

Decision of the National Commission sitting in restricted formation

on the outcome of investigation No. [...] conducted with Company A

Deliberation No. 48FR/2021 of December 15, 2021

The National Commission for Data Protection sitting in restricted formation

composed of Ms. 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 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

article 10 point 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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I. Facts and procedure

1. As of July 20, 2018, the National Data Protection Commission

(hereafter: the “CNPD”) received a complaint from [...] (hereafter: “the complainant”)

brought against Company A. The latter informed the CNPD that the said company would not have not responded to its two requests of January 24 and 31, 2018 to access certain images recorded by the company's CCTV system.

2. During its deliberation session on January 16, 2019, the National Commission for data protection sitting in plenary session (hereafter: “Formation Plenary”) had 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. Christophe Buschmann as head of investigation.

3. According to the decision of the Plenary Formation, the investigation carried out by the National Commission for Data Protection (hereinafter: “CNPD”) was to purpose of verifying compliance with the provisions of Regulation (EU) 2016/679 of the Parliament European Parliament and of the Council of 27 April 2016 relating to 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 (hereinafter: “GDPR”) and the law of 1 August 2018, in particular through the implementation of a video surveillance system installed by the Company A.

4. Company A is a limited liability company entered in the Register of the Commerce et des Sociétés de Luxembourg under number [...] with registered office at [...] (hereinafter: the “controlled”). The object of the controlled “aims to operate a restaurant with selling alcoholic and non-alcoholic beverages [...]”¹ and owns two establishments [...] which are [...]. Thus, the decision of the National Commission for the Protection data sitting in restricted formation on the outcome of the investigation (hereinafter: “

¹ Cf. Statutes of [...], article [...].

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Restricted Training”) will be limited to the processing implemented by the controller in its
[...] establishments [...].

5. On January 29, 2019, CNPD agents carried out a visit to the
Company premises A.2

6. The controller reacted to the report drawn up by the CNPD agents by mail
of February 18, 2019.

7. At the end of his investigation, the head of investigation notified the person inspected on 22
July 2019 a statement of objections detailing the shortcomings he considered

constituted in this case concerning the establishments [...], and more specifically a non-
compliance with the requirements prescribed by article 13.1 and 2 of the GDPR (right to information)
with regard to the persons concerned, i.e. employees and persons
non-employees, namely customers, suppliers, service providers and visitors
(hereinafter: "third parties"), non-compliance with the requirements of Article 5.1.c)
of the GDPR (data minimization principle), as well as non-compliance with articles
12 (methods for exercising the rights of the data subject) and 15 of the GDPR (right
access of the data subject).

8. A supplementary letter to the statement of objections was sent to the
checked on August 17, 2020. In this additional letter, the head of investigation
proposed to the Restricted Panel to adopt five corrective measures and to impose on the
controlled an administrative fine of 11,600 euros.

9. By letter dated September 23, 2020, the controller produced written observations
on the supplementary letter to the statement of objections.

10. The President of the Restricted Formation informed the controller by letter of 29 April 2021 that his case would be registered for the Restricted Panel session of 30 June 2021. The controller confirmed his presence at the said meeting by email of May 7, 2021.

11. During this session, the head of investigation and the controller presented their observations oral presentations in support of their written observations and answered the questions posed by the

2 See Minutes no. [...] relating to the on-site visit carried out on January 29, 2019 to

Company A (hereinafter: "Minutes no. [...]").

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Restricted Training. The president asked the control to send to the Formation

Restricted additional information on the means implemented after the visit

CNPD agents on site to inform the persons concerned, within a

week. The controller spoke last.

12. By email of June 30, 2021, the auditee produced the additional information requested.

II. Place

II. 1. As to the reasons for the decision

A. On the breach related to the principle of data minimization

1. On the principles

13. In accordance with Article 5.1.c) of the GDPR, personal data

must be "adequate, relevant and limited to what is necessary in view of the purposes for which they are processed (data minimization)".

14. The principle of data minimization in video surveillance involves

that only what appears strictly necessary to achieve the target(s) should be filmed

purpose(s) pursued and that the processing operations must not be disproportionate.³

15. Article 5.1.b) of the GDPR provides that personal data must be “collected for specific, explicit and legitimate purposes, and not be further processed in a manner incompatible with those purposes; [...] (limitation of purposes)”.

16. Prior to the installation of a video surveillance system, the controller must define, precisely, the purpose(s) it wishes to achieve by resorting to

³ See CNPD Guidelines (Point 4.), available at: <https://cnpd.public.lu/fr/dossiers-themes/videosurveillance/necessite-proportionnalite.html>.

