

Decision of the National Commission sitting in restricted formation on

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

Deliberation No. 25FR/2021 of July 1, 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 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 pursuant to 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 and on the free movement of such data, and repealing the

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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Directive 95/46/EC (General Data Protection Regulation) (hereinafter: the “GDPR”), the National Data Protection Commission (hereinafter: the “National Commission” or the “CNPD”) has decided to launch an investigation campaign thematic on the function of the DPO. Thus, 25 audit procedures were opened in 2018, concerning 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 Company A, established and having its registered office at [...], and registered in the register of Commerce et des Sociétés Luxembourg under the number [...] 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 questionnaire preliminary draft to Company A to which the latter responded by email dated October 5, 2018. A site visit took place on 22 January 2019.

5. In order to verify the organisation'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 lack of regular and systematic monitoring on a large scale of natural persons

by Company A within the meaning of Article 37.1.b) of the GDPR. However, the designation of a

DPD having been made on a voluntary basis, the head of investigation considered that the DPD

designated should therefore meet the requirements of Articles 37, 38 and 39 of the GDPR. All

the control objectives were therefore analyzed by the head of investigation.

7. By email dated [...] 2021, the head of investigation forwarded the investigation file to the

National Commission sitting in restricted formation (hereafter: the "constitution

restricted"), explaining the reasons why he considers that there is no need to retain

breach against Company A. Indeed, the Head of Investigation specified that the

requirements relating to the different control objectives were proportionate to the reality of the activities of Company A, namely maintenance and cleaning activities [...]. For these reasons, in his communication of [...] 2021, the head of investigation proposed to the restricted formation the closure of the file.

8. The Restricted Committee examined the case during its meeting of July 1, 2021, in accordance with Article 10.2.a) of the Commission's internal rules national.

9. 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. Following examination of the investigation file, the restricted committee agreed with the opinion of the chief survey according to which

the requirements for the different objectives were proportionate to the reality of the activities of Company A, namely maintenance activities

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and cleaning [...], and that no element had been found that would constitute a breach of Section 4 of Chapter 4 of the GDPR.

10. Consequently, the Restricted Committee considers that the case should be closed, in accordance with Article 10.2.a) of the Commission's internal rules 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 at [...] and registered in the Luxembourg Trade and Companies Register under number [...], in the absence of breach found against him.

Thus decided in Belvaux on July 1, 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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