

General Secretariat

Decision No. 04/2021 of April 8, 2021

Subject: Decision approving the draft code of conduct of the National Chamber of

notaries of January 28, 2021 specifying certain terms of application of the Regulation

General Data Protection (EU) 2016/679 (GDPR) for notaries (DOS-

2020-02215)

Considering Article 40 of the General Data Protection Regulation (EU) 2016/679 ("GDPR")

Considering the guidelines on codes of conduct and supervisory bodies under the

GDPR adopted on June 4, 2019 ("guidelines 01/2019") by the European Committee for Protection

of Data ("EDPS")

Considering article 20.4 of the law of December 3, 2017 establishing the Authority for the Protection of

Data

Considering the draft code of conduct of the National Chamber of Notaries of January 28, 2021

("draft code of conduct") submitted by the National Chamber of Notaries.

## FOREWORD

The Data Protection Authority ("the Authority") stresses the importance of codes of conduct

as an instrument of co-regulation in order to clarify and contextualize the rules of

protection of data with regard to the specific processing of a sector of activity. Authority

reaffirms its commitment to support associations and federations committed to the development

codes of conduct.

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Adherence to a code of conduct approved by the AMF does not constitute an attestation of

compliance of the processing carried out by the members of the code of conduct. The Authority retains

all of its prerogatives (e.g. inspection and sanctions).

Adherence to a code of conduct requires compliance with the rules it contains without excluding compliance

the rules contained in the GDPR and any other applicable regulations relating to the protection of data and privacy.

I.

## ELIGIBILITY OF THE DRAFT CODE OF CONDUCT

In order to be submitted to the Autorité, a draft code of conduct must meet certain criteria

eligibility relating to:

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the representativeness of the code bearer in relation to future members of the code of conduct

- AT ;

the introductory note contained in the draft code of conduct, which must contain a

clear and succinct presentation of the added value provided by the code of conduct

to the GDPR and the material and territorial scope of the code of conduct - B;

the designated supervisory body, if there is an obligation to appoint such a body - C;

the control mechanisms to ensure compliance with the provisions of the Code of

conducted by members of the code - D;

the consultation carried out by the code holder prior to its submission to the Authority,

with the interested parties or, where applicable, a justification of the absence of

consult-E;

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confirmation of compliance of the rules contained in the code of conduct with the

applicable national legislation - F.

A. With regard to representativeness

The draft code of conduct is introduced by the National Chamber of Notaries which represents ☐  
all notaries in Belgium. ☐

The representativeness is assessed in particular with regard to two elements which are on the one hand the number ☐  
or percentage of potential code members represented by the code holder among the ☐  
data controllers in this sector and, on the other hand, the experience of the representative body ☐  
in the sector or processing activities concerned by the code. ☐

Article 90 of the law of 25 Ventôse XI containing the organization of the notariat: to represent, in the ☐  
limits of its attributions, all the members of the companies of the notaries of the Kingdom with regard to ☐  
all power and institution; establish the general rules of ethics and define a framework ☐

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general regulatory framework for the exercise of the powers of companies of notaries, to take ☐  
all appropriate measures to meet, within the limits and conditions it determines, the obligations ☐  
resulting from the professional liability of notaries, and to send to the chambers of notaries ☐  
the recommendations necessary or useful for compliance with discipline ("Ventôse law") puts in place ☐  
the National Chamber of Notaries as a public institution. This institution is responsible for ☐  
representing the function of the notary and regulating it. Its missions and skills are ☐  
defined in Article 91 of the same law and include the establishment of rules relating to the practice ☐  
notary and the establishment of general rules of ethics. This provision provides between ☐  
other than the National Chamber of Notaries is responsible for taking all appropriate measures ☐  
to meet the obligations resulting from the professional liability of notaries. ☐

It is under its legal powers of representativeness and regulation of the profession ☐  
notaries that the National Chamber of Notaries supports the draft code of conduct submitted ☐  
with the approval of the Authority. ☐

The Autorité considers that the requirement of representativeness of the bearer of the code of conduct is met ☐  
in the head of the National Chamber of Notaries. ☐

B. Regarding the introductory note ☐

## 1° Added value of the code of conduct□

Added value is also a criterion for reviewing the content of the code of conduct. This one doing□  
the subject of an analysis in this respect, reference is made to point A of Title II of this decision.□

## 2° Material scope of application□

All notaries in Belgium, in their capacity as data controllers within the meaning of article 4.7□  
of the GDPR, are subject to this draft code of conduct, in order to harmonize the measures of□  
protection of the data that they take in the context of the accomplishment of their missions of□  
notary, in particular:□

