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

of survey no.[…] conducted with Company A

Deliberation No. 18FR/2022 of December 13, 2022

The National Commission for Data Protection sitting in restricted formation

composed of Ms. Tine A. Larsen, President, and Messrs. Marc Lemmer and Alain

Herrmann, commissioners;

Having regard to Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016

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

personal character and on the free movement of such data, and repealing Directive

95/46/EC;

Considering the law of August 1, 2018 on the organization of the National Commission for the

data protection and the general data protection regime, in particular

its article 41;

Having regard to the internal regulations of the National Commission for the Protection of

data adopted by decision no. 3AD/2020 dated January 22, 2020, in particular its

Section 10.2;

Having regard to the regulations of the National Commission for Data Protection relating to the

inquiry procedure adopted by decision No. 4AD/2020 dated January 22, 2020,

in particular its article 9;

Considering the following:

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

survey no.[…] conducted with Company A

I. Facts and procedure

The National Data Protection Commission (hereinafter: the “CNPD”)

received two complaints filed on February 27, 2019 by Mr. A

and dated February 28, 2019 by Mr. B (hereinafter together: the "complaints"

respectively the “claimants”) with respect to Company A hereinafter referred to as

“Company A” or “the Agency”, in connection with the exercise of its functions as trustee of the

co-ownership of Residence A located at L-[…], […] (hereinafter: “Residence A”).

The claimants accused the latter of "on the one hand the transmission [by] the

responsible for processing personal data to third parties without authorization

prior and without appropriate security and confidentiality measures and, on the other hand, the

non-respect by the latter of the right to information and access to their data”1.

During its deliberation session on October 4, 2019, the National Commission

for data protection sitting in plenary session (hereinafter: “Formation

Plenary”) thus decided to open an investigation with Company A on the basis of

article 37 of the law of 1 August 2018 on the organization of the National Commission for

data protection and the general data protection regime (hereinafter:

“law of August 1, 2018”) and to appoint Mr. Thierry Lallemang as head

of investigation.

According to the decision of the Plenary Formation, the purpose of the investigation was to

monitor the application and compliance with Regulation (EU) 2016/679 of the European Parliament

and of the Council of April 27, 2016 relating to the protection of individuals with regard to the

processing of personal data and the free movement of such data, and

repealing Directive 95/46/EC (hereinafter: “GDPR”) and the law of 1 August 2018 in the

in the context of the complaint lodged by Mr. A on February 27, 2019. Given

that Mr. B has lodged an almost identical complaint with regard to Company A,

both complaints were investigated by the head of investigation.

1 Initial findings (see definition in point 5. of this decision), Finding 3.

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Company A is registered […] in the Trade and Companies Register of Luxembourg under the number […], […] at the address L-[…], […] (hereinafter: the “controlled”). The object of its business is the operation of a real estate agency.2

The controller was informed of the opening of the investigation in his regard by letter from head of investigation dated July 28, 2020.

It appears from this letter that the head of investigation had defined two control objectives:

“1. Ensure that the treatment which is the subject of the complaints of the two complainants respects the principles relating to the processing of personal data such as defined by Articles 5 (1) and 6 (1) of the GDPR.

2. Ensure that the right of access of data subjects has been respected (information on the processing operations listed in points (a) to (d) of paragraph 1 of Article 15 of the GDPR as as requested by the persons concerned). »

The letter was accompanied by the document entitled “Initial findings Survey No.[…]” setting out the initial findings made by the CNPD officials in this case (hereinafter: “initial findings”). The head of the investigation offered the ability to the person checked to "dispute the facts included in the initial findings, or to share […] [his] possible remarks, clarifications or additions” for September 7, 2020 at the latest.

The controller replied by letter dated July 29, 2020. He informed that he was no longer "trustee of Residence A since [...] 2019".

The head of investigation informed the person checked by letter dated August 3, 2020 that the fact that he no longer acted as trustee of Residence A since […] 2019, “does not can cancel […] [his] role as data controller for the facts observed prior to this change. He invited the controller to respond to the requests that he

had been sent by his letter dated July 28, 2020 mentioned above within the deadlines allotted. The controller did not send any written observations to the CNPD.3

2 Requisition form (Registration) filed with the Trade Register and Luxembourg companies on […].

3 Statement of Objections, point 18.

At the end of his investigation, the head of investigation notified the person inspected on July 12, 2021 a Statement of Objections (hereinafter: the "Statement of Objections") detailing the shortcomings that he considered constituted in this case, and more specifically a non-compliance with the requirements of Article 5.1.a), b) and c) (principles of legality, limitation of purposes and minimization of data) and Article 6.1 of the GDPR (lawfulness of processing),4 as well as non-compliance with the obligations arising from article 12.3 and 4 of the GDPR (methods for exercising the data subject's rights) and Article 15.1.b) and c) of the GDPR (right of access of the data subject)5.

In that Statement of Objections, the Head of Investigation proposed to the Commission national authority for data protection sitting in restricted formation on the outcome of the investigation (hereinafter: "Restricted Training") to impose a fine on the controlled administrative fee in the amount of 2,500 (two thousand five hundred) euros.6 He did not propose corrective measures because he was of the opinion that the fact that the controlled no longer had mandate to act as trustee of Residence A, the latter would not be in able, either in fact or in law, to implement them.7

The head of the investigation offered the ability to the person checked "to take a position in writing by relation to the grievances upheld and the corrective measures and/or sanctions proposed by the

head of investigation, as soon as possible and no later than September 8, 2021”8.

The controller did not send any written observations to the CNPD.

The president of the Restricted Formation informed the controller by mail in

date of December 2, 2021 that his case would be registered for the session of the Formation

Restricted on January 17, 2022. The controller did not respond to this letter either.

During this session, the head of the investigation presented his oral observations to

support of his written observations and answered the questions posed by the Panel

Restraint.

