

Decision of the National Commission for Data Protection

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

with Company A

Deliberation No. 5FR/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 Data Protection Officer (hereinafter: the “DPO”) and the importance of its integration into the organization, and considering that the guidelines concerning DPD<sup>1</sup> 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

<sup>1</sup> 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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2016 on the protection of natural persons with regard to the processing of personal data of personal character and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (hereinafter: the "GDPR"), the National Commission for Data Protection (hereinafter: the "Commission National" or the "CNPd") 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 than 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 the [...] Company A, established and having its registered office at L- [...], and registered in the commercial register and companies under number [...] (hereinafter: "Company A"), and to designate Mr. Christophe Buschmann as head of investigation.

3. Said deliberation clarifies that the investigation relates to the compliance of Company A with the section 4 of chapter 4 of the GDPR.

4. By letter dated September 17, 2018, the head of investigation sent a preliminary questionnaire to Company A to which the latter responded by email dated October 9, 2018. A visit to place took place on February 25, 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 organization's compliance with section 4 of 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;

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

his 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;

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 November 4, 2019, the head of investigation informed Company A that he had not

found to be in breach of section 4 of chapter 4 of the GDPR. The audit report was attached

said mail.

8. By email of November 16, 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 Company A, then

that the latter had met the expectations set in the context of the investigation or presented

mitigation elements that it considers sufficient in relation to the control objectives

indicated in point 6. hereof. For these reasons, the head of investigation proposed to the restricted formation, in its communication of November 16, 2020, the closure of the file.

9. The Restricted Committee examined the case during its session of January 22, 2021, in accordance with Article 10, point 2), letter a) of the Commission's rules of procedure national.

10. The Restricted Committee notes that the Head of Investigation did not find any breach by the part of Company A with the provisions of section 4 of chapter 4 of the GDPR. During the exam of the investigation file, the Restricted Committee did not find any other elements either.

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 14 September 2018 of the Commission authority for data protection with [...] Company A, established and having its registered office registered 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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