

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. 7FR/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, operating under the trade name [...], established and having its registered office at L- [...], and registered in the trade and companies register under number [...] (hereinafter: "Company A"), and to appoint 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 letter dated October 15, 2018. A visit on site took place on January 18, 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 18 October 2019 (hereinafter: the "statement of objections"), the head

of investigation informed Company A that it considered a breach of the obligations provided for in

Article 37(7) of the GDPR, due to the late communication to the CNPD of the contact details of the

DPO of Company A. The audit report was attached to this letter.

8. Company A replied to the statement of objections by letter dated 11

November 2019, explaining that Company A had declared the contact details of the DPO to the

CNPD by email dated April 10, 2018. On this date, the online declaration form

was not yet available on the CNPD website, so Company A thought it had fulfilled its obligation to declare the DPO to the CNPD. For this reason, the chief of investigation informed Company A, by letter dated November 19, 2020, that there was reason to lift the complaint relating to the obligation to communicate the contact details of the DPO to the control and that there was therefore no longer any grievance against Company A regarding this investigation.

9. By email of November 20, 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

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mitigation elements that it considers sufficient in relation to the control objectives indicated in point 6. hereof.

10. The Restricted Committee examined the case during its meeting of February 26, 2021.

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.

11. 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.

12. 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

national authority for data protection with [...] Company A, operating under the name

commercial [...], established and having its registered office at L- [...], and registered in the commercial register

and companies under the number [...], in the absence of breach found against it.

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

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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.

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