



General Secretariat

Decision n° 03/2021 of 7 April 2021

Subject: Approval decision of the "Data Protection Agreement Between the Public Company Accounting Oversight Board And The College Van Toezicht Op De Bedrijfsrevisoren/Collège De Supervision Des Réviseurs d'Entreprise On The Transfer Of Certain Personal Data" (DOS-2018-07354)

Having regard to Article 63, Article 64(2), (3) – (8) and Article 46(3)(b) of the Regulation 2016/679/EU of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC ("GDPR");

Having regard to EDPB Guidelines 2/2020 on Articles 46(2)(a) and 46(3)(b) of Regulation 2016/679 for transfers of personal data between EEA and non-EEA public authorities and bodies adopted on 15 December 2020;

Having regard to the Opinion 05/2021 on the draft Administrative Arrangement for the transfer of personal data between the Haut Conseil du Commissariat aux Comptes (H3C) and the Public Company Accounting Oversight Board (PCAOB) adopted by the EDPB on February 2nd, 2021.

Having regard to Article 20 of the « Loi du 3 décembre 2017 portant création de l'Autorité de protection des données » ;

Whereas:

1. The College Van Toezicht Op De Bedrijfsrevisoren/Collège De Supervision Des Réviseurs d'Entreprise ("CTR-CSR") has submitted by an official letter addressed to the Belgian Data Protection Authority ("the Authority") on February 26th, 2021 a draft Administrative Arrangement ("Draft Arrangement") intended to frame the transfers of personal data from the CTR/CSR to the PCAOB in accordance with Article 46(3)(b) GDPR.
2. The EDPB has already issued an Opinion on the same matter under the form of Opinion 05/2021 on the draft Administrative Arrangement for the transfer of personal data between the Haut Conseil du Commissariat aux Comptes (H3C) and the Public Company Accounting Oversight Board (PCAOB) on February 2nd, 2021. The Plenary of the EDPB has been formally consulted and has decided that it was not

necessary to adopt a new article 46.2 GDPR opinion, in accordance with Art. 46.3 GDPR, since an Opinion has already been issued on the same matter.

3. Saving national specificities, the arrangement between the H3C and the PCAOB contains the same guarantees as the one provided by the Draft Agreement between the CTR/CSR and the PCAOB.
4. As in the arrangement between the H3C and the PCAOB, the exchange of personal data between the CTR/CSR and the PCAOB is necessary to ensure their audit regulatory functions in accordance with the Sarbanes-Oxley Act and Article 47 of Directive 2006/43/EC of the European Parliament³, namely for the purposes of auditor oversight, inspections and investigations of registered audit firms and their associated persons subject to the regulatory jurisdiction of the PCAOB and the CTR-CSR.
5. The Draft Agreement and its Annexes include the following guarantees:

Definitions of concepts and data subject rights:

6. Article I of the Draft Agreement contains the relevant definitions necessary to determine the scope of the Draft Agreement and its consistent application. Among them there are some definitions of key concepts and rights of the European data protection legal framework such as "personal data", "processing of personal data", "personal data breach", "right of access" and "right of erasure".

Principle of purpose limitation and prohibition of any further use:

7. Article III.1 of the Draft Agreement provides that personal data transferred by the CTR/CSR to the PCAOB may be processed by the PCAOB itself only to fulfil its audit regulatory functions in accordance with the Sarbanes - Oxley Act for the purposes of auditor oversight, inspections and investigations of registered audit firms and their associated persons subject to the regulatory jurisdiction of the PCAOB and the CTR/CSR. According to the principle of purpose limitation, the transfers can therefore only take place in the framework of such mandates and responsibilities. The PCAOB will not be allowed to process personal data it receives for any purpose other than as set forth in the Draft Agreement.
8. The PCAOB primarily seeks the names, and information relating to the professional activities, of the individual persons who were responsible for or participated in the audit engagements selected for review during an inspection or an investigation, or who play a significant role in the firm's management and quality control. Such information would be used by the PCAOB in order to assess the degree of compliance of the registered accounting firm and its associated persons with the Sarbanes-Oxley Act, the securities laws relating to the preparation and issuances of audit reports, the rules of the PCAOB, the rules of the SEC and relevant professional standards in connection with its performance of audits, issuances of audit reports and related matters involving issuers (as defined in the Sarbanes-Oxley Act).

Principle of data quality and proportionality:

9. According to Article III.2 of the Draft Arrangement the personal data transferred by the CTR/CSR must be accurate, adequate, relevant and not excessive in relation to the purposes for which they are transferred and further processed.
10. In addition, each Party will inform the other if it becomes aware that previously transmitted or received information is inaccurate and/or must be updated. Having regard to the purposes for which the personal data have been transferred, the Parties will make any appropriate corrections to their respective files, which may include supplementing, erasing, restricting the processing of, correcting or otherwise rectifying the personal data as appropriate.