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such a system, and may not subsequently use the personal data collected for other purposes.⁴

17. The necessity and proportionality of video surveillance is analyzed on a case-by-case basis. case and, in particular, with regard to criteria such as the nature of the place to be placed under video surveillance, its location, configuration or attendance.⁵

2. In this case

18. During the on-site visit, it was explained to CNPD officials that the purposes of the implementation of the video surveillance system are the protection of the property of company, as well as user safety and accident prevention.⁶

2.1. With regard to the field of vision of cameras aimed at employees

19. During the said visit, the CNPD agents noted that the fields of vision five cameras allow permanent monitoring of employees working

behind the counter, the small bar and behind the sink, while three cameras allow the permanent monitoring of employees who prepare meals or who are busy in the kitchen or in the bakery preparation area.⁷ The field of vision of a camera also allows permanent monitoring of the person(s) working in the managers office.⁸

20. With regard to the supervision of employees at their workstation, the head of inquiry considered that "such permanent surveillance can create pressure significant psychological impact for employees who feel and know they are being observed, all the more so since the monitoring measures last over time. The fact that the employees concerned do not have a means of avoiding from time to time this monitoring is also likely to aggravate this pressure. Such a

⁴ See CNPD Guidelines, available at: <https://cnpd.public.lu/fr/dossiers-themes/videosurveillance/necessite-proportionnalite.html>.

⁵ See CNPD Guidelines (Point 4.), available at: <https://cnpd.public.lu/fr/dossiers-themes/videosurveillance/necessite-proportionnalite.html>.

⁶ See finding 7 of minutes no. [...].

⁷ See findings 9, 10, 11, 13, 14, 15, 16, 17 of minutes no. [...]. These are camera numbers [...].

⁸ See finding 18 of minutes no. [...]. This is camera number [...].

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permanent surveillance is considered disproportionate to the purpose sought and constitutes an excessive invasion of the private sphere of the employees occupied in their positions of work. In this case, the fundamental rights and freedoms of employees must prevail.

on the interests pursued by the employer. (statement of objections, point II.b, p.4).

21. The controlee for his part explained in his letter of September 23, 2020 that the cameras in question were not intended to monitor staff, but that they "only film the entrance, the cash desks, the cold room, the office and the kitchens. The cameras were installed at neutral points but strategically important in order to protect us from damage to our property. »

22. La Formation Restreinte would like to remind you that employees have the right not to be subject to continuous and permanent supervision in the workplace. To reach the purposes pursued, it may seem necessary for a data controller installing a CCTV system in the workplace. On the other hand, respecting the principle of proportionality, the controller must use the means of most protective of the employee's private sphere and, for example, limit the fields of vision of the cameras to the only surface necessary to reach the purpose(s) pursued.

23. The Restricted Committee notes that the appendix to the audit letter of September 23 2020 contains photos of the disputed cameras' fields of view, which are identical to the photos taken from the fields of vision of the cameras by the CNPD agents during their on-site visit on January 29, 2019,⁹ that is to say that they are still aiming permanence of employees who work behind the counter, the small bar, behind the sink, who are busy in the kitchen or in the bakery preparation area or who work in the manager's office. However, she noted that the camera which was aiming employees who prepare meals seems to be disabled.

24. In view of the foregoing, it therefore considers that the non-compliance with Article 5.1.c) of the GDPR had been acquired on the day of the site visit by CNPD agents with regard to relates to the aforementioned cameras.

⁹ See findings 9, 10, 11, 13, 14, 15, 16, 17 of minutes no. [...]. These are camera numbers

[...].

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2.2. With regard to the field of vision of cameras aimed at controlled customers

25. During the on-site visit of January 29, 2019, CNPD officials noted

that the fields of view of six cameras allow continuous monitoring of

people seated at the bar and parts of the consumption tables.¹⁰

26. In his Statement of Objections, the Head of Investigation was of the view that a

surveillance of consumption areas “is disproportionate when customers

present will be permanently subject to video surveillance while they

choose a restaurant as a meeting place to have a good time around

a meal, to communicate, have fun or relax. However, customers who stay in

this type of place for a more or less long period of time, must be able to legitimately

expect not to be filmed during these private moments. The use of cameras

in consumer spaces is likely to film the behavior of each

customer seated at a table and can create discomfort or even psychological pressure for the

customers who feel observed throughout their presence in the restaurant. Such a

permanent monitoring constitutes an invasion of the client's private sphere. »

(statement of objections, point II.b, p.4).

27. As for his staff, the controller explained in his letter of 23

September 2020 that the disputed cameras were not intended to be surveillance

customers, but that they “only film the entrance, the checkouts, the cold room,

office and kitchens. The cameras were installed at neutral points but

strategically important in order to protect us from damage to our property. »

28. The Restricted Panel wishes to recall that even if a certain risk of theft or vandalism may exist inside a dining room with tables of consumption or at the counter of a café, the customers present will be, permanent, subject to video surveillance as they choose a restaurant or a cafe as a meeting place to have a good time over a meal, to communicate, entertain or relax. She thus agrees with the observation of the head of the investigation (see point 26 of the decision) that such permanent monitoring is therefore to be considered

10 See findings 9, 11, 12, 13, 14 and 15 of minutes no. [...]. These are the cameras [...].

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as disproportionate to the purpose sought and constitutes an attack on the sphere privacy of the client.¹¹

29. The Restricted Committee notes that the appendix to the audit letter of September 23 2020 contains photos of the disputed cameras' fields of view, which are identical to the photos taken from the fields of vision of the cameras by the CNPD agents during their on-site visit on January 29, 2019¹², that is to say that they are still aiming permanence of people seated at the bar and parts of the consumption tables.

