

National Data Protection Commission Executive Board resolution No. 2016-185 dated 12th June 2016 deciding to make public formal notice No. 2016-058 dated 30th June 2016 served on Microsoft Corporation

The Executive Board of the National Data Protection Commission, meeting on 12th July 2016 under the chairmanship of Ms Isabelle Falque-Pierrotin, with Ms Marie-France Mazars, Executive Deputy Chair, and Mr Eric Peres, Deputy Chair, also in attendance:

Having regard to Council of Europe Convention No. 108 of 28th January 1981 for the Protection of Individuals with regard to Automated Processing of Personal Data;

Having regard to Directive No. 95/46/EC of the European Parliament and of the Council of 24th October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;

Having regard to the Data Protection Act, No. 78-17, of 6th January 1978, as amended, notably Articles 45 and 46 thereof;

Having regard to Decree No. 2005-1309 of 20th October 2005, as amended, enforcing the 1978 Data Protection Act, as amended;

Having regard to Resolution No. 2013-175 of 4th July 2013 defining the internal rules of the National Data Protection Commission;

Having regard to Decision No. 2016-025 of 30th June 2016 by the Commission Chair to serve a formal notice on **Microsoft Corporation**;

passed the following resolution:

Via a decision dated 30th June 2016, the Commission Chair served a formal notice on Microsoft Corporation, based at One Microsoft Way, Redmond, Washington 98052-6399, United States, on the basis of Article 45 of the 1978 Data Protection Act, as amended, to put an end to the recorded breaches of the Act within a timescale of three months.

Pursuant to Article 46 paragraph two of the Act, the Chair of the National Data Protection Commission properly convened a meeting of the Executive Board in order to rule on her request to make her decision public and the Executive Board met for this purpose on 12th July 2016.

Having deliberated, the Executive Board considers that publishing the formal notice decision is justified by the large number of breaches recorded and the consequential damage to the rights of the individuals concerned, notably in respect of the activation by default of the advertising ID for Windows 10 users without obtaining their consent in advance, the excessiveness of the telemetry data collected by the company and the absence of adequate measures to ensure data security and confidentiality, as the company allows users to connect from their devices to all its on-line services using a PIN of at least four characters without any blocking mechanism after several unsuccessful authentication attempts.

The Executive Board also considers that publication is justified by both (i) the status and size of the organisation concerned, a world leader in marketing operating systems and software programs, and (ii) the number of individuals concerned by its processing (more than ten million Windows 10 users on French territory).

Finally, the Executive Board considers that publishing the formal notice should draw, on the one hand, the attention of the organisation concerned to the recorded breaches and enable it to comply within the timescale set by the notice and, on the other hand, should inform the users of their rights and particularly their right to control the collection of their data.

Given the above, the National Data Protection Commission Executive Board decides to make public decision No. 2016-058 by the Commission Chair to serve a formal notice on Microsoft Corporation.

For the record, the Executive Board states that formal notices are not sanctions so no further action will be taken if the organisation concerned complies in all respects with the requirements of the formal notice within the specified timescale, in which case the notice proceedings will be closed and this decision will also be made public.

Isabelle Falque-Pierrotin,
Chair