

REGISTERED

[CONFIDENTIAL]

Date

[CONFIDENTIAL]

Our reference

[CONFIDENTIAL]

Contact

[CONFIDENTIAL]

Subject

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 periodic penalty payments has been imposed on

Theodoor Gilissen Bankiers N.V. (TGB) for violation of Article 35, second paragraph, of the Wbp. The violation 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 about the origin of the data.

The beneficiary period ended on July 11, 2017. For email messages of July 7, 2017 and August 14, 2017, TGB [APPLICANT] received two statements regarding the processing of his personal data provided. The DPA has assessed whether TGB has correctly complied with the imposed burden

has complied. In this decision, the AP notes that TGB will not pay the order before the end of the beneficiary period has sufficiently performed and that InsingerGilissen Bankiers N.V. (IGB) as legal successor of TGB has thus paid the penalty included in the order to a total of € 48,000.00 forfeit.

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1. Order subject to periodic penalty payments

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

TGB must provide the following information to [APPLICANT]:

- (1) a complete overview in an intelligible form of the data subject's 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
- (5) the available information about 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 a two-month grace period to this burden, which ends on July 11, 2017.

If TGB does not comply with the order before the end of the beneficiary period, it will forfeit 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 (fully) carried out, up to a maximum of € 60,000.00.

2. Course of the procedure

2. By decision of 11 May 2017, the DPA 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 applied, so that the decision has become irrevocable.

3. For the implementation of the obligations included in the penalty payment order, TGB has at e-mail of 7 July 2017 to [APPLICANT] provided an overview with attachments regarding the processing of the personal data of [APPLICANT] by TGB. This overview with attachments has TGB also provided to the AP by e-mail of 7 July 2017.

4. By e-mail dated 13 July 2017, the DPA gave [APPLICANT] the opportunity to 2017 to respond to the overview with appendices of 7 July 2017.

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

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

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7. In an email 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 has been sent by the AP forwarded to TGB on July 26, 2017.

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

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

10. At the request of TGB, the DPA issued a provisional opinion by e-mail dated 11 August 2017 to

following the findings of the on-site investigation. This provisional judgment has been accepted by the AP TGB's request because the period over which a penalty could be forfeited has not yet been granted had passed. The AP has indicated that, in the AP's preliminary opinion, the overview is not complete.

11. In an e-mail dated 14 August 2017, TGB indicated that it disagreed with the provisional judgement. However, TGB indicates that it will clarify the overview.

12. In an 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 included provided the email of 14 August 2017 to [APPLICANT].

3. Considerations

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

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

15. At the request of the AP, [APPLICANT] responded to emails of 20 and 26 July 2017 on the overview of 7 July 2017. [APPLICANT] has indicated with reasons that the overview is on some points are incomplete.

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

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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 box, the AP points out the following.

3.1 The investigation and investigation report by KBL

18. [APPLICANT] takes the position in the e-mail 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 output to [CONFIDENTIAL]. Events prompted this research around [CONFIDENTIAL]. For the purpose of this study, as stated by TGB in its e-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 exclusively intended for internal use. It concerns a [CONFIDENTIAL]. Given the nature and content of this [CONFIDENTIAL]. TGB therefore invokes Article 43, preamble and under e, of the Wbp. TGB furthermore takes the position that the categories of personal data that appear in the report, are listed on the overview.

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

22. Based on TGB's statements, the AP determines that the purpose of processing

personal data of [APPLICANT] for conducting the investigation and preparing the report is located in [CONFIDENTIAL]. This purpose of processing is not included in it Overview.

23. Based on TGB's statements, the AP establishes that both TGB and KBL use the personal data received from [APPLICANT] in the context of this investigation. This is in the overview recipients under 1 only include the Board of Directors of TGB. KBL is not as a receiver included in the overview.

24. To assess whether the aforementioned information should have been included in the overview are included, it is important that TGB invokes Article 43, preamble and under e, of the Wbp.

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

The controller may not apply Articles 9, first paragraph, 30, third paragraph, 33, 34, 34a, second paragraph, and 35 insofar as this is 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 result in TGB sending [APPLICANT] a copy of must 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 processed in the report, the recipients of that data and the available information about its origin of the data. It appears from the email of the authorized representative of [APPLICANT] dated 26 July 2017 that [APPLICANT] was already aware of the fact that [CONFIDENTIAL]. This entails it

including information about the processing of [APPLICANT]'s personal data in the research report of KBL 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 including this information on the overview would lead to an infringement of the rights and freedoms of TGB. The AP therefore follows TGB not in its position that, by invoking Article 43, preamble and under e, of the Wbp, Article 35, second paragraph, could not be applied on this point.