30. In view of the foregoing, it therefore considers that the non-compliance with Article 5.1.c) of the GDPR had been acquired on the day of the site visit by CNPD agents with regard to relates to the aforementioned cameras.

B. On the breach of the obligation to inform the persons concerned

1. On the principles

31. According to paragraph 1 of Article 12 of the GDPR, the “controller take appropriate measures to provide any information referred to in Articles 13 and 14

as well as to carry out any communication under Articles 15 to 22 and Article 34 with regard to the treatment to the data subject in a concise manner, transparent, understandable easily accessible, in clear and simple terms [...]. »

32. Article 13 of the GDPR provides the following:

“1. Where personal data relating to a data subject is

collected from this person, the data controller provides him, at the time

where the data in question is obtained, all of the following information:

a) the identity and contact details of the controller and, where applicable, of the representative of the controller;

b) where applicable, the contact details of the data protection officer;

11 See CNPD Guidelines (Point 4.2.), available at: <https://cnpd.public.lu/fr/dossiers-themes/videosurveillance/necessite-proportionnalite.html>.

12 See findings 9, 11, 12, 13, 14 and 15 of minutes no. [...]. These are the cameras [...].

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c) the purposes of the processing for which the personal data are intended as well as the legal basis for the processing;

d) where the processing is based on Article 6(1)(f), the legitimate interests sued by the controller or by a third party;

e) the recipients or categories of recipients of the personal data, if they exist; and

(f) where applicable, the fact that the controller intends to carry out a transfer of personal data to a third country or to an organization

international community, and the existence or absence of an adequacy decision issued by the

Commission or, in the case of transfers referred to in Article 46 or 47, or Article 49, paragraph 1, second subparagraph, the reference to the appropriate or suitable safeguards and the means of obtaining a copy or where they have been made available;

2. In addition to the information referred to in paragraph 1, the controller shall provide to the data subject, at the time the personal data is obtained, the following additional information which is necessary to guarantee fair and transparent treatment:

- a) the retention period of the personal data or, where this is not possible, the criteria used to determine this duration;
- b) the existence of the right to request from the controller access to the data to personal character, the rectification or erasure of these, or a limitation of the processing relating to the data subject, or the right to oppose the processing and right to data portability;
- c) where the processing is based on point (a) of Article 6(1) or on Article 9, paragraph 2(a), the existence of the right to withdraw consent at any time, without affecting the lawfulness of the processing based on the consent made before the withdrawal thereof;

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- d) the right to lodge a complaint with a supervisory authority;
- (e) information on whether the requirement to provide data to personal nature has a regulatory or contractual nature or if it conditions the conclusion of a contract and whether the data subject is obliged to provide the data to personal character, as well as on the possible consequences of the non-provision of

those data;

f) 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.

3. When he intends to carry out further processing of personal data personal data for a purpose other than that for which the personal data have been collected, the data controller provides the data subject beforehand concerned information about this other purpose and any other information relevant referred to in paragraph 2.

4. Paragraphs 1, 2 and 3 do not apply where and to the extent that the person concerned already has this information. »

33. The communication to data subjects of information relating to the processing of their data is an essential element in the context of compliance with general transparency obligations within the meaning of the GDPR.¹³ These obligations have been explained by the Article 29 Working Party in its guidelines on the transparency within the meaning of Regulation (EU) 2016/679, the revised version of which has been adopted April 11, 2018 (hereinafter: “WP 260 rev.01”).

34. It should be noted that the European Data Protection Board (hereinafter: “EDPS”), which has replaced the Article 29 Working Party since 25 May 2018, took over
13 See in particular Articles 5.1.a) and 12 of the GDPR, see also recital (39) of the GDPR.

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and reapproved the documents adopted by the said Group between May 25, 2016 and May 25

2018, as precisely the aforementioned guidelines on transparency.¹⁴

2. In this case

35. CNPD officials noted during their on-site visit that the presence of the video surveillance system is not signaled to the persons concerned at the entrance to the establishment.¹⁵ With regard to employees, the inspector specified by letter dated 18 February 2019 that the latter are informed of the presence of the video surveillance by a charter appended to their employment contract.¹⁶

36. In the Statement of Objections, the Head of Investigation took note of the explanations of the audit contained in its aforementioned letter of February 18, 2019, while retaining that the “persons concerned preparing to access the establishments run by the responsible for the treatment are not informed of the presence of the system of video surveillance, in the absence of any signage. (statement of objections, p3.).