The decision of the Restricted Panel will be limited to the processing and obligations

at issue in the aforementioned initial findings and to the legal provisions and

4 Statement of Objections, point 28.

5 Statement of Objections, paragraph 35.

6 Statement of Objections, paragraph 39.

7 Statement of Objections, point 40.

8 Statement of Objections, point 41.

regulations for which the head of investigation found a breach in his

statement of objections.

II. Place

II. 1. On the reasons for the decision

A. On the breach related to the principles of lawfulness, limitation of purposes and

data minimization

1. On the principles

Article 5.1 of the GDPR requires, among other things, that personal data

have to be

“a) processed in a lawful, fair and transparent manner with regard to the data subject

(lawfulness, fairness, transparency);

b) collected for specified, explicit and legitimate purposes, and not to be processed

subsequently in a manner incompatible with those purposes; further processing to

archival purposes in the public interest, for scientific or historical research purposes

or for statistical purposes is not considered, in accordance with Article 89(1),

as incompatible with the initial purposes (limitation of purposes);

c) adequate, relevant and limited to what is necessary in relation to the purposes for

which they are processed (data minimization); […]”.

Article 6.1 of the GDPR provides that

“1. Processing is only lawful if and insofar as at least one of the conditions

following is fulfilled:

a) the data subject has consented to the processing of his or her personal data

for one or more specific purposes;

b) the processing is necessary for the performance of a contract to which the data subject

is a party or to the execution of pre-contractual measures taken at the latter's request;

c) processing is necessary for compliance with a legal obligation to which the controller

treatment is submitted;

d) the processing is necessary to protect the vital interests of the person

concerned or of another natural person;

e) processing is necessary for the performance of a task carried out in the public interest or falling within the

the exercise of official authority vested in the controller;

f) processing is necessary for the purposes of the legitimate interests pursued by the controller

processing or by a third party, unless the interests or freedoms and rights

fundamentals of the data subject which require data protection to be

personal nature, in particular when the person concerned is a child.

Point (f) of the first paragraph does not apply to processing carried out by the authorities

public in the performance of their duties. »

2. In this case

It appears from the initial findings of the CNPD agents

- that on February 11, 2019, the auditee "acting as trustee of the

condominium Residence A […], sent an email to Mrs A and an email to

Mr and Mrs B, all three co-owners of the residence, within the framework

of a reminder of receivables.

These two emails contained the following personal data:

- Details of the accounting situation of Mr. and Mrs. A and of

Mr and Mrs B vis-à-vis the co-ownership from January 2018 to February

2019;

- The private addresses of Mrs A and Mr and Mrs B.

These two emails were sent to the other co-owners of Residence A

as well as to a former co-owner in order to highlight payment irregularities

from Mrs A and Mr and Mrs B".9 The copies of the emails

of the audit dated February 11, 2019 are part of the documents submitted in

the species10;

- that on February 13, 2019, Mr A and Mr B had each sent

an email to the controller, in which they stated, among other things, "that the email

sent by Company A on […] 2019 to the other co-owners and the former

co-owner constitutes a violation of personal data and

represents a breach of confidentiality as well as an infringement of the rights of

data subjects", and "as such […] "strongly encourage" the

controller to "report" this data breach

personnel at the CNPD within 72 hours of its occurrence"11. The copies

e-mails from the complainants are part of the exhibits tendered in this case12;

- that "concerning the reasons justifying the transmission of a letter addressed to a

co-owner (also containing his address) and listing his situation

individual accountant to other co-owners and a former co-owner, the

controller has taken a position in several letters addressed to the

CNPD of 04/04/2019; 04/23/2019 and 07/22/2019 […]"13. Copies of letters

audited form part of the exhibits tendered in this case.14

As the Claimants had not yet received a position paper from the

checked, following the submission of their complaints on February 27 and 28, 2019, the

legal department of the CNPD wrote to the control on March 21, 2019 and asked to

the latter "to take a position on the reasons justifying the communication of the letters

initially sent to claimants and listing their individual accounting situation

detailed to other co-owners and former co-owners of Residence A". He has

9 Initial findings, finding 1.

10 Initial findings, point "1. Exhibits added to this investigation".

11 Initial findings, finding 2.

12 Initial findings, point “1. Documents added to this investigation”.

13 Initial findings, finding 5.

14 Initial findings, point “1. Documents added to this investigation”.

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requested clarification from the control by letters dated June 3 and 21, 2019.

Copies of these letters form part of the exhibits tendered in this case.15

The auditee for its part, by letter dated April 4, 2019, took a position by

report to the letter from the CNPD's legal department dated March 21, 2019. A copy

of this letter is part of the exhibits tendered in this case.16

With regard to the disputed communication, he gave "to consider that the situations

of the co-owners' accounts indicate the total amount of cash advances

made by each and of its balance towards the co-ownership".

He also indicated that “no other document likely to show the total amount

cash advances and the balance towards the co-ownership is established by the trustee so

that only this document is available to the trustee”.

Thus, it “consequently seemed to him with regard to Articles 24, 25 and 26 of the provisions

ducales of June 13, 1975 prescribing the measures of execution of the law of May 16, 1975

relating to the status of the co-ownership of the buildings, that the account situation of each

owner, insofar as it shows the total amount of its advances of

cash and its balance towards the co-ownership, could be communicated".

By letter dated April 23, 2019, and following a telephone conversation

with an agent of the CNPD, the controller provided the following details:

“The syndic is the accountant and the cashier of the co-ownership.

As such, it is bound by a triple obligation in accounting terms:

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He must first keep separate accounts for each syndicate, each syndicate

constituting an autonomous legal person.

- This separate accounting must make it possible to clearly identify the situation of

cash in particular to put the syndicate and, through it, the co-owners,

faced with their responsibilities in the event of a cash shortage, to detect

15 Same.

16 Same.

possibly the union in pre-difficulty, or even in difficulty and also for

facilitate the transfer of funds in the event of a change of trustee.

