

REGISTERED

[CONFIDENTIAL]

Date

[CONFIDENTIAL]

Our reference

[CONFIDENTIAL]

Contact

[CONFIDENTIAL]

Topic

Decision to collect and intention to publish

Authority for Personal Data

[CONFIDENTIAL]

Dear [CONFIDENTIAL],

By decision of 11 May 2017 with reference [CONFIDENTIAL], the Dutch Data Protection Authority (AP) pursuant to Article 65 of the Personal Data Protection Act (Wbp) and viewed in conjunction with Article 5:32, first paragraph, of the General Administrative Law Act (Awb), an order subject to a penalty imposed on Theodoor Gilissen Bankiers N.V. (TGB) for violation of Article 35, second paragraph, of the Wbp. The offense lies in the fact that TGB had not complied with [APPLICANT]'s request for him to provide an overview of the personal data concerning him that TGB processes as well as a description of the purpose or purposes of the processing of this data, the categories of data to which the processing relates, the recipients or categories of recipients and the available information on the origin of the data.

The beneficiary period has ended on July 11, 2017. In the case of e-mail messages of July 7, 2017 and On 14 August 2017, TGB [APPLICANT] has two statements regarding the processing of his provided personal data. The AP has assessed whether TGB has correctly met the imposed burden has complied. In this decision, the AP notes that TGB will not bear the burden before the expiry of the

has completed the beneficiary period to a sufficient extent and that InsingerGilissen Bankiers N.V. (IGB) as legal successor of TGB thus has the penalty included in the order up to a total of € 48,000 forfeit.

1

Date

[CONFIDENTIAL]

Our reference

[CONFIDENTIAL]

1. Order subject to penalty

1. The order subject to periodic penalty payments as imposed on TGB by the AP by decision of 11 May 2017 reads as follows:

TGB must provide [APPLICANT] with the following information:

- (1) a complete overview in comprehensible form of the data subject concerning personal data;
- (2) a description of the purpose or purposes of the processing;
- (3) the categories of data to which the processing relates;
- (4) the recipients or categories of recipients as well as
- (5) the available information on the origin of the data.

In view of what TGB has put forward about the effort involved in drawing up an overview, involved and the size of the number of documents containing personal data about [APPLICANT], the AP attaches to this charge a grace period of two months ending on 11 July 2017.

If TGB does not comply with the order before the end of the beneficiary period, it forfeits a penalty. the AP sets the amount of this penalty at an amount of € 12,000.00 for each week that the order is not (entirely) carried out, up to a maximum of € 60,000.00.

2. Course of the procedure

2. By decision of 11 May 2017, the AP imposed an order subject to periodic penalty payments on TGB for violation of Article 35, second paragraph, of the Wbp. There are no legal remedies against this decision

so that the decision has become irrevocable.

3. In order to implement the obligations included in the order subject to a penalty, TGB has e-mail of 7 July 2017 to [APPLICANT] provided an overview with attachments with regard to the processing of the personal data of [APPLICANT] by TGB. This overview with attachments has TGB also provided to the AP by email of 7 July 2017.

4. By e-mail dated 13 July 2017, the AP gave [APPLICANT] the opportunity to 2017 to give a response to the overview with appendices of 7 July 2017.

5. By e-mail dated 20 July 2017, [APPLICANT] requested that the response period be extended by one week extend. In anticipation of the response, [APPLICANT] has taken the position that the overview is not complete.

6. By e-mail dated 21 July 2017, the AP informed [APPLICANT] that [APPLICANT] will be postponed until and 27 July 2017 to respond to the overview with attachments dated 7 July 2017.

2/9

Date

[CONFIDENTIAL]

Our reference

[CONFIDENTIAL]

7. By e-mail of 26 July 2017, [APPLICANT] provided a further response to the overview of 7 July 2017 and indicated that certain information is missing from the overview. This email was sent by the AP forwarded to TGB on July 26, 2017.

8. In an e-mail of 4 August 2017 from TGB to the AP, TGB provided an explanation of the overview and TGB addressed the statements of [APPLICANT] of 20 and 26 July 2017.

9. On August 10, 2017, the AP conducted an on-site investigation at TGB's office. It The final report of this investigation was sent to IGB by letter dated 24 October 2017.