- The collection of personal data from the persons concerned, from the□  
authentic sources, such as the National Registry or the Security Crossroads Bank□  
social security and with Belgian administrations;□
- The insertion of personal data in authentic instruments and in other□  
documents prepared by notaries;□
- The retention of personal data in the files of notaries;□

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- The transfer of personal data to the authorized administrations in the□  
framework of the completion of the administrative formalities required by the legislation in□  
vigor.□

The provisions of the draft code of conduct relate to the processing of data categories□  
following personal:□

- identification data;□
- data relating to the capacity of natural persons;□
- tax data;□
- financial datas ;□
- family data;□
- social data.□

The material scope of the code of conduct is clearly and restrictively defined, the Authority

therefore considers that this requirement is met by the draft code of conduct.

### 3° Territorial scope

The draft code of conduct is a national code within the meaning of guidelines 01/2019<sup>1</sup> and

Article 40.2(6) of the GDPR insofar as it does not relate to processing activities carried out

in several Member States or outside the European Union.

The code will, after approval, be registered and published by the Authority, which will inform the EDPS of this

approval in accordance with Article 40.2(11) of the GDPR.

### C. As to the accredited supervisory body

The accredited oversight body designates the body or bodies or committees (internal or external)

to the bearers of the code of conduct) who exercise a control function with a view to verifying and establishing

that members of the code of conduct comply with its provisions.

In accordance with article 41.6 of the GDPR and guidelines 01/2019 (§88) the requirement of the

designation of a supervisory body does not apply to processing carried out by

public authorities and public bodies.

<sup>1</sup> Guidelines 01/2019 on codes of conduct and monitoring bodies under the Regulation

(EU)2016/679, version 2.0 of June 4, 2019,

[https://edpb.europa.eu/sites/edpb/files/files/file1/edpb\\_guidelines\\_201901\\_v2.0\\_codesofconduct\\_en.pdf](https://edpb.europa.eu/sites/edpb/files/files/file1/edpb_guidelines_201901_v2.0_codesofconduct_en.pdf)

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This code of conduct covers the processing of personal data carried out by notaries

as agents of public authority and carried out in accordance with their legal obligations.

The code of conduct therefore does not necessarily require the establishment of a monitoring body

accredited supervision.

### D. Regarding the control measures

Control measures are also a criterion for reviewing the content of the code of conduct. Those

being the subject of an analysis in this respect, reference is made to point C of Title II of this decision.

#### E. Regarding prior consultation□

The National Chamber of Notaries legally represents notaries in Belgium through its□  
general meeting and management committee. On January 28, 2021, it submitted the draft code□  
of conduct for the approval of its general meeting before submitting the said project thus approved□  
to the Authority.□

The National Chamber of Notaries did not consult other interested parties and justifies this□  
absence of consultation by the fact that “the number of people potentially concerned – at□  
knowing the citizens involved in a notarial file – makes it inappropriate, for lack of feasibility, to□  
proceed to the prior consultation of the persons concerned”. the Autorité takes note of this□  
justification.□

#### F. As to the conformity of the rules with the applicable national legislation□

It does not emerge from an examination of the draft code of conduct that the rules it contains□  
would violate the applicable data protection provisions or any other□  
applicable national law. However, it is up to the code holder to ensure this and, if□  
where appropriate, to make the necessary adjustments.□

In any event, adherence to this draft code does not exempt compliance with any□  
legislation applicable to members of the code of conduct.□

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## II. EXAMINATION OF THE DRAFT CODE OF CONDUCT FOR NOTARIES□

In accordance with guidelines 01/2019 (§32), code holders must be able to□  
to demonstrate that their code will contribute to the proper application of the GDPR rules, taking into account□  
specific characteristics of the processing, or some of the processing, of a sector of activity□  
as well as the particular requirements and obligations of data controllers in this sector, and□  
where applicable, the subcontractors concerned.□

This general requirement implies in particular that the draft code:□

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meets a specific need and facilitates the application of the GDPR (added value) - A;□

provides sufficient guarantees - B;□

- contains effective control and sanction mechanisms - C.□

A. Added value of the draft code of conduct□

Holders of codes of conduct are required to demonstrate that their code meets a need□

particular and facilitates the application of the GDPR in accordance with recital 98 of the GDPR.□

The draft code submitted by the National Chamber of Notaries responds to the need to ensure□

some consistency and uniformity in terms of compliance with the GDPR in the notarial sector.□