- This accounting must make it possible to determine the accounting position of each

co-owner with regard to the syndicate. More precisely, it must show

clearly the identification of debtor co-owners and the assessment of their debt,

both to take recovery action and to implement

sureties.

For its part, it is up to the syndicate of co-owners to control the management carried out

by the trustee.

This control mainly concerns the management aspects of the syndic, in particular the

accounting of the syndicate, the development and monitoring of the provisional budget, the distribution of

expenses, the conditions under which contracts are awarded, perform the

contracts...

Consequently, within the framework of the control of the accounts made by the syndicate, it is up to the syndicate to communicate the identification of the debtor co-owners, and the assessment of their debts.

Indeed, it is necessary to recall that under penalty of invoking its responsibility contractual with regard to the syndicate of co-owners, the trustee must proceed with the possible recovery of co-ownership debts in the event that the co-owners debtors do not pay their debt.

Therefore, with regard to both the obligations of the trustee and that of the syndicate of co-owners, communication of personal account status of co-owner[s] does not constitute a violation of the regulations on the protection of data. »

A copy of the aforementioned letter from the inspector forms part of the documents tendered in this case.17

Finally, by letter dated July 22, 2019, a copy of which is part of the documents submitted in this case18, and following two reminders from the CNPD legal department in

17 Same.

18 Same.

date of June 21, 2019 and July 15, 2019, the control has taken a position with regard to the mail of the CNPD's legal department dated June 3, 2019. He referred to the position paper in its letter of April 4, 2019 relating to the question of the legality of the communication of the individual accounting situation of co-owners to other co-owners or to

former co-owners.

2.1. Lawfulness of processing

The head of investigation in his statement of objections first noted that he

“it emerges from the investigation that the data controller [the controlled party] sent two

emails to the other co-owners of Residence A as well as to a former co-owner

in order to highlight payment irregularities on the part of Mrs A and Mr and

Mrs B in the context of a reminder of debts. and that "these two emails

contained the following personal data:

 Details of the accounting situation of Mr. and Mrs. A and of Mr. and

Madame B vis-à-vis the co-ownership from January 2018 to February 2019;

 The private addresses of Mrs A and of Mr and Mrs B”19.

Then, the head of the investigation observed that the controlled invoked "different

legal provisions […] in his letter to the CNPD, dated 04/04/2019, to justify the

lawfulness of the processing carried out”. He noted that the controller invoked "the Grand-

of June 13, 1975 prescribing the measures for the execution of the law of May 16, 1975 on

status of the co-ownership of the buildings” to justify “the lawfulness of the processing in question

as follows: "It therefore seemed to me with regard to Articles 24, 25 and 26 of the provisions

of 13 June 1975 prescribing the measures for implementing the law of

May 16, 1975 on the status of the co-ownership of buildings, that the account situation

of each owner, insofar as it shows the total amount of its

advances of

cash and its balance towards

the condominium, could be

communicated. » »20.

The head of the investigation considered that article 14 of the amended law of 16 May 1975

on the status of the co-ownership of buildings (hereinafter: "law of 16 May 1975")

19 Statement of Objections, point 23.

20 Statement of Objections, point 24.

"could be invoked by the data controller by allowing the syndic to bring
a legal action (debt collection action)", noting that "this one has
that "the syndic cannot bring a legal action in the name of the union without having been
authorized by a decision of the general meeting, except in the case of an action in
debt collection even by way of forced execution or when there is an emergency
not allowing the convening of a general meeting within the time limits. On the occasion of
all disputes brought before a court and which concern the operation of a trade union
or in which the syndicate is a party, the trustee notifies each co-owner of the existence
and the subject of the proceeding. ".
However, he was of the opinion that "this article cannot justify such a transmission of
personal data ". He specified that "indeed, a simple reminder of receivables cannot
constitute a legal action. Moreover, even if a legal action for
debt collection would have been initiated, the trustee would not have needed to obtain
the prior authorization of the general meeting of co-owners and therefore no need
proactively transmit the details of the individual accounting situation and the
personal addresses of co-owners to other co-owners and to former
co-owners".21

Furthermore, the head of investigation, after noting that article 24 of the regulations
Grand-Ducal of 13 June 1975 prescribing the measures for implementing the law of 16 May 1975
on the status of co-ownership of buildings (hereinafter: "Grand-Ducal regulation of the

June 13, 1975) “provides that “The trustee holds, for each syndicate of co-owners,

separate accounts such as to show the accounting position of each

co-owner with regard to the syndicate. He prepares the provisional budget which is voted by

the general assembly", expressed

the opinion that "these regulatory provisions

do not authorize the proactive transmission of the details of the accounting situation

individual and personal addresses of co-owners to other co-owners and to

former co-owners”.22

The Head of Investigation also noted that Article 25 of the Grand-

of June 13, 1975 “provides that “The trustee may demand the payment: 1° Of the advance

permanent cash provided for in the co-ownership regulations; 2° At the beginning of each

21 Statement of Objections, point 24.a.

22 Statement of Objections, point 24.b.

exercise, of a provision which, subject to the stipulations of the co-ownership regulations

or, failing that, of the decisions of the general meeting, cannot exceed either a quarter of the

provisional budget voted for the financial year in question, i.e. half of this budget, if the

co-ownership regulations do not provide for the payment of a cash advance

permed; 3° During the financial year, either an amount corresponding to the reimbursement

expenses regularly incurred and actually paid, or provisions

quarterly, each of which cannot exceed a quarter of the provisional budget for

the financial year in question; 4° Special provisions intended to enable the execution of

decisions of the general meeting, such as those to carry out the work

provided for in articles 26 to 32 of the law of May 16, 1975, under the conditions set by decisions of the said assembly. The general meeting decides, if necessary, on the method of investment of the funds thus collected. » and that article 26 of the Grand-Ducal regulation of the June 13, 1975 “provides that “Unless otherwise stipulated in the co-ownership regulations, the sums due under the preceding article bear interest for the benefit of the syndicate. This interest, fixed at the legal rate in civil matters, is due from the formal notice sent by the syndic to the defaulting co-owner”.

