

Decision of the National Commission sitting in restricted formation on

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

Deliberation No. 12FR/2021 of April 8, 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

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

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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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 October 1, 2018, the head of investigation sent a preliminary questionnaire

4.

to Company A to which the latter responded by letter dated October 22, 2018. Visits to place took place on May 16, 2019 and July 3, 2019.

5.

In order to verify the organization's compliance with section 4 of chapter 4 of the GDPR, the head of investigation had 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 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 involved all questions relating to data protection;
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- 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 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.

6.

Following discussions between Company A and the head of investigation, the latter arrived at the conclusion that Company A was under no obligation to appoint a DPO due to the absence regular and systematic large-scale monitoring of natural persons by Company A, at the meaning of Article 37.1.b) of the GDPR. Therefore, only the first control objective was analyzed without it being necessary to analyze the other ten control objectives.

7.

By email of February 18, 2021, the head of investigation sent the investigation file to the National Commission sitting in restricted formation (hereafter: the “restricted formation”), in explaining why he believed that Company A had no obligation to appoint a DPO. For these reasons, the head of investigation proposed, in his communication of 18 February 2021, to the restricted committee the closure of the file.

The Restricted Committee examined the case during its meeting of March 31, 2021,

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in accordance with Article 10.2.a) of the National Commission's internal rules.

The Restricted Committee notes that the Head of Investigation did not find any breach by the

9.

part of Company A with the provisions of section 4 of chapter 4 of the GDPR. When examining the 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.

Consequently, the Restricted Committee considers that the case should be closed,

10.

in accordance with Article 10.2.a) of the National Commission's internal rules.

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

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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 April 8, 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 the subject of 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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