The draft code of conduct aims to clarify certain rules of the GDPR by adapting them□

the particularities of the processing of personal data carried out in the context of□

the activity of notaries in Belgium. The purpose of the draft code of conduct covers:□

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the appointment of a data protection officer (art. 1 of the draft code of□

conduct);□

-□

the measures to be adopted to ensure the security of the processing of personal data□

personnel (art. 2 of the draft code of conduct);□

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the measures to be adopted by the notary vis-à-vis his collaborators (art. 3 of the draft code□

driving) ;□

-□

the right to information of data subjects (art. 4 of the draft code of conduct).□

The Autorité limits its analysis to the provisions of the draft code of conduct as provided to it.□

submitted.□

1° Regarding the appointment of a data protection officer□

The draft code of conduct provides in its article 1 the obligation for each notary to appoint a data protection officer, when notaries act in their capacity as an authority public and as a legal person authorized to access authentic sources.

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The Autorité recalls that, in accordance with Articles 37.2 and 38.6 of the GDPR and the guidelines concerning data protection officers (WP 243 rev.01)<sup>2</sup> adopted by the group of “article 29” work on data protection, the data protection officer (DPO) must be independent of the data controller or/and subcontractor who employs it and can exercise other missions and functions, but without these leading to conflicts of interest.

The WP 243 guidelines specify that “a single data protection officer can be designated for several public authorities or public bodies, taking into account their structure organizational and their size. The same resource and cost considerations communication apply. Since the DPO is responsible for a series of tasks, the controller or processor must ensure that a single DPO can, with the help of a team if necessary, carry out these missions effectively despite the fact that he is appointed by several public authorities and public bodies. »<sup>3</sup>

In this respect, the controller and/or processor must also ensure that the DPO is easily reachable and has at all times sufficient resources to fulfill its missions fully and effectively.

In terms of sufficient resources, Recommendation No. 04/2017 of 24 May 2017 adopted by the Data Protection Commission and on the appointment of a data protection officer data in accordance with the General Data Protection Regulation (GDPR), in particular the admissibility of combining this function with other functions, including that of adviser in security<sup>4</sup>, underline that it is in particular the responsibility of the controller and/or the sub-dealing with allocating sufficient time for the DPO to carry out his tasks, whether he has sufficient financial, infrastructure and personnel resources, and



that official communication be ensured on his appointment as a delegate to

all staff, access to other services and ongoing training. The

Recommendation n°04/2017 continues by specifying that if a team must be formed around the

DPD to enable it to carry out its missions, “the internal structure of the team as well as the tasks

and responsibilities of each must be clearly established”. Finally, she indicates that the question

whether a DPO has the necessary time is up to the controller alone or to the

subcontractor who must be able to assess whether this requirement is met.

2 Guidelines WP 243 rev. 01 of December 13, 2016 regarding data protection officers

(DPD). These guidelines were adopted and approved by the EDPS on 25 May 2018 -

[https://edpb.europa.eu/sites/edpb/files/files/news/endorsement\\_of\\_wp29\\_documents\\_en\\_0.pdf](https://edpb.europa.eu/sites/edpb/files/files/news/endorsement_of_wp29_documents_en_0.pdf)

3 Guidelines WP 243, rev. 01, page 26.

4 <https://www.autoriteprotectiondonnees.be/publications/recommandation-n-04-2017.pdf>

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As data controllers, it is therefore up to notaries to appoint a DPO who responds

the requirements established by the GDPR to guarantee the full and satisfactory exercise of the missions assigned to it.

are allocated.

2° As regards the security measures to be put in place and the measures to be adopted by the

notary towards his collaborators

Article 2§1 of the draft code defines a series of security measures to be implemented by each

notary.

Members adhering to the code are not limited by the said measures as long as they constitute

a non-exhaustive minimum threshold to be followed to guarantee the security of personal data

for which they are responsible. The Autorité recalls that adherence to this code of conduct does not remove

in fact in no way the obligation provided for by article 32 of the GDPR for each data controller of

put in place, depending on the processing of personal data and their risks for individuals

concerned, the appropriate technical and organizational measures to protect the privacy

data subjects in accordance with the GDPR, as well as more broadly the freedoms and rights□  
fundamentals of these people.□

The security measures put in place must, in accordance with Article 2, § 2 of the draft code,□  
be contained in a readable and accessible manner for the notary and his staff, in a policy of□  
written security.□

