

Decision of the National Commission sitting in restricted formation on

the outcome of survey no. [...] conducted with Company A

Deliberation n° 9FR/2021 of March 22, 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 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 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.

Given 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

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.

Decision of the National Commission sitting in restricted formation on the outcome of

Survey No. [...] conducted with Company A

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

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

general on data protection) (hereinafter: the "GDPR"), the National Commission for the

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, involving both the private and public sectors.

2.

In particular, the National Commission decided by deliberation n° [...] 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 trade and

companies under number [...] (hereinafter: "Company A") and to designate Mr. Christophe

Buschmann as chief investigator.

3.

Said deliberation specifies that the investigation relates to the compliance of Company A with the

section 4 of chapter 4 of the GDPR.

By letter dated September 17, 2018, the head of investigation sent a questionnaire

4.

preliminary draft to Company A to which the latter responded by email dated October 4, 2018. A

on-site visit took place on 12 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 the 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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Decision of the National Commission sitting in restricted formation on the outcome of
Survey No. [...] conducted with Company A

2/4

- 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 data controller in carrying out the impact analyzes in the event of new data processing.

7.

By letter dated October 21, 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 to the audit mail.

8.

By email of November 6, 2020, the head of investigation sent the investigation file to the National Commission sitting in restricted formation (hereafter: the “restricted formation”) in indicating that it has not upheld any grievances or breaches against Company A, whereas 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 item 6. hereof. For these reasons, the head of investigation proposed, in his communication of November 6, 2020, to the restricted committee the closing 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. When examining the

Decision of the National Commission sitting in restricted formation on the outcome of Survey No. [...] conducted with Company A

3/4

investigation file, the Restricted Committee did not find any other elements that would be constituting a breach of section 4 of chapter 4 of the GDPR.

11.

Consequently, the Restricted Committee considers that the case should be closed, in accordance with Article 10, point 2), letter a) of the Commission's rules of procedure national.

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 22, 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 must be introduced through a lawyer at the Court of one of the Bar Associations.

Decision of the National Commission sitting in restricted formation on the outcome of

Survey No. [...] conducted with Company A