10. At the request of TGB, the AP issued a preliminary judgment by email of 11 August 2017 according to following the findings of the on-site investigation. The AP has made this provisional judgment

request of TGB because the period over which a penalty could be forfeited has not yet been had expired. The AP has indicated that, in the preliminary opinion of the AP, the overview is not is complete.

11. In an e-mail dated 14 August 2017, TGB indicated that it did not agree with the provisional judgement. TGB indicates, however, that it will clarify the overview.

12. By email of 14 August 2017, TGB provided [APPLICANT] with an amended overview.

In addition, TGB had its lawyer draw up a separate overview. This overview is also at the email dated 14 August 2017 to [APPLICANT].

3. Considerations

13. On 7 July 2017, TGB provided [APPLICANT] with an overview of personal data of [APPLICANT] processed by TGB (hereinafter: the overview). In this overview is per category of processed personal data the following: a description of the purpose of the processing, the (categories) of recipients and available information about the origin of the data.

14. The AP assesses whether by providing this overview to the imposed order subject to a penalty of May 11, 2017 has been met. To this end, the AP is faced with the question whether the overview of 7 July 2017 is complete.

15. At the request of the AP, [APPLICANT] responded by e-mails dated 20 and 26 July 2017 to the overview of 7 July 2017. [APPLICANT] has hereby stated with reasons that the overview on some points are incomplete.

16. To ensure the completeness of the overview and thus the execution of the order subject to a penalty able to assess, the AP conducted an investigation on August 10, 2016 at the office of TGB performed on site.

Our reference

[CONFIDENTIAL]

17. After investigation, the AP determines that the overview is incomplete, because when it was drawn up, the processing of personal data of [APPLICANT] in two documents is not involved. In this

In the frame, the AP points out the following.

3.1 The investigation and research report by KBL

18. [APPLICANT] takes the position in the email of 26 July 2017 that information relating to the personal data of [APPLICANT] provided by TGB to KBL European Private Bankers (hereinafter: KBL) is missing from the overview.

19. During the on-site investigation, TGB stated that KBL (shareholder of TGB) was conducting an investigation exported to [CONFIDENTIAL]. The reason for this research were events all around [CONFIDENTIAL]. For the purpose of this investigation, as stated by TGB in its e-mail mail of 14 August 2017 to [APPLICANT], personal data of [APPLICANT] exchanged between TGB and KBL.

20. A report has been drawn up of the investigation. TGB stated during the on-site investigation that it report contains personal data of [APPLICANT]. The relevant categories of personal data are, according to TGB, included in the overview under 1. TGB takes the position that the report however, does not have to be included in the overview, because this document is intended solely for for internal use. It is a [CONFIDENTIAL]. Given the nature and content of this [CONFIDENTIAL]. TGB therefore invokes Article 43, opening words and under e, of the Wbp. TGB also takes the position that the categories of personal data that appear in the report, are mentioned on the overview.

21. Based on the statements of TGB, the AP establishes that the report personal data of [APPLICANT] contains.

22. The AP establishes on the basis of the statements of TGB that the purpose of processing personal data of [APPLICANT] for conducting the investigation and drawing up the

report is located in [CONFIDENTIAL]. This purpose of the processing is not included in the

Overview.

23. The AP establishes on the basis of the statements of TGB that both TGB and KBL use the personal data received from [APPLICANT] in the context of this investigation. In the overview of this recipients under 1 exclusively included the Board of Directors of TGB. KBL is not as a receiver included in the overview.

24. For the assessment of whether the information referred to above should have been included in the overview are included, it is important that TGB invokes Article 43, opening words and under e, of the Wbp.

4/9

Date

[CONFIDENTIAL]

Our reference

[CONFIDENTIAL]

25. Article 43, preamble and under e, of the Wbp reads as follows:

The controller may disapply Articles 9, first paragraph, 30, third paragraph, 33, 34, 34a, second paragraph, and 35 to the extent necessary in the interest of:

[...]

e. the protection of the data subject or the rights and freedoms of others.