37. It appears from the letter of the control of September 23, 2020 concerning the information third parties that a sticker was affixed after the departure of the CNPD agents at the entrance to his establishment informing of the use of video surveillance, but that he considered that this sticker “is not sufficient to achieve the purpose of information adequate and compliant with GDPR requirements. The company will therefore set up a new decal [...]”. Concerning the information of employees, the control specified in the aforementioned letter that it is planned to attach a document entitled “GENERAL REGULATIONS ON DATA PROTECTION (GDPR 2016/679)” to all employment contracts.

38. The Restricted Committee would first like to point out that Article 13 of the GDPR makes reference to the obligation imposed on the data controller to “provide” all the information mentioned therein. The word “provide” is crucial here and it “means that the data controller must take concrete measures to provide the information in question to the person concerned or to actively direct the person

14 See EDPS Endorsement Decision 1/2018 of 25 May 2018, available at:

https://edpb.europa.eu/sites/edpb/files/files/news/endorsement_of_wp29_documents_en_0.pdf.

15 See finding 1 of minutes no. [...].

16 See appendix 2 of the audit letter of February 18, 2019.

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concerned to the location of said information (for example by means of a link

direct, a QR code, etc.). (WP260 rev. 01. paragraph 33).

39. She also believes that a multi-level approach to communicating

transparency information to data subjects can be used in a

offline or non-digital context, i.e. in a real environment such as

for example personal data collected by means of a system of

video surveillance. The first level of information (warning sign, note

information, etc.) should generally include the most important information

essential, namely the details of the purpose of the processing, the identity of the person responsible for the

processing and the existence of the rights of data subjects, as well as the information

having the greatest impact on the treatment or any treatment likely to surprise

the persons concerned, as well as a reference to the more detailed information of the

second level (for example, via a QR code or a website address).¹⁷ The

second level of information, i.e. all of the information required under

of Article 13 of the GDPR, could be provided or made available by other means,

such as a copy of the privacy policy emailed to

employees or a link on the website to an information notice with regard to

third parties.¹⁸

2.1. Information from third parties

40. The Restricted Committee notes that during the on-site visit by the agents of the CNPD, third parties were not informed of the presence of the security system. video surveillance.

41. In his letter of September 23, 2020, the controller indicates in this context that a new sticker will be affixed at the entrance to the building. Nevertheless, the training Restricted finds that this sticker does not contain all the required elements of the first level of information, because the identity of the controller and a reference to the

17 See WP260 rev 0.1 (point 38) and EDPS Guidelines 3/2019 on the processing of personal data of a personal nature by video devices, version 2.0, adopted on 29 January 2020 (points 114. and 117.).

18 See WP260 rev 0.1 (point 38).

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more detailed second level information is lacking. Furthermore, she does not have no documentation that this sticker has been displayed in the meantime.

42. With regard to the second level of information, the Restricted Committee notes that such information intended for third parties did not exist at the time of the on-site visit by CNPD agents and it has no documentation other than this has been modified in the meantime.

43. In view of the foregoing, it concludes that at the time of the on-site visit by the agents of the CNPD, article 13 of the GDPR was not respected by the control in terms of video surveillance for third parties.

2.2. Employee information

44. With regard to

informing employees about the system of

video surveillance, the Restricted Panel notes that during the on-site visit by the agents

of the CNPD, employees were informed of the presence of the video surveillance system

by a charter annexed to their employment contract.¹⁹ Nevertheless, the said document does not

not all of the information within the meaning of Article 13 of the GDPR, because it lacks

in particular the legal basis, recipients or categories of recipients,

the existence of the right of rectification, erasure, limitation, opposition and

portability, as well as the right to lodge a complaint with the CNPD.

45. It notes, however, that in its letter of September 23, 2020, the controller

specified that it is planned to append a document entitled "GENERAL REGULATIONS ON THE

DATA PROTECTION (GDPR 2016/679)" to all employment contracts. By

elsewhere, during the Restricted Training session of June 30, 2021, the controller indicated

that following the control of the CNPD agents, a form informing of the video surveillance

would have been displayed on a bulletin board and the aforementioned charter and annexed to any contract

of work would have been updated. By email dated June 30, 2021, the Claimant sent a

copy of the said charter and a sheet containing a pictogram of a camera and indicating

that "FOR YOUR SAFETY, THIS ESTABLISHMENT IS UNDER VIDEO-

MONITORING »²⁰.

¹⁹ See appendix 2 of the audit letter of February 18, 2019.

²⁰ The said pictogram contains the same text translated into German and English.

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46. The Restricted Team assumes that this sheet is the one displayed on the board

display of the controlled, but she has no documentation that she was there actually put, on the one hand, and like the identity of the data controller, the existence of the rights of data subjects and a reference to the more detailed information of the second level are missing, said sheet does not contain the information of the first level information, on the other hand.