In this regard, it noted that the provisions of Articles 25 and 26 of the Grand-ducal of June 13, 1975 "do not authorize the proactive transmission of the details of the individual accounting situation of each co-owner and their personal addresses to other co-owners and former co-owners”.23

In view of the foregoing, the head of the investigation held that the person inspected in his letter to the CNPD dated April 4, 2019 "did not invoke any legal basis likely to establish and justify the processing of data carried out in this case, namely the transmission data to unauthorized third parties. He was of the opinion that the controlled did not respect the condition of lawfulness of Article 5.1.a) of the GDPR "in the context of data processing achieved”.25

In addition, the head of investigation found that the control stated "other arguments […] to justify such processing in his letter of 23/04/2019 indicating

23 Statement of Objections, point 24.c.

24 Statement of Objections, point 24.

25 Same.

that: “as part of the control of the accounts made by the syndicate, it is up to the
syndicate to communicate the identification of the debtor co-owners, and the assessment of
their debts. » »26.

In this context, he identified similarities with Article 16.2 of the Regulation
Grand-Ducal of 13 June 1975. Indeed, he retained that "this article allows the council
union (taken over by the data controller under the name “union”, if
the interpretation of the head of investigation is correct) to control the management of the trustee (taken over by
the controller under the name "syndicate", if the interpretation of the controller
investigation is correct), in particular the accounts of the latter. It states that: "He [the
union council] controls the management of the trustee, in particular the accounts of the latter,
the breakdown of expenses, the conditions under which the contracts are awarded and executed
markets and all other contracts. » »27.

He further stated that "however, the legal and regulatory provisions
invoked do not apply to the processing under review. On the one hand, the communication of
detail of the individual accounting situation of each co-owner and their addresses
personal to the co-owners and to a former co-owner was at the initiative of the trustee
only and does not respond to a request for access to these documents by members
of the trade union council specially authorized by the latter within the framework of its control of
the management of the co-ownership by the trustee. On the other hand, and even if the advice
union would have wanted to access the accounts, this information should not have been
proactively forwarded to all co-owners and a former co-owner.
Indeed, the union council is an optional body, which is not necessarily composed
of all the co-owners or former co-owners (According to article 14 of the law
of May 16, 1975 and Article 13 of the GDPR of June 13, 1975)”28.

In view of the foregoing, he retained that the control in his letter to the CNPD
dated April 23, 2019 "has not invoked any relevant argument allowing him to be linked

to a legal obligation or for the purposes of the legitimate interests pursued by the person responsible for the treatment or by a third party".

26 Statement of Objections, point 25.

27 Same.

28 Same.

29 Same.

Therefore, the head of the investigation was of the opinion that the control did not respect the conditions of lawfulness of articles 5.1.a) and 6.1 of the GDPR "in the context of the processing of data carried out in this case, namely the transmission of data to third parties not permitted"30.

The Restricted Committee notes that the facts set out in the two complaints with regard to the disputed communication of personal data are almost identical.

It notes in particular that the e-mail from the controller to the co-owners and to a former co-owner dated February 11, 201931 had been sent to six e-mail addresses different, including those of the claimants. The controller had indicated in this e-mail to do "follow account situations" and complained that two co-owners had taken delay in the payment of their monthly advances. He demanded payment of these delays, and threatened to garnish wages in the event of non-payment.

Letters containing the individual accounting situation of spouses B as well as that of Madame A, dated the same day, were attached to this email. These annexes were appear, among other things, the names of the recipients and the respective private addresses of the

spouse, the monthly movements (sums debited and credited) for the years 2018

and 201932 and debit balances, amounts for which payment was requested.

The Restricted Committee notes that the person checked in the letters he sent

to the CNPD during the complaint procedures, invoked two legal bases for

justify the lawfulness of its processing, namely compliance with a legal obligation (article 6.1.c)

of the GDPR) and the legitimate interest (article 6.1.f) of the GDPR).

With regard to compliance with a legal obligation, it takes note of the

regulatory provisions that the controller invoked in his letter dated

April 4, 2019 (see point 17 of this decision) to justify the communication of

30 Statement of Objections, points 25 and 28.

31 Initial findings, point “1. Documents added to this investigation”.

32 That is to say the monthly movements from […] 2018 to […] 2019 with regard to the annex

addressed to Mr and Mrs B, and those from […] 2018 to […] 2019 with regard to the appendix

addressed to Mrs A.

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individual account situations of co-owners to other co-owners, current or

old, namely Articles 24, 25 and 26 of the Grand-Ducal Regulation of 13 June 1975:

" Art. 24. The trustee keeps, for each syndicate of co-owners, accounts

separated in such a way as to show the accounting position of each co-owner at

towards the union. He prepares the provisional budget which is voted by the assembly

general.

Art. 25. The syndic may require the payment:

1° The permanent cash advance provided for in the co-ownership regulations;

2° At the beginning of each financial year, a provision which, subject to the stipulations of the co-ownership regulations or, failing that, the decisions of the general meeting, cannot exceed either a quarter of the estimated budget voted for the financial year in question, or half of this budget, if the co-ownership regulations do not provide for the payment of an advance of permanent cash;

3° During the financial year, either an amount corresponding to the reimbursement of expenses regularly incurred and actually paid, either provisions quarterly, each of which cannot exceed a quarter of the provisional budget for the year in question;

4° Special provisions intended to allow the execution of decisions of the meeting general, such as carrying out the work provided for in Articles 26 to 32 of the law of May 16, 1975, under the conditions set by decisions of the said meeting.