26. The AP states first and foremost that the imposed order does not lead to TGB providing [APPLICANT] with a copy of to provide the report. The burden only leads to an obligation to provide information about the processing of the personal data of [APPLICANT] in that report, namely about the purpose of the processing of the personal data, the categories of personal data contained in that report have been processed, the recipients of that data and the available information about the origin of the data. It appears from the e-mail of [APPLICANT]'s representative dated 26 July 2017 that [APPLICANT] was already aware of the fact that [CONFIDENTIAL]. This means that it including information about the processing of [APPLICANT]'s personal data in the

KBL investigation report does not lead to new information becoming known to [APPLICANT] about, for example, the purpose of the processing of the personal data of [APPLICANT] in the report. Therefore, there is no reason to conclude that the inclusion of this information on the overview would lead to a violation of the rights and freedoms of TGB. The AP follows TGB too not in its position that by invoking Article 43, opening words and under e, of the Wbp Article 35, second paragraph, could not apply on this point.

27. The AP concludes that in the overview the purpose of the processing of the personal data of [APPLICANT] in the context of the investigation carried out by KBL and the recipients of this data has not been included and there is no reason not to provide this information of [APPLICANT]. TGB has not met the burden to that extent.

3.2 Personal data of [APPLICANT] with regard to the forensic report

28. [APPLICANT] takes the position in the email of 20 July 2017 that the processing of personal data of [APPLICANT] with regard to the forensic report is missing on the Overview.

29. TGB stated during the on-site investigation that TGB provided the report in 2008 to the lawyer of TGB. TGB has stated that it is no longer in possession of the report. The lawyer TGB still owns the report. TGB takes the position that the processing of personal data of [APPLICANT] with regard to the forensic report, however, not in the overview should be included. To this end, it submits, first, that TGB at the time of the preparing the summary was not aware of the existence of the report. This can be explained, according to TGB, because the forensic report is not included in the file of [APPLICANT] and TGB no longer has the report. Second, TGB argues that the report is currently

5/9

Date

[CONFIDENTIAL]

Our reference

[CONFIDENTIAL]

was not in the possession of TGB when the overview was drawn up – and it is not now. She therefore does not process any personal data of [APPLICANT] in that regard, according to TGB.

30. Based on the statements of TGB, the AP establishes that the forensic report personal data of [APPLICANT]. Furthermore, the AP establishes that the report is not held by TGB, but by its own lawyer.

31. The AP does not follow TGB's position that the information about the processing of the personal data of [APPLICANT] did not have to be included in the report on the overview, because TGB was not aware of the existence of the report. To this end, the AP points out that the forensic investigation by [APPLICANT] was discussed at the hearing on 16 February 2017 brought. TGB was present at this hearing and also stated this in the letter from the AP of 11 received the report in May 2017. [APPLICANT]'s assertion that there was a forensic investigation carried out and that his personal data are being processed as a result thereof, there was reason must be for TGB to check whether that statement was correct. That research would have shown that in the context of the forensic investigation personal data of [APPLICANT] have been collected by TGB incorporated.

32. Nor does the AP follow TGB's position that the information about the processing of the personal data in the report did not have to be included in the overview, because TGB personal data is not processed in this regard. In this context, the AP considers the following important. Fixed states that the lawyer of TGB in her capacity as attorney-at-law of TGB about the forensic report. Contrary to what TGB assumes, this circumstance does not imply that TGB no longer processes the personal data of [APPLICANT] contained in the report. To that end the AP points out that the lawyer acts on behalf of TGB and is thus identified with TGB.

(ABRvS February 5, 2014, ECLI:NL:RVS:2014:308, ground for appeal 13.1). The AP therefore concludes that TGB is point personal data of [APPLICANT].

33. The AP is of the opinion that by not including TGB in the overview of the personal data of

[APPLICANT] with regard to the forensic report, has not fully complied with the imposed burden under duress.

3.3 Other processing

34. By email of 20 and 26 July 2017, [APPLICANT] indicated that he believed that the overview of 7 July 2017 is also incomplete with regard to the following points: processing of personal data in the internal memo of April 18, 2006, the processing of personal data with regard to a [CONFIDENTIAL].

35. During the on-site investigation, the AP established that the overview of 7 July 2017 with regard to the processing referred to under 34. is complete.

6/9

Date

[CONFIDENTIAL]

Our reference

[CONFIDENTIAL]

3.4 The overview of August 14, 2017

36. The AP is faced with the question whether TGB with the provision to [APPLICANT] of the overview dated 14 August 2017, accompanied by a separate overview with information about the processing of his personal data in the forensic report, has still complied with the imposed burden under penalty that terminates the period for which the penalty is forfeited.