Principle of transparency:

11. As provided by Article III.3 of the Draft Arrangement, a general notice to data subjects will be provided by both the CTR/CSR and the PCAOB by publishing the Draft Arrangement itself on their websites. In addition to the Draft Arrangement, CTR/CSR will provide Information in relation to the processing carried out, including the transfer, the type of entities to which data may be transferred, the rights available to them under the applicable legal requirements, including how to exercise those rights and information about any applicable delay or restrictions on the exercise of such rights and the contact details for submitting a dispute or claim. The PCAOB also will publish on its website appropriate information relating to its processing of Personal Data, including information noted above, as described in the Draft Arrangement. Furthermore, individual notice will be provided to data subjects by the CTR/CSR in accordance with the GDPR. The CTR/CSR will notify the PCAOB in advance of making such individual notification.

Principle of data retention:

12. Article III.2 of the Draft Arrangement provides that personal data must be retained in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed, or for the time as required by applicable laws, rules and regulations. The Parties shall have in place appropriate record disposal procedures for all information received pursuant to the Draft Arrangement .

Security and confidentiality measures:

13. Article III.4 of the Draft Arrangement envisages that the PCAOB has provided information (Annex I of the Draft Arrangement) describing its technical and organisational security measures to guard against accidental or unlawful destruction, loss, alteration, disclosure of, or access to the personal data. The PCAOB agrees to notify the CTR/CSR of any change to the technical and organisational security measures that would adversely affect the protection level afforded for personal data by the Draft Arrangement. The PCAOB will also update the information in Annex I if such changes are made. In the case that the PCAOB provides such

notification to the CTR/CSR, the CTR/CSR would notify the Belgian Data Protection Authority of such changes.

14. The PCAOB has also provided to the CTR/CSR a description of its applicable laws and/or rules relating to confidentiality and the consequences for any unlawful disclosure of non-public or confidential information or suspected violations of these laws and/or rules.
15. Where the PCAOB becomes aware of a personal data breach, it will without undue delay and, where feasible, not later than 24 hours after having become aware that it affects such personal data, notify the breach to the CTR/CSR. The PCAOB shall also as soon as possible use reasonable and appropriate means to remedy the breach and minimize the potential adverse effects.

Safeguards relating to data subject rights:

16. Article III.5 of the Draft Arrangement provides for safeguards relating to data subject rights. In particular, data subjects whose personal data has been transferred to the PCAOB can exercise his/her data subject rights as defined in Article I(j) of the Draft Arrangement including by requesting that the CTR/CSR identifies any personal data that has been transferred to the PCAOB. In addition, data subjects may request directly to the CTR/CSR to confirm with the PCAOB that their personal data is complete, accurate and, if applicable, up-to-date and that the processing is in accordance with the principles in this Draft Arrangement. The PCAOB will address in a reasonable and timely manner any such request from the CTR/CSR concerning any Personal Data transferred by the CTR/CSR to the PCAOB. The data subject can also contact the PCAOB directly.
17. Any restriction to these rights has to be provided by law and should be necessary and will continue only for as long as the reason for the restriction continues to exist. Such restrictions may be allowed to avoid prejudice or harm to supervisory or enforcement functions of the Parties acting in the exercise of the official authority vested in them, such as for the monitoring or assessment of compliance with the Party's applicable laws or prevention or investigation of suspected offenses; for important objectives of general public interest, as recognized in the United States and in Belgium or in the European Union, including in the spirit of reciprocity of international cooperation; or for the supervision of regulated individuals and entities.

Automated decision making:

18. Article III.5 provides that the PCAOB will not take a legal decision concerning a data subject based solely on automated processing of Personal Data, including Profiling, without human involvement.

Special categories of Personal Data/Sensitive Data:

19. Article III.6 provides that special categories of personal data/sensitive data shall not be transferred by the CTR/CSR to the PCAOB.

Restrictions on onward transfers:

20. According to Article III.7 of the Draft Arrangement, the PCAOB will only share Personal Data received from the CTR/CSR with those entities identified in Annex II of the Draft Arrangement. In the event of such sharing, except for the U.S. Securities and Exchange Commission, the PCAOB will request the prior written consent of the CTR/CSR and will only share such personal data if the third party provides appropriate assurances that are consistent with the safeguards in the Draft Arrangement. When requesting such prior written consent, the PCAOB should provide the elements to the CTR/CSR, to allow the latter to provide consent, on the type of personal data that it intends to share and the reasons and purposes for which the sharing would take place. If the CTR/CSR does not provide its written consent to such sharing within a maximum of ten days, the PCAOB will consult with the CTR/CSR and consider any objections it may have. If the PCAOB decides to share the personal data without the CTR/CSR written consent, the PCAOB will notify the CTR/CSR of its intention to share and the CTR/CSR may then decide whether to suspend the transfer of personal data. This decision should be notified to the Belgian Data Protection Authority. Furthermore, as an exception, where the appropriate assurances cannot be provided by the third party, the personal data may be shared with the third party with the consent of the CTR/CSR if sharing the personal data is for important reasons of public interest, as recognized in the United States and in Belgium or in the European Union or if the sharing is necessary for the establishment, exercise or defense of legal claims.
21. Regarding the sharing of personal data with the U.S. Securities and Exchange Commission, the PCAOB will obtain from the former appropriate assurances that are consistent with the safeguards in the Draft Arrangement. In addition, the PCAOB will periodically inform the CTR/CSR of the nature of personal data shared and the reason it was shared if providing such information will not risk jeopardizing an ongoing investigation. Such restriction regarding information related to an ongoing investigation will continue only for as long as the reason for the restriction continues to exist.
22. A data subject may request from the CTR/CSR certain information related to his or her personal data that has been transferred by the CTR/CSR to the PCAOB. It shall be the responsibility of the CTR/CSR to provide such information in accordance with applicable legal requirements in the GDPR and Belgian law.