47. With regard to the second level of information, she notes that the audited specified that it is planned to append a document entitled “GENERAL REGULATIONS ON DATA PROTECTION (GDPR 2016/679)” to any employment contract.²¹ However, this document does not contain all the information provided for in Article 13 of the GDPR. He In particular, it lacks the legal basis, updated information on the duration of retention of data and the right to lodge a complaint with the CNPD. By elsewhere, it has no documentation that this document was actually annexed after the on-site inspection by CNPD officials to the employment contracts of the employees.²²

48. The Restricted Panel also notes that Article 3 of the aforementioned document indicates the following: "By signing this appendix, the employee acknowledges having been informed personal data likely to be collected and stored by the employer as well as the installation of a video surveillance system capable of filming it. He declares that he agrees to the computerized and/or automated processing of all of this personal data, in compliance with the legislative provisions and regulations in force." It should be emphasized in this context that the signing of a information sheet by the employee can at most be considered as an acknowledgment of receipt allowing the employer to document that he has indeed provided the information in under Article 13 of the GDPR, but cannot in any case constitute valid consent of the employee to the processing of data by his employer.²³ Indeed, an employee, in view of the imbalance in the balance of power existing within the framework of labor relations, cannot

not respond freely to a request for consent from their employer

21 See appendix to the audit letter of September 23, 2020.

22 See annex to the letter of February 18, 2019 and to the email of June 30, 2021.

23 See the definition of consent provided for in Article 4.10) of the GDPR, as well as the conditions applicable to consent provided for in Article 7 of the GDPR.

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“without fearing or incurring negative consequences as a result of this refusal. »²⁴ The consent as the basis for the lawfulness of data processing (Article 6.1.a) of the GDPR) is therefore inoperative in this case because of the nature of the employer/employee relationship.

49. With regard to the charter annexed to the employment contracts, the Training Restricted notes that it also does not contain all of the information provided in Article 13 of the GDPR. In particular, it lacks the legal basis, the recipients or the categories of recipients, the existence of the right of rectification, erasure, limitation, opposition and portability, as well as the right to lodge a complaint with the CNPD.

50. The Restricted Committee also notes that Article 14 of the aforementioned charter refers to deliberation n° [...] of the CNPD. She would like to point out that the old authorizations from the CNPD in terms of video surveillance, as are the vignettes related, have become obsolete, as they were issued by the CNPD under the former authorization regime of the amended law of 2 August 2002 on the protection of persons with regard to the processing of personal data which has been repealed by the law of August 1, 2018.

51. In view of the foregoing, the Restricted Panel concludes that at the time of the visit

on site by CNPD agents, article 13 of the GDPR was not respected by the control in terms of video surveillance for employees.

C. On the breach related to the obligation to respect the terms of the exercise of the rights of the data subject and the right of access of the data subject

1. On the principles

52. With regard to the modalities of the exercise of human rights

data subject, Article 12 of the GDPR provides that “[...] 3. The controller shall provide

to the data subject information on the measures taken following a request

formulated in application of articles 15 to 22, as soon as possible and in any state of

cause within one month of receipt of the request. If necessary, this

24 Guidelines 5/2020 on consent within the meaning of Regulation (EU) 2016/679, Version 1.1,

adopted on 4 May 2020, point 21, see also opinion 15/2011 on the definition of consent (WP

187), adopted July 13, 2011.

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deadline may be extended by two months, taking into account the complexity and the number of

requests. The controller informs the data subject of this

extension and the reasons for the postponement within one month of receipt of

Requirement. When the person concerned submits his request in a form

electronically, the information is provided electronically when possible,

unless the data subject requests otherwise. 4. If the

controller does not respond to 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 of introducing

a complaint to a supervisory authority and to lodge a judicial appeal. »

53. With regard to the data subject's right of access, Article 15.1 of the

GDPR provides the following: "The data subject has the right to obtain from the controller

processing confirmation that personal data relating to him or her are or

are 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

personal have been or will be communicated, in particular the recipients who are

established in third countries or international organisations;

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

personnel 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

object to this processing;

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

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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 regarding the underlying logic, as well as the importance and consequences intended for this processing for the data subject. »

2. In this case

54. During the on-site visit, CNPD officials observed that the length of the conservation of images from the video surveillance system installed in the establishments [...] is 14 days.²⁵

55. By letter dated February 18, 2019, the controller confirmed that due to a misunderstanding with the company in charge of installing the cameras, the images were indeed until this date kept for 14 days, but that this duration has been modified and that the images are now only kept for five days before being erased.²⁶

56. In the Statement of Objections, the Head of Investigation specified that the Complainant exercised his right of access to the video surveillance images of the controlled on two occasions, know dated January 24, 2018 aiming at images from January 15, 2018, as well as dated January 31, 2018 targeting images from January 2 to January 19, 2018.²⁷ Due to the absence of a response from the controller, the claimant would thus have seized the CNPD in accordance with Article 77 of the GDPR (see also points 1 and 2 of this decision).

57. The head of investigation also indicated that in the context of the investigation of the complaint, the person checked would have confirmed "twice, by letter dated August 21, 2018 and of December 6, 2018, that the images were kept for a period of 5 days whereas, during the on-the-spot investigation, it turned out that the retention period was

²⁵ See finding 5 of minutes no. [...].