37. The AP establishes that TGB by supplementing the overview and providing the separate overview of 14 August 2017 with regard to the processing of personal data relating to until the KBL report and the forensic report has yet to comply with the order subject to penalty fulfilled, by indicating which categories of personal data are processed therein, what the purpose of that processing is, who the recipients of the personal data are and what the origin of the personal data.

4. Conclusion

38. In view of the above, the AP finds that TGB with the provision of the overview of

July 7, 2017 has not fully met the burden imposed on May 11, 2017.

39. The overview of 7 July 2017 is missing with regard to the conduct of the investigation and the

preparation of the KBL report the purpose of processing the personal data of

[APPLICANT] and the recipients of this data. TGB has not fully complied with this

parts 1, 2 and 4 of the imposed load.

40. The overview of 7 July 2017 also lacks, with regard to the forensic report, the

information regarding the purpose of the processing of the personal data of [APPLICANT], the

categories of data to which the processing relates, the (categories of) recipients

as well as the available information on the origin of the data. TGB has not fully

fulfilled parts 1, 2, 3, 4 and 5 of the imposed load.

41. The beneficiary period expired on 11 July 2017. IGB therefore forfeits as legal successor to TGB

a penalty payment from 12 July 2017.

42. With the supplement of 14 August 2017 to the overview with a separate overview, TGB still has

paid the imposed burden.

43. The period for which the penalty payment is due therefore ends on 14 August 2017. IGB

forfeits a penalty over the period from July 12, 2017 to August 14, 2017. This means that

4 full weeks have passed before the imposed burden has been met. The height of the

penalty forfeit is 4 times € 12,000.00 is € 48,000.00.

7/9

Date

[CONFIDENTIAL]

Our reference

[CONFIDENTIAL]

44. The penalty is forfeited by operation of law on the day after the end of the period of the 4 full weeks

in which the imposed burden has not been met. The penalty was forfeited by operation of law on August 9.

2017. Pursuant to Article 5:33 Awb, a forfeited penalty is paid within six weeks after it is forfeited by operation of law. The AP has not yet made a payment on the date of this decision receive.

45. It is settled case law of the Administrative Jurisdiction Division of the Council of State that the importance of the recovery of forfeited penalty payments must be given a heavy weight (see including ABRvS 3 October 2012, 201202290/1/A1). Otherwise, the authority that is based on the imposition of an order subject to a penalty. Only in special circumstances can be waived in whole or in part. The AP has not shown any special circumstances.

5. Decision

46. In view of the above and Article 5:37 Awb, the AP finds that:

i.

- TGB has not fully complied with the requirements in providing the overview of 7 July 2017 order of 11 May 2017 imposed an order subject to a penalty.

- TGB with the provision of the supplemented overview of August 14, 2017 and the separate overview of August 14, 2017, on August 14, 2017 has fully complied with the decree order subject to penalty imposed on 11 May 2017.

IGB has thereby forfeited a penalty of €48,000.00.

II.

The AP proceeds to collect the penalty of €48,000,00 forfeited by IGB plus the statutory interest.

47. The AP will hand over the aforementioned claim to the Central Judicial Collection Agency (CJIB).

IGB therefore receives from the CJIB -

on behalf of the AP – a reminder to pay within two weeks. In the absence of timely payment the outstanding amount will be increased by the reminder and any collection costs.

[CONFIDENTIAL]

Date

[CONFIDENTIAL]

Our reference

[CONFIDENTIAL]

7. Finally

48. In connection with Article 5:37 Awb, [APPLICANT], as interested party, receives a copy of this decision.

I trust to have informed you sufficiently with this.

Yours faithfully,

Authority Personal Data,

[WG]

mr. A. Wolfsen

Chair

If you do not agree with this decision, you can, within six weeks of the date of dispatch of the decision pursuant to the General Administrative Law Act submitting a notice of objection to the Dutch Data Protection Authority, PO Box 93374, 2509

AJ Den

Haag, stating "Awb objection" on the envelope. Submitting a notice of objection suspends the operation of this don't decide. If immediate urgency, in view of the interests involved, so requires, you can also request make a provisional provision to the preliminary relief judge of the district court (administrative law sector) in the district, in which your place of residence falls. In that case, you must enclose a copy of this decision.