

Decision of the National Commission sitting in restricted formation on

the outcome of survey no.[...] conducted with public establishment A

Deliberation no. 2FR/2021 of March 5, 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 relating

the protection of natural persons with regard to the processing of personal data

personal data and on 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

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

investigation procedure 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 body, and considering that the lines

DPO1 guidelines have been available since December 2016, i.e. 17 months

before the entry into force of the GDPR, the National Commission for the Protection of

(hereinafter: the “National Commission” or the “CNPD”) has decided to launch

a thematic survey campaign on the function of the DPO. Thus, 25 procedures

audits were opened in 2018, concerning both the private and public sectors.

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

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2. In particular, the National Commission decided by deliberation n°[...]/2018 of 14 September 2018 to open an investigation in the form of an audit on the protection of data from public establishment A, established and having its registered office in L-[...] and registered in the Trade and Companies Register under number [...] (hereinafter: the “controlled”) and to appoint Mr. Christophe Buschmann as head of the investigation.

3. Said deliberation specifies that the investigation relates to the conformity of the control with the Section 4 of Chapter 4 of Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 on the protection of individuals with regard to the processing of personal data and the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (hereinafter: the “GDPR”).

4. By letter dated September 17, 2018, the head of investigation sent a questionnaire preliminary to the control to which the latter replied by letter of October 4, 2018.

A site visit took place on January 30, 2019.

5. Following these exchanges, the head of investigation drew up an audit report no.[...]/2019 (hereafter: the “audit report”).

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

- 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 carry out effectively

of its missions;

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;

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

of his body;

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

impact analyzes in the event of new data processing.

7. By letter dated October 18, 2019, the head of investigation informed the person inspected that he had not
found to be in breach of section 4 of chapter 4 of the GDPR. 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 (hereafter: the "constitution
restricted"), indicating that it did not retain any grievances or breaches against the

controlled, while the latter had met the expectations set in the context of the investigation or has presented mitigation elements that it considers sufficient in relation to the control objectives indicated in point 6. of this document. For these reasons, the chief of inquiry proposed, in its communication of October 6, 2020, to the training restricted the closing of the file.

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

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

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

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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 National Commission for Data Protection at public establishment A,

established and having its registered office at L- [...] and registered in the trade and companies register

under number [...], in the absence of breaches found against it.

Thus decided in Belvaux on March 5, 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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