

Deliberation SAN-2020-005 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 committee no SAN-2020-005 of September 3, 2020 concerning Madame x, Member of Parliament for xThe 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 January 28, 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 April 27, 2016 relating to the protection of personal data personnel and the free movement of such data; Having regard to law no. ts; Having regard to 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. 78-17 of January 6, 1978 relating to 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 the President of the National Commission for Computing and Liberties to instruct the Secretary General to carry out or to have carried out a mission to verify all the processing carried out by or on behalf of the recorat of Z; Having regard to the decision of the President of the Commission National Commission for Computing and Liberties appointing a rapporteur before the Restricted Committee, dated March 12, 2020; Having regard to the referral [...] received by the National Commission for Computing and Liberties on August 8, 2019; Having regard to the report of Mrs Dominique CASTERA, reporting commissioner, notified to Mrs X, deputy for the 4th district of [...], on June 3, 2020; Having regard to the written observations of Mrs X, received on July 7, 2020; Having regard to the other documents of the file; Were present remotely, during the session of the restricted training of July 16, 2020 which was held by videoconference: Mrs. Dominique CASTERA, auditor, in her report; As representative of Mrs. X:- [...]The restricted formation has adopted the following decision:I. Facts and procedure X, MP for [...], couriers from Felic tations to the 2019 baccalaureate diploma winners in her constituency. made the recipient, at its request, of an Excel file from the services of the recorat of Z – which has been replaced by the recorat of Y since January 1, 2020 – containing the contact details of the department's baccalaureate graduates. Mrs X also notified the CNIL that a member of her team had processed the surnames, first names and postal

addresses of the baccalaureate holders in her department present in the file for direct mail purposes, for half a day, and then proceeded to destroy said file. Finally, Mrs X indicated that she had sent a letter of congratulations to graduates every year since her election, in 2017. with the recorat 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 examinations and competitions of the rectorate sent to the deputy, 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 X and the services of the rectorate on the occasion of this communication. On the other hand, the rectorate's data protection delegation had not been consulted prior to the transmission of this personal data. the scope of the elected representative's request. Indeed, the latter asked to be the recipient of the surnames, first names, mentions in the baccalaureate and postal addresses of the baccalaureate holders of his district only. However, the delegation was informed that, due to lack of time, the rectorate services had sent the MEP a global list, leaving the latter free 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 sent by the rectorate that a file containing the data of the winners who obtained the mention Very good throughout the department of [...] had already been sent in 2018 to Mrs X, when she had limited his request to the contact details of the winners who obtained the mention Very good in his only constituency. For the purposes of examining these elements, the President of the Commission appointed Mrs. article 22 of the amended law of January 6, 1978. Following her investigation, the rapporteur had a bailiff notify Mrs. X on June 3, 2020 of a report detailing the breach of Regulation (EU) 2016 /679 of the European Parliament and of the Council of April 27, 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 CNIL to pronounce to the e against Madame X a call to order, for her disregard of

article 5-1-a of the Regulation 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 MNA to be identified by name after the expiry of a period of two years from its adoption. The letter notifying the report indicated that Mrs. X had a period of one month to communicate her written observations. June 15, 2020. On July 7, 2020, Mrs X produced written observations. During the restricted committee session of July 16, 2020, the rapporteur maintained the proposals made in her sanction report. II. Reasons for the decision¹.

On the applicable law The restricted training recalls that the personal data transmitted to Mrs X by the services of the rectorat of Z result 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 set by the GDPR. Consequently, the GDPR being applicable to the facts of the e In this case, the Restricted Committee assesses the breaches with regard to this text. 2. On the breach of the obligation to process data lawfully Article 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 concerns them. The services of the rectorat de Z – which has been replaced by the rectorat de Y since January 1, 2020 – therefore had legitimate access, on the basis of the said decree, to the personal data of the OCEAN processing for high school students in the department of [...]. The Restricted Committee notes, however, that parliamentarians are not among the list of persons authorized by the decree of April 22, 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, authorized agents of local authorities participating in the public service of education who request it (...) may also be recipients of processing data, it recalls that local authorities territorial are administrative structures distinct from the State, which support the interests of the population of a precise territory. Under these conditions, a parliamentarian cannot be assimilated either to a local authority or to an agent of such an authority within the meaning of the aforementioned decree. The restricted committee thus considers that Mrs X, in her capacity as a deputy, could not made the recipient of the personal data of the OCEAN processing. Mrs. X was also not authorized to carry out a separate processing, in her name and on her behalf, of the personal data thus

transmitted. The Restricted Committee therefore considers that by recording the file transmitted by the rectorate of Z, by using the data from these files to send letters to the winners and by destroying these data once the letters have been sent, Mrs X disregarded the terms of the aforementioned decree of April 22, 2013 and, therefore, unlawfully processed this personal data. These facts constitute a breach of Article 5-1-a) of the RG PD.3. On the aggravating elements The Restricted Committee notes first of all that the unlawful processing of personal data which took place concerns a large number of people, since the data of 11,856 high school students were thus processed under conditions not provided for by the decree of April 22, 2013. The Restricted Committee also 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. Finally, the Restricted Committee emphasizes that Mrs. X exercises public functions and that her elected status raises legitimate expectations in terms of legality and rigor, including in the implementation of the processing of personal data.III.On corrective measures and their publicityTo 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 regulations resulting from Regulation (EU) 2016/679 of April 27, 2016 or from this law, the President of the National Commission for Data Processing and Liberties may also, if necessary after having sent him 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 commission with a view to the pronouncement, after adversarial procedure, of one or more of the following measures: 1° A reminder to order ; [...]In the first place, concerning the measure proposed by the rapporteur, the Restricted Committee considers that the aforementioned breach justifies a call to order against Mrs X, for the following reasons. The Restricted Committee notes firstly that the breach of article 5-1-a) is characterized by the request for communication and the processing by Mrs. X of personal data, not provided for by the decree of April 22, 2013 creating the OCEAN processing , and of which she is not entitled to be a recipient under the terms of this same decree. She then notes that the personal data resulting from the OCEAN processing have been requested and processed by Mrs X for the second consecutive year. publicity of its decision, the Restricted Committee considers that, given the sensitivity of the public concerned, the number of people concerned by the unlawful processing of data, as well as the public nature of the functions exercised es by Mrs X, the publicity of the decision to call to order for a period of one year appears justified. X a call to order, for its ignorance of article 5-1-a) of regulation no. 2016/679 of April 27, 2016 on data protection; make public, on the CNIL website and on site of Légifrance, its deliberation, which will no longer identify Madame X by name at the end of a period of one year from its publication. Council of

State within two months of its notification.