The general meeting decides, if necessary, on the method of investment of the funds as well as collected.

Art. 26. Unless otherwise stipulated in the co-ownership regulations, the sums due under of the previous article bear interest for the benefit of the syndicate. This interest, fixed at the legal rate in civil matters, is due from the formal notice sent by the trustee to the defaulting co-owner. »

The Restricted Committee considers that if these provisions determine accounting and treasurer obligations to which the audit is subject, they do not authorize

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not the communication by transmission to other co-owners, current or former, of a e-mail having as an appendix letters addressed to a co-owner and resuming his

individual accounting situation, neither for information nor as a reminder of debt. By moreover, the auditee did not demonstrate to what extent the disputed communication was necessary for compliance with the duties incumbent on the trustee under these provisions, so that the controlled could not base this treatment on these.

It considers in particular that the assertions of the audited according to which the situations of the co-owners' individual accounts would be the only "document capable of making statement of the total amount of cash advances and the balance towards the co-ownership" drawn up by the trustee and at his disposal cannot disturb these findings.

It also notes that in its letter to the CNPD dated April 23, 2019 (see point 18 of this decision), the control to found the disputed communication, further invoked control obligations of the syndicate of co-owners concerning the management of the syndic and the accounts of the syndicate. However, the audit cannot establish the processing in question on legal obligations incumbent on the syndicate of co-owners.

With regard to the legitimate interest, the controlled, in its aforementioned letter to the CNPD dated April 23, 2019 to found the disputed communication, also invoked that he would bring into play his contractual liability with regard to the syndicate of co-owners, if he would not proceed "to the possible recovery of the debts of the co-ownership in the event that the debtor co-owners do not discharge their debt".

However, in view of the trustee's obligation to recover debts under of article 14.5 of the law of May 16, 1975, which stipulates that "the trustee may not bring legal action on behalf of the union without having been authorized to do so by a decision of the general meeting, except in the case of an action for the recovery of debt even by way of forced execution […]", the Restricted Panel cannot retain this justification to legitimize the processing in question.

In view of the foregoing, the Restricted Formation agrees with the opinion of the Chief

investigation and concludes that Articles 5.1.a) and 6.1 of the GDPR have not been complied with by the checked in the context of the communication at issue.

2.2 Purpose limitation

The head of investigation in the statement of objections also held that "the data initially collected and processed (detail of the accounting situation of co-owners vis-à-vis the co-ownership and private addresses) for initial purposes determined, explicit and legitimate for a trustee in the context of his activities regular (reminder of receivables to the debtor) were then subsequently processed from a manner incompatible with these purposes (willingness to harm certain co-owners). In effect, the data controller has carried out processing incompatible with these purposes, namely the deliberate transmission of the financial situation of the co-owners concerned to unauthorized third parties with a view to harming the debtor co-owners. The will of controller to harm is proven in his initial email dated 02/11/2019.

Indeed, in this email, the data controller specifies that "it is a shame to see that 2 co-owners [indicating their names and financial situation] do not pay their monthly advances » »33.

He believed that the controlled "used the personal data of the co-owners debtors for a purpose incompatible with the purposes for which the trustee could legitimately process them, which constitutes a misuse of purpose". Thus, he was of the opinion that the controlled has violated Article 5.1.b) of the GDPR.34

Given that the Restricted Formation does not recognize a will to harm as a specific purpose on the part of the audited, it cannot agree with the opinion of the

head of investigation, and therefore cannot conclude that Article 5.1.b) of the GDPR has been violated by the controlled party in the context of the disputed communication.

2.3 Data minimization

In his statement of objections, the head of investigation finally held that he considered "that a reminder of debts could not justify the proactive transmission of personal data to other co-owners and former co-owners". Leaving, he was of the opinion that "the data, by communicating them to unauthorized third parties, have been

33 Statement of Objections, point 26.

34 Statement of Objections, points 26 and 28.

excessively used and processed, so that Article 5.1.c) of the GDPR has been violated".35

However, in view of the lack of lawfulness of the processing in question under Article 6.1 of the GDPR, the Restricted Committee considers that there is no need to rule on this point.

B. On the breach related to the obligation to comply with the terms and conditions of the exercise of data subject rights

1. On the principles

With regard firstly to the procedures for exercising the rights of the data subject, Article 12 of the GDPR provides, among other things, that:

"[…] 3. The controller shall provide the data subject with information on the measures taken following a request made pursuant to Articles 15 to 22, as soon as possible and in any case within one month from of receipt of the request. If necessary, this period may be extended by two months,

given the complexity and number of requests. The controller

inform the person concerned of this extension and the reasons for the postponement within a period

one month from receipt of the request. When the person concerned

submits its request in electronic form, the information is provided electronically

electronically where possible, unless the data subject requests

let it be otherwise.

4. If the controller does not comply with the request made by the

person concerned, he shall inform the latter without delay and at the latest within one month

from receipt of the request, the reasons for its inaction and the possibility

to lodge a complaint with a supervisory authority and to lodge an appeal

jurisdictional. […]"

With regard then to the data subject's right of access, Article

15 GDPR provides the following:

35 Statement of Objections, points 27 and 28.

"1. The data subject has the right to obtain from the controller the

confirmation that personal data relating to him or her is or is not

processed and, when they are, access to said personal data as well as

the following information:

a) the purposes of the processing;

b) the categories of personal data concerned;

c) the recipients or categories of recipients to whom the personal data

personnel have been or will be communicated, in particular recipients who are established

in third countries or international organisations;

d) where possible, the retention period of the personal data

envisaged or, where this is not possible, the criteria used to determine this

duration ;

e) the existence of the right to request from the controller the rectification or

the erasure of personal data, or a limitation of the processing of

personal data relating to the data subject, or the right to oppose

to this treatment;

f) the right to lodge a complaint with a supervisory authority;

g) when the personal data is not collected from the

data subject, any available information as to their source;

h) the existence of automated decision-making, including profiling, referred to in Article

22, paragraphs 1 and 4, and, at least in such cases, useful information concerning the

underlying logic, as well as the significance and intended consequences of such processing

for the person concerned.