²⁶ See letter of February 11, 2019 attached to the letter of the audit of February 18, 2019 in which the Company B confirms having installed the controlled video surveillance system and having modified the shelf life of 14 to five days.

27 The deposit receipts for dispatches by registered letter by the claimant can be found in appendix to his complaint and demonstrate that the requests were sent on the said dates.

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14 days. He thus retained in this context that as society "kept the images video surveillance for a period of 14 days, it had to grant the requests claimant's access for all recordings dating back less than 14 days to the time of receipt of these requests" and that it "should have kept the images of video surveillance upon receipt of access requests, even if the delay retention expired during the one-month period available to you to comply with requests. Moreover, he considered that the controlled party did not inform the complaining in accordance with Article 12 of the GDPR (statement of objections, p.5).

58. By letter of September 23, 2020, the controller referred again to the letter from 11

February 2019 in

which

the company installing its system

CCTV explained that the images are now kept for five

days before being erased.²⁸ Furthermore, he mentioned that "when [...] requested to have access to the images, we were no longer in possession of them. Consequently, we could not respond favorably to his request. »

59. The Restricted Committee thus notes that since February 11, 2019, the duration of retention of images from the controlled video surveillance system is five days and that before that date, the images were kept for 14 days. At the time

of the complainant's access requests, i.e. in January 2018, the images were from then kept for 14 days.

60. As the complainant's first request for access sent by letter recommended dated January 24, 2018 and targets images from January 15, 2018, said images should still have been available to the controlled and he should have granted the said request. With respect to the Complainant's second access request sent by registered letter dated January 31, 2018 for images from January 2 to 19 January 2018, the controller should have granted this request for all records that are less than 14 days old at the time of receipt. Furthermore, she agrees with the observation of the head of the investigation according to which the person checked "should have kept the video surveillance images upon receipt of access requests, even if even the retention period expired during the one-month period of which you have to comply with the requests. »

28 See appendix to the audit letter of February 18, 2019.

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61. The Restricted Panel thus considers that at the time of the on-site visit by the agents of the CNPD, article 15 of the GDPR was not respected by the auditee.

62. Finally, it notes that, even if the controlled person would no longer have been in possession of the images in question at the time of the Complainant's access requests, as he claims moreover, in its letter of September 23, 2020, article 12.4 of the GDPR requires that if the controller "does not respond to 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 of introducing

a complaint to a supervisory authority and to lodge a judicial appeal. »

63. Thus, as the controlled party did not respond at all to the access requests of the claimant of January 24, 2018 and January 31, 2018, the Restricted Panel considers that at the time of the on-site visit by CNPD officials, Article 12.4 of the GDPR was not in any way condition not respected by the controller.

II. 2. On corrective measures and fines

1. On the principles

64. In accordance with article 12 of the law of 1 August 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;

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- (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. »

65. In accordance with article 48 of the law of 1 August 2018, the CNPD may impose administrative fines as provided for in Article 83 of the GDPR, except against the state or municipalities.

66. 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;
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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 violation. »

67. The Restricted Committee wishes to specify 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.

68. Nevertheless, the steps taken by the control to bring itself into compliance with the GDPR during the investigation process or to remedy breaches noted by the head of investigation in the statement of objections, are taken into account by

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the Restricted Training within the framework of any corrective measures and/or setting the amount of any administrative fine to be imposed.

2. In this case

2.1 Regarding the imposition of an administrative fine

69. In the supplementary letter to the statement of objections of 17 August 2020, the head of investigation proposes to the Restricted Panel to impose an administrative fine control of an amount of eleven thousand six hundred (11,600) euros.

70. In his letter of September 23, 2020, the auditee estimated that the amount of the fine is disproportionate and excessive due to the corrective measures implemented place following the statement of objections, while he added in his email of June 30 2021 that financially the last 15 months were, due to the current health crisis, very difficult and a fine of such an amount would therefore be even more serious.

71. 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 regard to the breach of Article 5.1.c) of the GDPR, it constitutes a

breach of a fundamental principle of the GDPR (and of the right to the protection of data in general), namely the principle of minimization of data dedicated to the Chapter II “Principles” of the GDPR. It should be noted that at the time of the site visit by the CNPD officers, nine cameras enabled the permanent surveillance of employees at their place of work, while six cameras allowed live surveillance permanence of people seated at the bar and parts of the consumption tables.

- As to the breach of the obligation to inform the persons concerned in accordance with article 13 of the GDPR, the Restricted Training recalls that information and transparency relating to the processing of personal data personnel are essential obligations weighing on data controllers so that people are fully aware of the use that will be made of their personal data, once collected. A failure to

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Article 13 of the GDPR thus constitutes an infringement of the rights of individuals concerned. This right to information has also been reinforced under the GDPR, which testifies to their particular importance.

The Restricted Training takes into account in this context that during the visit to site by CNPD agents, third parties were not informed at all the presence of the video surveillance system, while the employees were informed by a charter appended to their employment contract which, as there was no in particular the legal basis, recipients or categories of recipients, the existence of the right of rectification, erasure, limitation, opposition and portability, as well as the right to lodge a complaint with the CNPD,

did not contain all the information within the meaning of Article 13 of the GDPR.