27. The AP concludes that the purpose of the processing of the personal data of [APPLICANT] in the context of the investigation conducted by KBL and the recipients thereof data are not included and there is no reason to refrain from communicating this information of [APPLICANT]. TGB has not complied with the burden to that extent.

3.2 Personal data of [APPLICANT] related to the forensic report

28. In the e-mail of 20 July 2017, [APPLICANT] takes the position that the processing of personal data of [APPLICANT] with regard to the forensic report is missing from it 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 van TGB still owns the report. TGB takes the position that the processing of personal data of [APPLICANT] with regard to the forensic report, however, are not included in the overview must be included. To this end, it argues, first, that TGB at the time of the preparing the overview was not aware of the existence of the report. This can be explained, said TGB, because the forensic report was not included in the file of [APPLICANT] and TGB no longer has the report. Secondly, TGB argues that the report at the time

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of the preparation of the overview was not in the possession of TGB - and is not now. She thus does not process any personal data of [APPLICANT] in that context, according to TGB.

30. Based on TGB's statements, the AP establishes that the forensic report contains personal data of [REQUEST]. The AP also notes that the report is not held by TGB, but by its lawyer.

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

32. The AP also does not follow TGB in its 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 de personal data is not processed at this point. 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 therefore identified with TGB.

(ABRvS 5 February 2014, ECLI:NL:RVS:2014:308, legal ground 13.1). The AP therefore concludes that TGB on this point processes 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. In an email dated 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.

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3.4 The overview of August 14, 2017

36. The DPA is faced with the question of whether TGB provides [APPLICANT] with the overview of August 14, 2017 with a separate overview with information about the processing of his personal data in the forensic report, has yet complied with the order imposed under periodic penalty payment which terminates the period for which the periodic penalty payment has been 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 with regard to until the KBL report and the forensic report, still has to comply with the order subject to periodic penalty payments fulfilled, because it is indicated 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 has provided the overview of July 7, 2017 has not fully complied with the order imposed on May 11, 2017.

39. The overview of 7 July 2017 with regard to the conduct of the investigation and the preparation of the KBL report the purpose of the processing of 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. In the overview of July 7, 2017, the forensic report also lacks the information about 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 does not fully have this complied with 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 of TGB from July 12, 2017 a penalty.

42. With the addition of 14 August 2017 to the overview with a separate overview, TGB has yet to the burden imposed.

43. The period for which the penalty payment is due therefore ends on 14 August 2017. IGB forfeits a penalty for the period from July 12, 2017 to August 14, 2017. This means that 4 full weeks have elapsed before the imposed burden has been met. The height of the penalty forfeited is 4 times € 12,000.00 is € 48,000.00.

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

in which the imposed burden has not been met. The periodic penalty payment was forfeited by operation of law on 9 August 2017. Pursuant to Article 5:33 Awb, a forfeited penalty is paid within six weeks after it is forfeited by operation of law. On the date of this decision, the AP has not yet received payment received.

45. It is established 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 would be undermined is based on the imposition of an order subject to periodic penalty payments. Only in special circumstances be waived in whole or in part. The AP has not shown anything special circumstances.

5. Decision

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

i.

- TGB has not fully complied with the bee by providing the overview of 7 July 2017 decision of 11 May 2017 imposed an order subject to periodic penalty payments.

- 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 requirements laid down by decision order subject to penalty imposed on 11 May 2017.

IGB thus forfeited a penalty of € 48,000.00.

II.

The AP proceeds to collect the penalty of € 48,000.00 forfeited by IGB plus statutory interest.

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

IGB therefore receives from the CJIB after sending this recovery decision –

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.

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7. Finally

48. In connection with Section 5:37 Awb, [APPLICANT] will receive a copy of this decision.

I trust to have informed you sufficiently.

Yours faithfully,

Authority for Personal Data,

[WG]

mr. A. Wolfsen

Chair

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

Hague, 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 submit a request for make a preliminary injunction with the provisional relief judge of the court (administrative law sector) in the district, within which your place of residence falls. In that case, you must enclose a copy of this decision.

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