Redress:

23. Article III.8 of the Draft Arrangement provides for a redress mechanism. There are four layers of redress provided for the data subject in the Draft Arrangement. First, any dispute or claim brought by a data subject concerning the processing of his or her personal data pursuant to the Draft Arrangement may be made to the CTR/CSR, the PCAOB, or both, as may be applicable. Each Party will inform the other Party about any such dispute or claim, and will use its best efforts to amicably settle the dispute or claim in a timely fashion.
24. The PCAOB will inform the CTR/CSR of reports it receives from data subjects and will consult with the CTR/CSR on a response to the matter.
25. Secondly, if a Party or the Parties is/are not able to resolve a concern or complaint made by a data subject and the data subject's concern or complaint is not manifestly unfounded or excessive, the data subject, the

Party or Parties may use a first layer of appropriate dispute resolution mechanism conducted by an independent function within the PCAOB, known as the Hearing Officer.

26. Thirdly, the decision reached through this dispute resolution mechanism may be submitted to a second independent review, which would be conducted by a separate independent function known as the Redress Reviewer. The decisions of both the Hearing Officer and the Redress Reviewer are binding on the PCAOB. These dispute resolution mechanisms are described in detail in Annex III of the Draft Arrangement.
27. In situations where the CTR/CSR is of the view that the PCAOB has not acted consistent with the safeguards set out in the Draft Arrangement, the CTR/CSR may suspend the transfers until the issue is satisfactorily addressed and may inform the Data Subject thereof.
28. Finally, in any case, the data subject may exercise his or her rights for judicial or administrative remedy (including damages) according to Belgian data protection law.

Oversight mechanism:

29. Article III.9 of the Draft Arrangement provides for an oversight mechanism ensuring the implementation of the safeguards of the Draft Arrangement. This oversight mechanism consists of a combination of internal and external oversight.
30. With regards to the internal oversight, each Party will conduct periodic reviews of its own policies and procedures that implement the safeguards of the Draft Arrangement. Upon reasonable request from the other Party, a Party will review its policies and procedures to ascertain and confirm that the safeguards specified in the Draft Arrangement are being implemented effectively and send a summary of the review to the other Party.
31. Regarding the external review, upon request by the CTR/CSR to conduct an independent review of the compliance with the safeguards in the Draft Arrangement, the PCAOB will notify the Office of Internal Oversight and Performance Assurance ("IOPA"), which is an independent office of the PCAOB, to perform a review to ascertain and confirm that the safeguards in the Draft Arrangement are being effectively implemented. The details of the functioning of IOPA are provided in Annex IV of the Draft Arrangement. IOPA will provide a summary of the results of its review to the CTR/CSR once the PCAOB's governing Board approves the disclosure of the summary to the CTR/CSR.
32. Where the CTR/CSR has not received the IOPA's results of its review and is of the view that the PCAOB has not acted consistent with the safeguards specific to its obligations under the Draft Arrangement, the CTR/CSR may suspend the transfers to the PCAOB until the issue is satisfactorily addressed by the PCAOB. Such suspension must be notified to the Belgian Data Protection Authority.

DECIDES AS FOLLOWING:

33. The Authority authorizes the Arrangement under the procedure described under article 64(3) GDPR and under article 10.4 of the EDPB Rules of Procedure adopted on October 8th, 2020.
34. The Authority will monitor the Draft Arrangement and its practical application especially in relation to Articles III.7, 8 and 9 relating to onward transfers, redress and oversight mechanisms to ensure that data subjects are provided with effective and enforceable data subject rights, appropriate redress and that compliance with the Draft Arrangement is effectively supervised.
35. The Authority shall only authorize this Draft Arrangement as a suitable data protection safeguard with a view to the cross-border data transfer, conditional to full compliance by the signatories with all the clauses of the Draft Arrangement.
36. The Authority will suspend the relevant data flows carried out by the CTR/CSR pursuant to the authorization, if the Draft Arrangement no longer provides for appropriate safeguards in the meaning of the GDPR.

David Stevens
Secretary-General