purposes and means of processing. The Restricted Committee observes that in this case the services of the rectorate of Z independently determined the purpose of the processing of the personal data in question, by deciding alone to proceed with the extraction of the personal data from the OCEAN processing with a view to their transmission to Mrs Y. Indeed, it does not appear from the investigations carried out by the CNIL services that the transmission of personal data from the OCEAN processing to Mrs Y would have taken place on the instructions of the Ministry of National Education, responsible for the processing of OCEAN personal data, nor that this ministry was informed of this transmission. personal data communicated to Mrs. Y. In this case, it was the services of the rectorate which were at the initiative of extracting personal data from OCEAN processing and who piloted the transmission of the file. They thus decided on the nature of the personal data to be extracted and determined the methods of communication of this data. All of these operations took place under the control of the cabinet of the rector of the academy. Finally, the rectorate appears solely responsible for

checking the legality of the requests it receives and which relate to the transmission of personal data resulting from the processing OCEAN . In this regard, the Restricted Committee notes that the rectorate's data protection officer is usually in charge of examining the legality of such requests. In addition, the rectorate announced the implementation, from January 2020, of an internal procedure within its services aimed at conditioning the transmission of personal data resulting from OCEAN processing to local authorities on the prior signature of an agreement with the academy. Consequently, the Restricted Committee considers that the rectorate of Z – which replaced the rectorate of X from 1 January 2020 – acted as data controller with regard to the separate processing carried out from personal data from the OCEAN database .3. On the breach of the obligation to process data lawfullyArticle 5-1-a) of the GDPR provides that personal data must be processed in a lawful, fair and transparent manner with regard to the person concerned. The Restricted Committee observes that under the terms of Article 3 of the decree of April 22, 2013 creating an automated processing of personal data relating to the management of school examinations and competitions called OCEAN, the agents of the academic services are among the recipients authorized to receive communication of the personal data resulting from this processing, only for the candidates for the examination of the academy which concern them. The services of the rectorate of Z therefore had legitimate access, on the basis of the said decree, to the personal data of the said processing for the high school students of the department of [...]. The Restricted Committee notes, however, that parliamentarians are not among the list of persons authorized by the decree of 22 April 2013 to be recipients of personal data resulting from OCEAN processing. Indeed, if the restricted committee notes that under the terms of article 3 of the decree of April 22, 2013 can also be recipients of processing data the authorized agents of the local authorities participating in the public service of education who the request (...) , it recalls that local authorities are administrative structures distinct from the State, which take charge of the interests of the population of a specific territory. Under these conditions, a parliamentarian cannot be assimilated to a local authority or to an agent of such an authority within the meaning of the aforementioned decree. Consequently, the Restricted Committee considers that by transmitting personal data resulting from OCEAN processing to Mrs. Y, in her capacity as an MP, while parliamentarians are not among the list of persons authorized to access data under the aforementioned decree of 22 April 2013, the rectorate has unlawfully processed personal data. These facts constitute a breach of Article 5-1-a) of the GDPR.4. On the aggravating elements First, the Restricted Committee notes that the personal data was transmitted by the rectorate to Mrs Y under unsecured conditions, namely by sending an Excel file as an unencrypted attachment to an email . These methods of transmission of personal data

do not make it possible to protect against their interception by a third party and, therefore, present a risk of attack on their integrity. In this respect, the Restricted Committee recalls that the CNIL recommends, as an elementary security precaution, the encryption of personal data before their recording on a physical medium, or their transmission by e-mail, and to ensure the confidentiality of the password of decryption by transmitting it by a channel other than that by which the personal data is communicated, for example by telephone when the data is sent by e-mail. Secondly, the Restricted Committee considers that the conditions under which the transmission of the personal data took place in this case reflect a certain negligence on the part of the rectorate in the analysis and processing of the request addressed to it by the member. The Restricted Committee recalls in this respect, on the one hand, that the legality of the request presented by the deputy has not been analyzed by the services of the rectorate of the academy - nor has it been transmitted to the data protection officer for advice - and that, on the other hand, the illicit processing of personal data from the OCEAN database is characterized for the second consecutive year - since the rectorate has acknowledged having already transmitted in 2018 the data of all the laureates of the department holding a mention Very good to Mrs Y. The restricted training also notes that the services of the rectorate transmitted to the deputy a global file containing the data of all the laureates of the department, thus going beyond the territorial scope of [...] for which Mrs Y exercises her representation functions. As a result, the rectorate transmitted to the MEP more personal data than the latter had requested and, in any event, more than what the provisions of the decree of 22 April 2013 provide for the benefit of the agents authorities of local authorities participating in the public service of education. Finally, the Restricted Committee notes that the transmission of personal data took place without any form of a priori control and without any other form of a posteriori control, as regards the use and deletion of personal data by the MEP's teams, that the request for the production of a sworn statement of destruction of the file. Thirdly, the Restricted Committee notes that the unlawful processing involved concerns a large number of people, since the data of 11,856 high school students were thus transmitted outside the framework legal provision provided for by the decree of 22 April 2013. Finally, the restricted committee observes the sensitive nature of the public affected, since some of the persons concerned by the unlawful processing of personal data were minors at the time of the events. III. On corrective measures and their publicity Under the terms of III of article 20 of the law of January 6, 1978 as amended: When the data controller or its subcontractor does not comply with the obligations resulting from Regulation (EU) 2016/679 of 27 April 2016 or from this law, the President of the National Commission for Computing and Liberties may also, if necessary after having sent the warning provided for in I of this article or,

if necessary in addition to a formal notice provided for in II, seize the restricted formation of the committee with a view to the pronouncement, after adversarial procedure, of one or more of the following measures: 1° A call to order; [...] Firstly, with regard to the measure proposed by the rapporteur, the Restricted Committee considers that the aforementioned breach justifies a call to order against the rectorate of X, which replaced to the rectorate of Z from 1 January 2020, for the following reasons. The Restricted Committee first notes that the breach of Article 5-1-a) is characterized by the transmission of personal data to a person who , under the terms of article 3 of the decree of April 22, 2013, is not one of the recipients authorized to receive communication of data resulting from OCEAN processing. She then observes that the data was transmitted by the rectorate to Mrs Y for the second consecutive year, that this data was transmitted under unsecured conditions (Excel file as an unencrypted email attachment), that the legality of the request submitted by the member has not been analyzed by the services of the rectorate of the academy, nor has it been transmitted to the data protection officer for an opinion, that the data transmitted by the rectorate exceeded those referred to in the MEP's request and that the rectorate did not carry out any effective control of the destruction of the data file. Secondly, concerning the publication of its decision, the Restricted Committee considers that, given the sensitivity of the public concerned and the number of people affected by the unlawful data processing, the publication of the decision to call to order for a period of one year appears justified. FOR THESE REASONS The restricted formation of the CNIL, after having deliberated, decides to: pronounce against the rectorate of X a call to order, for its ignorance of article 5-1-a) of regulation no 2016/679 of April 27, 2016 relating to data protection; make public, on the CNIL website and on the Légifrance website, its deliberation, which will no longer identify the rectorate of X by name at the end of a period of one year from its publication. President Alexandre LINDEN This decision may be subject to appeal before the Council of State within two months of its notification.