Article 2 § 3 of the draft code of conduct regulates the use of a subcontractor for a notary□  
in the context of the processing of personal data for which he is responsible. Contract□  
meeting, at a minimum, the guarantees of article 28 of the GDPR as well as taking up at least the□  
details listed in article 2, §3 of the draft code must be signed. In this regard, the Autorité notes□  
that the draft code mentions that the said clarifications could be taken up "in another writing□  
depending on service". It urges notaries to always include these details in the signed contract□  
between him and his subcontractors, even if they were to appear in another written document.□

A non-exhaustive list of types of suppliers is provided in the draft code of conduct□  
in order to draw the attention of notaries to their quality of subcontractor. The Authority draws the attention of□  
adherent members on the fact that this list is illustrative and must only serve as an index of□  
qualification of the role of a party to the processing of personal data.□

The quality of subcontractor is examined and determined mainly with regard to the level of influence□  
exercised by an actor in the context of processing operations. If a service provider,□  
qualified as a subcontractor by contract, makes decisions on the purposes and/or the essential means□  
of the processing, the latter will no longer act solely as a subcontractor but may, if necessary, be□  
requalified as controller or joint controller with the notary. Members must□  
therefore remain attentive to the roles and missions assigned to each actor in the processing of data□  
of a personal nature for which they are responsible.□

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In addition, the Autorité invites members adhering to the draft code to provide each of their sub-□  
processing a copy of the code of conduct.□

Article 3 of the draft code of conduct provides the rules to be followed by notaries towards their employees to make them aware of the protection of personal data as well as the precautions to be taken when processing personal data. The Authority insists on the importance of clarifying the roles and obligations of each recipient of personal data staff. Notaries remain responsible for processing but if some of their collaborators are brought to be within the framework of certain missions, this must be clearly stipulated, explained and documented.

3° As regards the right to information of the persons concerned

Article 4 of the draft code of conduct articulates the exercise of the right of access and the right to information data subjects, by providing in particular that they must have easy access "to all the information necessary to guarantee fair and transparent processing, at the latest at the time the personal data is obtained".

As examples of communication of the data protection policy, the draft code provides for a hypertext link placed at the place of the signature of the notary for any e-mail sent to customers and a dedicated location on the notary's website.

The Authority draws attention to the fact that information must be provided in the easiest way and accessible to the persons concerned and if the customers concerned do not have access easy or comprehensible of digital tools, it must in any case be able to be provided in another way, just as readable and complete. In addition, the data protection policy personal data must be able to be updated if necessary by the notary.

As well as information concerning the processing of personal data such as provided for by the GDPR, the National Chamber of Notaries and/or the member notaries themselves must make this draft code of conduct public and easily accessible to persons concerned.

B. Provide sufficient guarantees

The Autorité notes that the provisions of the draft code of conduct do not contravene the

safeguards provided by the GDPR. On the contrary, they reinforce certain obligations by concretizing and adapting them to the particular processing of the notarial sector. Guarantees offered in the draft code of conduct constitute a minimum common base on which the members to the code of conduct can rely when processing personal data, in addition to respect

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the rules provided for by the GDPR or any other applicable provisions for the protection of data and privacy.

Furthermore, this decision should in no way be interpreted as an endorsement of the model documents referred to in the draft code of conduct, namely:

- The personal data outsourcing contract model (Art. 2§3 of the draft code of conduct);
- The model information security policy (Art. 2§2 of the draft code of conduct);
- The working rules model (Art. 3§1 of the draft code of conduct);
- The model personal data protection policy (Art 4§2 of the draft code of conduct).

Although these documents are indicated for information purposes in the draft code, the Autorité recalls that each responsible for processing, such as notaries in the exercise of their missions, is required to process personal data in accordance with the applicable data protection rules; data and privacy, in particular from the GDPR. This implies that any reference document in this respect must strictly comply with the requirements of the said rules, and take into account of each concrete situation.

The Authority, in accordance with the principle of accountability (“accountability” article 5.2 of the GDPR) and in accordance with the purpose of its decision (i.e. only the provisions contained in the draft code), does not comment on the conformity of the model documents made available to the notaries with the GDPR.

vs.