2. When the personal data is transferred to a third country or to a

international organization, the data subject has the right to be informed of the guarantees

appropriate, under Article 46, with respect to this transfer.

3. The controller provides a copy of the personal data

undergoing treatment. The controller may require payment of

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reasonable charges based on administrative costs for any additional copies

requested by the data subject. When the person concerned presents his

request electronically, the information is provided in an electronic form

commonly used, unless the data subject requests otherwise.

4. The right to obtain a copy referred to in paragraph 3 does not affect the rights and

freedoms of others. »

2. In this case

It appears from the initial findings of the CNPD agents

- that on February 13, 2019, Mr A and Mr B had each sent

an email to the controller, in which they declared, among other things, "that they have not

been informed of how their data has been processed" and that "as such,

they request, within 5 days, a copy of the data protection policy

Agency data and access to information specified in Article 15 (1) (a)

to (d) GDPR"36. The copies of the claimants' emails are part of the exhibits

paid in this case;37

- that a response that the audit provided to Mr. B on February 26, 2019 does not

did not contain the information requested by the latter, and that no response

had not been provided to Mr. A.38 A copy of the above-mentioned letter from the person inspected

part of the exhibits paid in this case;39

- that "on 16/04/2019, the data controller sends two letters

registered with acknowledgment of receipt to Mr A and Mr B. These

letters contain a "data protection information notice

personal". In a letter dated 19/06/2019, the data controller

confirms that the aforementioned letter of 16/04/2019 constitutes a "response to

requests for access from Messrs. A and B concerning information relating to the

processing of their data corresponding to those provided for in Article 15

36 Initial findings, finding 2.

37 Initial findings, point "1. Documents added to this investigation".

38 Initial findings, finding 6.

39 Initial findings, point “1. Documents added to this investigation”.

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paragraph 1 a (h) (sic) of the general regulation on the protection of

data » »40. The copies of the letters of the control are part of the documents paid

in this case.41

As the Claimants had not yet received a position paper from the

checked following the submission of their complaints on February 27 and 28, 2019, the

CNPD's legal department in its letter dated March 21, 2019 asked the

controlled information on the follow-up given to their access requests, or failing that

on the reasons that would justify refusing to exercise their right of access. He asked

details to the control by mail dated June 3, 2019. The copy of this mail is

part of the documents tendered in this case.42

The auditee for its part, by letter dated April 4, 2019, took a position by

report to the letter from the legal department of the CNPD dated March 21, 2019. With regard to

concerning the exercise of the right of access by the complainants, he indicated that he had “responded to the

statements of Mr. B dated February 26, 2019", and that Mr. A would not have

made an access request. A copy of the aforementioned letter from the controller, with the

attaches, among other things, a copy of his email to Mr B dated February 26, 2019,

forms part of the exhibits tendered in this case.43

Finally, the controller specified in his letter to the CNPD dated

June 19, 2019 that a response to the access requests would have been sent to Messrs. A and

B by registered letter dated April 16, 2019. He attached to his letter to the CNPD

the copies of these two letters which were addressed to "Mr. and Mrs. B"

respectively to "Madame A", as well as copies of deposit receipts for a shipment

of Post Luxembourg of the same day and the corresponding acknowledgments of receipt. Control

had indicated in the registered letters that it had attached the “information note on the

personal data protection policy”. However, he did not append

this document to his mail at the CNPD.

40 Initial findings, finding 7.

41 Initial findings, point “1. Documents added to this investigation”.

42 Same.

43 Same.

A copy of this information note was provided to the CNPD by each of the claimants

on request, namely by email from Mr B dated February 15, 2020 and by email

of Mr. A dated February 11, 2020 (hereinafter: the “information note”).

A copy of the control letter of June 19, 2019 with the above-mentioned annexes as well

that copies of the documents provided by the claimants are part of the documents submitted

in this case.44

The head of investigation in his statement of objections noted “that it appears from

investigation that the claimants, Mr. A and Mr. B, each send an email to the

data controller dated 02/13/2019, in order to make an access request

to their personal data” and that they “request, within 5 days, a copy of the

Agency's data protection policy and access to specified information

in Section 15.1. a) to d) of the GDPR”45.

Then, he noted that the control provided two answers to the claimants, to know :

- “a first response was provided […] within one month of receipt of the request to Mr B (on 02/26/2019). This response did not contain any information requested by Mr. B. No response was provided to Mr A”;
- "a second response with an information note relating to the protection of personal data was sent on 04/16/2019 […] by mail to Mr. B and A, i.e. more than two months after the initial request of 02/13/2019”;46

He noted that "these responses were therefore sent more than a month from receipt access requests from Messrs A and B and without explanation on the extension of the deadline response beyond one month nor on the possibility of lodging a complaint with a supervisory authority”47.

44 Same.

45 Statement of Objections, point 32.

46 Statement of Objections, paragraph 33.

47 Same.

Thus, the head of investigation was of the opinion that the conditions of article 12.3 and 4 of the GDPR had not been respected by the controller “in the context of the responses made […] to the requests for access submitted by Mr. A and Mr. B”.48

The head of investigation also noted that if the information note mentioned above that the control sent to the claimants by registered letter in

dated April 16, 2019 "contained information on the treatments listed in the article 15.1. a), b), c) and d) of the GDPR […] information was missing in the note information on the following points:

 Point b) of Article 15.1. of the GDPR (relating to the categories of personal data staff concerned): it appears from the investigation that the financial data were not included in the description of the categories of personal data personnel processed by the trustee (e.g. RIB or bank account number, fund movements).