- As regards the breach of the obligation to comply with the terms of the exercise of rights of the data subject, as well as the data subject's right of access in accordance with Articles 12 and 15 of the GDPR, the Restricted Training recalls that the right of access is one of the major requirements of the right to data protection, because it constitutes the "gateway" allowing the exercise of rights other than the GDPR confers on the person concerned, such as the rights to rectification and erasure provided for in Articles 16 and 17 of the GDPR.

- As for the duration criterion (article 83.2.a) of the GDPR), the Restricted Panel finds that these breaches have lasted over time, at least since May 25, 2018 and until the day of the site visit. She recalls here that two years separated the entrance into force of the GDPR from its entry into force to allow those responsible processing to comply with their obligations. All the more, a obligation to respect the minimization principle, as well as obligations comparable to respect the right to information and the right of access of persons concerned already existed pursuant to Articles 4.1.b), 10.2, 26 and 28 of the law repealed from August 2, 2002 relating to the protection of individuals with regard to the processing personal data. Guidance on the principles and obligations provided for in the said law was available from the CNPD, in particular at through mandatory prior authorizations in terms of video surveillance and the guidance available on the CNPD website.

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- As for the number of data subjects (article 83.2.a) of the GDPR), the Training

Restreinte notes that this is, except for the breach of the obligation to respect the procedures for exercising the data subject's rights and the right of access same, [...] employees²⁹ working in the two establishments in question from controlled, as well as all the people third parties visiting said establishments.

- 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 has not complied with the duty of care which is incumbent on him under the law, which is the case here.
- As for the measures taken by the inspected party to mitigate the damage suffered by the persons concerned (article 83.2.c), the Restricted Training takes into account the measures taken by the auditee and refers to chapter II.2. section 2.2. of this decision for the related explanations.

72. 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 imposition of a administrative fine and its amount.

73. It also notes that while several measures have been put in place by the control in order to remedy in whole or in part certain shortcomings, these have only been adopted only following the control of CNPD agents on January 29, 2019 (see also point 67 of this decision).

74. Consequently, the Restricted Committee considers that the imposition 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.c), 12.4, 13 and 15 of the GDPR.

75. With regard to the amount of the administrative fine, she recalled that paragraph 3 of Article 83 of the GDPR provides that in the event of multiple violations, as is the case in case, the total amount of the fine may not exceed the amount fixed for the violation the 29 Site information [...].

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worse. To the extent that a breach of Articles 5, 12.4, 13 and 15 of the GDPR is accused of the controlled, the maximum amount of the fine that can be withheld is €20 million or 4% of worldwide annual revenue, whichever is greater being retained.

76. With regard to the relevant criteria of Article 83.2 of the GDPR mentioned above, the Restricted Panel considers that the imposition of a fine of four thousand nine hundred (4,900) euros appears to be effective, proportionate and dissuasive, in accordance with the requirements of Article 83.1 of the GDPR.

2.2 Regarding the taking of corrective measures

77. In its supplementary letter to the statement of objections of 17 August 2020 the head of investigation proposes to the Restricted Panel to adopt the corrective measures following:

“a) Order the controller to put in place measures information intended for third parties (customers, suppliers and other visitors) affected by video surveillance, in accordance with the provisions of Article 13, paragraphs (1) and (2) of the GDPR by providing in particular the identity of the person responsible

of the processing, the contact details of the data protection officer (if applicable), the purposes of the processing and its legal basis, the categories of data processed, the legitimate interests pursued by the controlled, recipients, retention period of the data as well as the indication of the rights of the person and the manner of exercise.

b) Order the controller to complete the information measures

intended for employees affected by

video surveillance,

in accordance with the provisions of Article 13, paragraphs (1) and (2) of the GDPR in

indicating in particular the identity of the data controller, the contact details of the

data protection officer (if applicable), the purposes of the processing and its

legal basis, the categories of data processed, the legitimate interests pursued by

the controlled, the recipients, the retention period of the data as well as

the indication of the rights of the person and the manner of exercising them.

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c) Order the controller to process only relevant data,

adequate and limited to what is necessary with regard to the purposes of protecting the

goods, the safety of users and the prevention of accidents and, in particular, adapting the

video device so as not to film employees at their workstations, nor to film

third parties in areas in which such surveillance is deemed to be

disproportionate, for example by removing or reorienting the cameras.

d) Order the data controller to implement a duration policy

retention of personal data in accordance with the provisions of e)

of Article 5 of the GDPR, not exceeding the duration necessary for the purposes for which they are collected, and in particular by not keeping the images of the video stream longer of a week.

e) Order the controller to implement a policy

allowing the exercise of the rights of data subjects, in accordance with the provisions of Chapter III of the GDPR. »

78. As for the corrective measures proposed by the head of investigation and by reference in point 68 of this decision, the Restricted Panel takes into account the steps taken by the controller, following the on-site visit by CNPD agents, in order to to comply with the provisions of articles 5.1.c), 12, 13 and 15 of the GDPR, as detailed in its letters of February 18, 2019 and September 23, 2020, as well as in its email dated June 30, 2021. More specifically, it notes the following facts:

- As for the corrective measure proposed by the head of investigation mentioned under a) of point

77 of this Decision concerning the introduction of information measures

intended for third parties concerned by video surveillance, in accordance with

to the provisions of article 13.1 and 2 of the GDPR, the controller specified in his letter

September 23, 2020 that a new sticker will be affixed at the entrance to the building.

