

Decision of the National Commission for Data Protection

sitting in a restricted formation on the outcome of investigation No. [...] conducted

with public institution A

Deliberation No. 3FR/2021 of March 12, 2021

The National Commission for Data Protection sitting in restricted formation,

composed of Mrs. Tine A. Larsen, president, and Messrs. Thierry Lallemand and Marc

Lemmer, commissioners;

Having regard to Regulation (EU) 2016/679 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 the free movement of such data, and repealing Directive 95/46/EC;

Having regard to the law of August 1, 2018 on the organization of the National Commission for the Protection of

data and the general data protection regime, in particular Article 41 thereof;

Having regard to the internal rules of the National Commission for Data Protection

adopted by decision no. 3AD/2020 dated January 22, 2020, in particular its article 10, point 2;

Having regard to the regulations of the National Commission for Data Protection relating to the procedure

investigation adopted by decision No. 4AD/2020 dated January 22, 2020, in particular its article 9;

Considering the following:

1. Considering the impact of the role of the Data Protection Officer (hereinafter: the “DPO”) and

the importance of its integration into the organization, and considering that the guidelines

concerning DPD1 have been available since December 2016, i.e. 17 months before the entry into

application of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016

on the protection of individuals with regard to the processing of personal data

1 The DPO Guidelines were adopted by the Article 29 Working Party on 13 December

2016. The revised version (WP 243 rev. 01) was adopted on April 5, 2017.

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personal data and on the free movement of such data, and repealing Directive 95/46/EC

(General Data Protection Regulation) (hereinafter: the “GDPR”), the Commission

National Commission for Data Protection (hereinafter: the “National Commission” or the

“CNPD”) has decided to launch a thematic survey campaign on the function of the DPO.

Thus, 25 audit procedures were opened in 2018, concerning both the private sector and the public sector.

2. In particular, the National Commission decided by deliberation No. [...] of 14 September 2018

to open an investigation in the form of a data protection audit with

public institution A, established and having its registered office at L- [...], and registered in the register of

Commerce et des Sociétés under number [...] (hereinafter: “public establishment A”) and

appoint Mr. Christophe Buschmann as head of investigation.

3. Said deliberation specifies that the investigation relates to the compliance of public establishment A with section 4 of chapter 4 of the GDPR.

4. By letter dated September 17, 2018, the head of investigation sent a preliminary questionnaire to public establishment A, to which the latter responded by letter dated 5 October 2018.

on-site visit took place on 26 February 2019.

5. Following these exchanges, the head of investigation drew up an audit report no. [...] (hereinafter: the “audit report”).

6. It appears from the audit report that in order to verify the compliance of the organization with section 4 of the chapter 4 of the GDPR, the head of investigation has defined eleven control objectives, namely:

- 1) Ensure that the body subject to the obligation to appoint a DPO has done so;
- 2) Ensure that the organization has published the contact details of its DPO;
- 3) Ensure that the organization has communicated the contact details of its DPO to the CNPD;
- 4) Ensure that the DPO has sufficient expertise and skills to

carry out its missions effectively;

5) Ensure that the missions and tasks of the DPO do not lead to a conflict of interest;

6) Ensure that the DPO has sufficient resources to effectively carry out its

his missions ;

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7) Ensure that the DPO is able to carry out his duties with a sufficient degree

autonomy within their organization;

8) Ensure that the organization has put in place measures for the DPO to be associated with

all questions relating to data protection;

9) Ensure that the DPO fulfills his mission of providing information and advice to the

controller and employees;

10) Ensure that the DPO exercises adequate control over the processing of data within

his body;

11) Ensure that the DPO assists the controller in carrying out the

impact analyzes in the event of new data processing.

7. By letter dated December 2, 2019, the head of investigation informed public establishment A that he had

no violation of section 4 of chapter 4 of the GDPR has been found. The audit report was

attached to said letter.

8. By email of October 6, 2020, the head of investigation sent the investigation file to the

National Commission sitting in restricted formation (hereinafter: the “restricted formation”)

by indicating that he has not upheld any grievance or breach against the public establishment

A, while the latter had met the expectations set in the context of the investigation or presented

mitigation elements that he considers sufficient in relation to the control objectives indicated

in point 6. hereof. For these reasons, the head of investigation proposed to the formation restricted, in its communication of October 6, 2020, the closure of the file.

9. The case was examined by the Restricted Committee during its session on 13 November 2020. In accordance with Article 10, point 2), letter a) of the internal rules of the National Commission, the head of investigation presented oral observations on the case.

10. The Restricted Committee notes that the head of investigation did not find any breach on the part of of public institution A to the provisions of section 4 of chapter 4 of the GDPR. During examination of the investigation file, the Restricted Committee did not find any other elements that would constitute a breach of section 4 of chapter 4 of the GDPR.

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11. Consequently, the Restricted Committee considers that the case should be closed, in accordance in Article 10, point 2, letter a) of the internal regulations of the National Commission.

In view of the foregoing developments, the National Commission sitting in restricted formation and deliberating unanimously decides:

to close the investigation, opened by deliberation n°[...] of September 14, 2018 of the Commission authority for data protection with the public institution A, established and having its headquartered at L- [...] , and registered in the trade and companies register under number [...], in the absence of breach found against him.

Thus decided in Belvaux on March 12, 2021.

The National Commission for Data Protection sitting in restricted formation

Tine A. Larsen Thierry Lallemand

President

Commissioner

Marc Lemmer

Commissioner

#### Indication of remedies

This administrative decision may be subject to an appeal for review within three months following its notification. This appeal is to be brought before the administrative court and must be introduced through a lawyer at the Court of one of the Bar Associations.

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