 Point c) of Article 15.1. of the GDPR (relating to the recipients or categories of recipients to whom the personal data have been or will be communicated, in particular recipients who are established in third countries or international organizations): the information note did not mention recipients or categories of recipients to whom the personal data personnel have been or are being communicated. It is only made mention of the potential recipients (e.g.: "he can call on subcontractors external"). If applicable, the category of recipients should be specified (the formulation "external subcontractors" is not sufficient) and mention should be made if recipients are established in third countries or organizations international".49

Thus, the head of investigation was of the opinion that the control had not complied with the conditions of Article 15.1.b) and c) of the GDPR "in the context of responses made […] to requests of access introduced by Messrs. A and B".50

48 Statement of Objections, paragraphs 33 and 35

49 Statement of Objections, paragraph 34.

50 Statement of Objections, paragraphs 34 and 35.

With regard to Mr. B's request for access, the Restricted Training
notes that in his email to the controller dated 13 February 2019, the latter had asked
to the controlled to provide him with his "privacy policy" as well as access to the
information specified in Article 15.1.a) to d) of the GDPR.
She also notes that in her response to Mr B dated February 26, 2019 the
controlled had not sent the latter's request for access, and that the controlled did not
communicated the prospectus only with its registered letter dated
April 16, 2019, i.e. more than a month after receipt of the request.

With regard to Mr. A's request for access, the Restricted Training
notes that he had expressly referred to the right of access conferred on him by the
GDPR51 in his email to the controller dated February 13, 2019 by which he had
asked the latter to provide it with its privacy policy as well as access to the
information specified in Article 15.1.a) to d) of the GDPR, so that the assertion of the
controlled that Mr. A did not make an access request is false.
It also notes that the auditee did not communicate the information note to it.
only with his registered letter dated April 16, 2019, that is to say more than a month
after receipt of the request.

The Restricted Formation considers that the controlled neither responded to the requests
of access for claimants within the period provided for in Article 12.3 of the GDPR, nor informed the
claimants of a possible reason for its inaction as required by article 12.4 of the GDPR.

It also considers that the information note communicated with the letter
recommended by the audit dated April 16, 2019, and which had for “the objective […]
to inform the various co-owners about the processing and transfer of their

personal data by the trustee”52, was unsuitable for responding to requests

access for claimants.

Indeed, it did not mention all the categories of personal data

personnel concerned (article 15.1.b) of the GDPR), nor all the recipients or categories

51 Extract from the original English text: “Pursuant to our rights of access as data subjects under the

General Data Protection Regulation, please provide us with the following information […]”.

52 Point “[…]” of the information note.

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recipients to whom the personal data have been or will be

communicated (article 15.1.c) of the GDPR).

In view of the foregoing, the Restricted Formation agrees with the opinion of the Chief

investigation and concludes that Articles 12.3 and 4 as well as Article 15.1.b) and c) of the GDPR

had not been complied with by the controller with regard to access requests

brought by the claimants.

II. 2. On the fine and corrective measures

1. Principles

In accordance with article 12 of the law of August 1, 2018, the CNPD has the

power to adopt all the corrective measures provided for in Article 58.2 of the GDPR:

"(a) notify a controller or processor of the fact that the operations of the

envisaged processing are likely to violate the provisions of this regulation;

(b) call a controller or processor to order when the

processing operations have resulted in a breach of the provisions of this Regulation;

(c) order the controller or processor to comply with requests

submitted by the data subject with a view to exercising their rights under this

these regulations;

(d) order the controller or the processor to put the operations of

processing in accordance with the provisions of this Regulation, where applicable, of

specific manner and within a specified time;

(e) order the controller to communicate to the data subject a

personal data breach;

f) impose a temporary or permanent restriction, including prohibition, of processing;

g) order the rectification or erasure of personal data or the

limitation of processing pursuant to Articles 16, 17 and 18 and the notification of these

measures to the recipients to whom the personal data have been disclosed

pursuant to Article 17, paragraph 2, and Article 19;

(h) withdraw a certification or order the certification body to withdraw a

certification issued pursuant to Articles 42 and 43, or order the body to

certification not to issue certification if the requirements applicable to the certification

are not or no longer satisfied;

(i) impose an administrative penalty under section 83, in addition to or in addition to

instead of the measures referred to in this paragraph, depending on the characteristics

specific to each case;

j) order the suspension of data flows addressed to a recipient located in a

third country or an international organisation. »

In accordance with article 48 of the law of August 1, 2018, the CNPD may impose

administrative fines as provided for in Article 83 of the GDPR, except against

of the state or the municipalities.

Article 83 of the GDPR provides that each supervisory authority shall ensure that the

administrative fines imposed are, in each case, effective, proportionate and

deterrents, before specifying the elements that must be taken into account to decide

whether an administrative fine should be imposed and to decide on the amount of this

fine :

“(a) the nature, gravity and duration of the breach, taking into account the nature, scope

or the purpose of the processing concerned, as well as the number of data subjects

affected and the level of damage they suffered;

b) whether the breach was committed willfully or negligently;

c) any action taken by the controller or processor to mitigate the

damage suffered by the persons concerned;

d) the degree of responsibility of the controller or processor, account

given the technical and organizational measures they have implemented under the

sections 25 and 32;

e) any relevant breach previously committed by the controller or

the subcontractor ;

f) the degree of cooperation established with the supervisory authority with a view to remedying the breach

and to mitigate any negative effects;

g) the categories of personal data affected by the breach;

h) the manner in which the supervisory authority became aware of the breach, in particular whether,

and to what extent the controller or processor notified the breach;

(i) where measures referred to in Article 58(2) have previously been ordered against the controller or processor concerned for the same purpose, compliance with these measures;

(j) the application of codes of conduct approved pursuant to Article 40 or certification mechanisms approved under Article 42; And

k) any other aggravating or mitigating circumstance applicable to the circumstances of the species, such as the financial advantages obtained or the losses avoided, directly or indirectly, as a result of the breach".