Contains effective control and sanction mechanisms.□

1° Control mechanisms□

In accordance with article 41.6 of the GDPR and guidelines 01/2019 (§88) the control of codes□

of conduct approved by an accredited body does not apply to processing carried out by□

public authorities and public bodies. This provision removes the requirement for a body□

accredited to follow a code of conduct.□

This draft code of conduct covers the processing of personal data carried out by the□

notaries as depositaries of public authority and carried out in accordance with their obligations□

legal. The code of conduct therefore does not necessarily require the establishment of a monitoring body.□

accredited supervision.□

This exemption in no way weakens the requirement to put in place effective mechanisms to□

to follow a code of conduct. The Autorité recalls in this respect that procedures must□

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be established in order to assess, in accordance with Article 41.2, b), whether those responsible for the□

processing or the subcontractors concerned meet the conditions to apply the code, to control□

compliance with its provisions and to periodically review its operation. In addition,□

in accordance with Article 41.2, c) of the GDPR, structures and procedures must be put in place□

to ensure, if necessary, the treatment of complaints relating to violations of the code or the□

how the code has been applied by a relevant controller or processor.□

These procedures and structures must be made transparent and accessible to people□

concerned in particular, and to the public in general.□

The control of the binding rules contained in the draft code is included in article 5 of the draft□

of code of conduct. This provides that compliance with the rules contained in the draft code of□

conduct is subject to control by the National Chamber of Notaries as part of the control of□

three-year quality made by the latter in the studies.□

The Autorité stresses that it is also the responsibility of the National Chamber of Notaries, as bearer□

of the code, to ensure that the control provided for in article 5 of the draft code is carried out in a manner□  
effective, that it makes it possible to effectively verify compliance with the rules of the code of conduct by□  
adherent members. The Authority insists that the checks carried out by the National Chamber of□  
notaries are documented and made available to the DPA, whether or not these checks lead to□  
a sanction or other form of measure.□

The Autorité considers it important, to ensure the quality and effectiveness of the control measures including the□  
National Chamber of Notaries is in charge of ensuring compliance with article 41.2, d), namely, that□  
the National Chamber of Notaries must be able to demonstrate that the exercise of its missions arising from□  
the application of the code of conduct does not lead to a conflict of interest.□

## 2° Penalties□

Failure to comply with the rules of this draft code of conduct is subject to sanctions, in particular□  
disciplinary measures, as provided for in article 5 of the draft code.□

When quality control reveals that a notary does not comply with the obligations of this□  
draft code of conduct, chambers of notaries can take measures to support and□  
supervision and sanctions with regard to the notary. A support and supervision measure consists of□  
to allow the notary time for compliance and to provide for an additional check, at his□  
costs. Sanctions are taken later. These are the disciplinary sanctions provided for by□

Title IV of the Ventôse law.□

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The Autorité emphasizes the importance of justifying and documenting any decision taken, whether it constitutes or□  
not a sanction, against a member adhering to the code of conduct. These decisions must be□  
made available to the Authority.□

The Autorité also stresses that, regardless of the penalties applicable under the draft□  
of the code and disciplinary measures provided for by law for notaries, it fully retains□  
all of its powers (e.g. investigation and sanction with regard to any violation of the□  
applicable data protection rules), including in the event of non-compliance with the□

rules contained in the draft code of conduct.□

The Data Protection Authority,□

taking into account the above,□

approved,□

the draft code of conduct submitted by the National Chamber of Notaries provided that it meets the□

requirements of Article 40 of the GDPR and Guidelines 01/2019.□

The draft code of conduct is approved as a code of conduct from the establishment□

effective and binding measures to monitor compliance with the rules contained in the Code of□

conduite et des sanctions applicables en cas de non-respect de ces règles.□

The decision d'approval is published on the site de l'Autorité et sera communiquée au Comité Européen□

de Protection des Données conformément à l'article 40.11 du RGPD.□

L'adhésion à a code de conduite approuvé par l'Autorité ne constitue pas une attestation de□

conformity of the traitements effectués par les membres du code de conduite. La decision d'approvation□

est adopted on the base of the elements qui ont été communiqués par le porteur de code à l'Autorité.□

L'Autorité se reserve le droit de réévaluer la presente decision d'approval à l'aune de nouveaux□

éléments dont elle prendrait ultérieurement connaissance mais également au regard de l'application□

concrete des mechanics de control et de sanctions prévus dans le project de code de conduite.□

S'il s'avère que les mecanismes contenus dans le code ne permettent pas en pratique de garantir que□

les adherents se conforment aux règles du project de code de conduite, l'Autorité se concertera avec□

les porteurs de code afin d'améliorer l'efficacité des mecanismes de control et de sanctions.□

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En dernier recours, et à défaut de trouver un accord sur d'éventuelles adaptations à apporter au code□

de conduite ou sur la mise en place de mecanismes permettant d'assurer un niveau de conformité□

Satisfaisant des membres du code, l'Autorité pourra suspendre et/ou retirer sa decision d'approvation.□

David Stevens□

President□