The Restricted Committee would like to point out that the facts taken into account in the context of this decision are those found at the start of the investigation. The possible changes relating to the data processing under investigation subsequently, even if they make it possible to establish in whole or in part the conformity, do not make it possible to retroactively cancel a breach noted.

Nevertheless, the steps taken by the controller to put themselves in compliance with the GDPR during the investigation process or to remedy the shortcomings noted by the head of investigation in the statement of objections, are taken taken into account by the Restricted Training in the context of any corrective measures to pronounce and/or the setting of the amount of a possible administrative fine to be pronounce.

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2. In this case

2.1 Regarding the imposition of an administrative fine

In the statement of objections, the head of investigation proposes to the Panel Restricted to impose an administrative fine on the person controlled in the amount of 2,500 (two one thousand five hundred) euros.53

In order to decide whether to impose an administrative fine and to decide, where applicable, the amount of this fine, the Restricted Panel takes into account the elements provided for in Article 83.2 of the GDPR:

- As to the nature and seriousness of the violation (Article 83.2.a) of the GDPR), it is that with respect to breaches of Article 5.1.a) and Article 6.1 of the GDPR, they constitute breaches of a fundamental principle of the GDPR (and of the right to data protection in general), namely the principle of lawfulness enshrined in the Chapter II “Principles” of the GDPR.

It also notes that compliance with the right of access provided for in Article 15 of the GDPR is one of the major requirements of the right to data protection, because it constitutes the "gateway" allowing the exercise of the other rights that the GDPR confers on the data subject, such as the rights to rectification and erasure provided for by GDPR Articles 16 and 17.

In addition, in the present case, the breaches found do not relate solely to the right of access, but also the procedures for exercising this right provided for in Articles 12.3 and 4 of the GDPR which have not been complied with by the controller.

- As for the duration criterion (article 83.2.a) of the GDPR), the Restricted Panel finds that the breaches of the claimants' rights of access have lasted over time, at least since February 13, 2019, the date of their access requests, and until the receipt of the information note communicated by the controller with his letter recommended on April 16, 2019. Furthermore, it does not have any documentation that proves that the auditee has in the meantime responded in full to the

53 Statement of Objections, paragraph 39.

access requests from claimants by sending them all the data to
personal nature processed by him as required by Article 15.1 a) to d) of the GDPR.

- As for the number of data subjects (article 83.2.a) of the GDPR), the Training
Restreinte finds that the breaches noted in Articles 5.1.a) and 6.1 of the
GDPR concern the two claimants, their wives and the other co-owners,
old and current, while the breaches noted in Articles 12.3 and 4 as well as
that Article 15.1 b) and c) of the GDPR only concern the two complainants.

- As to whether the breaches were committed deliberately or
not (by negligence) (article 83.2.b) of the GDPR), the Restricted Panel recalls that
"not deliberately" means that there was no intention to commit the violation,
although the controller or processor has not complied with the obligation
due diligence required by law.

In this case, it is of the opinion that the facts and breaches observed do not reflect
not a deliberate intention to violate the GDPR on the part of the controller.

The Restricted Committee notes that the other criteria of article 83.2 of the
GDPR are neither relevant nor likely to influence its decision on the taxation
an administrative fine and its amount.

Therefore, the Restricted Committee considers that the pronouncement of a fine
administrative is justified with regard to the criteria laid down by article 83.2 of the GDPR for
breach of Articles 5.1.a), 6.1, 12.3 and 4 as well as Article 15.1.b) and c) of the GDPR.

As regards the amount of the administrative fine, it recalls that the
paragraph 3 of Article 83 of the GDPR provides that in the event of multiple infringements, such as

this is the case here, the total amount of the fine may not exceed the amount set for

the most serious violation. To the extent that a breach of Articles 5, 6, 12 and 15

of the GDPR is reproached to the controlled, the maximum amount of the fine that can be retained

amounts to 20 million euros or 4% of worldwide annual turnover, whichever is the greater

high being retained.

With regard to the relevant criteria of Article 83.2 of the GDPR mentioned above, the

Restricted Formation considers that the imposition of a fine in the amount of 1,500

(one thousand five hundred) euros appears to be effective, proportionate and dissuasive, in accordance

the requirements of Article 83.1 of the GDPR.

2.2 Regarding the taking of corrective measures

In the statement of objections, the head of investigation did not propose to the

Restricted training to adopt the corrective measures. Indeed, "given that the

subject of this investigation […] no longer has a mandate to act as

as syndic of Residence A since […] 2019" the head of the investigation was of the opinion "that he

does not make sense to propose additional corrective measures to the fine

administrative proposed above, given that the control will not be able, nor

in fact, or in law, to implement corrective measures.

In view of the foregoing developments, the National Commission sitting

in restricted formation, after having deliberated, decides:

- to retain the breaches of Articles 5.1.a), 6.1, 12.3 and 4 as well as Article 15.1b)

and c) GDPR; And

- to pronounce against Company A, an administrative fine of an amount

of 1,500 (one thousand five hundred) euros, with regard to breaches of articles

5.1.a), 6.1, 12.3 and 4 as well as in article 15.1.b) and c) of the GDPR.

Belvaux, December 13, 2022.

For the National Data Protection Commission sitting in formation

restraint

Tine A. Larsen Marc Lemmer

President

Commissioner

Alain Hermann

Commissioner

54 Statement of Objections, point 40.

Indication of remedies

This administrative decision may be the subject of an appeal for review in the

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 Orders of

lawyers.