Nevertheless, the Restricted Committee finds that this sticker does not contain all the

required elements of the first level of information, because the identity of the person responsible for the

treatment and a reference to the more detailed information of the second level make

default. Furthermore, it has no documentation that this sticker was

displayed in the meantime. Regarding the second level of information, the

Restricted Training notes that such information intended for third parties was

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non-existent at the time of the on-site visit by CNPD officials and it does not have no documentation that this has been changed in the meantime.

In view of the insufficient compliance measures taken by the controlled in this case and point 68 of this decision, the Restricted Panel therefore considers that it is appropriate to pronounce the corrective measure proposed by the head of investigation in this regard as set out in point 77 (a) with regard to informing third parties about the video surveillance system.

- As for the corrective measure proposed by the head of investigation mentioned under b) of point 77 of this Decision concerning the introduction of information measures intended for employees affected by video surveillance, in accordance with the provisions of article 13.1 and 2 of the GDPR, the controller specified during the Restricted Training of June 30, 2021 only following the control of CNPD agents, a card informing about video surveillance would have been posted on their board display and an updated charter would have been appended to any employment contract. By email of June 30, 2021, the complainant sent a copy of the said charter and a file containing a pictogram of a camera and indicating that "FOR YOUR SECURITY, THIS ESTABLISHMENT IS UNDER VIDEO SURVEILLANCE".

The Restricted Formation assumes that this sheet is the one displayed on the board display of the controlled, but she has no documentation that she was there actually put. Like the identity of the data controller, the existence of the rights data subjects and a reference to the more detailed information of the second level are missing, said sheet therefore does not contain the information of the first level of information.

With regard to the second level of information, it notes that the controller has specified that it is planned to append a document entitled "GENERAL REGULATIONS ON

DATA PROTECTION (RGPD 2016/679”) to any employment contract. Gold,
this document does not contain all the information provided for in article 13 of the
GDPR. In particular, it lacks the legal basis, updated information on the
data retention period and the right to lodge a complaint with
the CNPD. Moreover, it does not have any documentation that this document has

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actually annexed after the on-site inspection by CNPD agents to the
employee employment contracts.

With regard to the charter appended to the employment contracts, Restricted Training
notes that it also does not contain all of the information provided for in
GDPR Article 13. In particular, it lacks the legal basis, the recipients or
the categories of recipients, the existence of the right of rectification, erasure,
limitation, opposition and portability, as well as the right to lodge a complaint
with the CNPD.

In view of the insufficient compliance measures taken by the
controlled in this case and point 68 of this decision, the Restricted Panel
therefore considers that it is appropriate to pronounce the corrective measure proposed by the
head of investigation in this respect as set out in point 77 (b) with regard to
informing employees about the video surveillance system.

- As for the corrective measure proposed by the head of investigation mentioned under c) of point
77 of this Decision regarding the obligation to process only personal data
relevant, adequate and limited to what is necessary in relation to the purposes of
protection of property, the safety of users and the prevention of accidents and, in

particular, adapt the video system so as not to film employees at their workstation work, nor to film third parties in areas in which such surveillance is considered disproportionate, the Restricted Committee notes that the appendix to the control letter of September 23, 2020 contains photos of the fields of vision cameras, which, except for the camera which aimed at the employees who prepare the meals which seems to be deactivated, are identical to the photos taken from the fields of vision cameras by CNPD agents during their on-site visit on January 29, 2019, that is to say that they always allow permanent monitoring of employees at their place of work, as well as people sitting at the bar and parts of the tables of consumption.

In view of the insufficient compliance measures taken by the controlled in this case and point 68 of this decision, the Restricted Panel therefore considers that it is appropriate to pronounce the corrective measure proposed by the head of inquiry in this regard as set out in point 77 (c).

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- As for the corrective measure proposed by the head of investigation mentioned under d) of point 77 of this decision concerning the obligation to implement a policy retention period of personal data in accordance with the provisions of Article 5.1.e) of the GDPR, not exceeding the duration necessary for the purposes for which they are collected, and in particular by not keeping the images of the video stream more than a week, the Restricted Training takes into account the letter from the control of February 18, 2019 which contains in annex a letter dated 11 February 2019 whereby the company in charge of installing the cameras confirms that the

images were indeed until this date kept for 14 days, but that this duration has been modified and that the images are now only kept for five days before being deleted.

In consideration of the sufficient compliance measures taken by the control in this case and point 68 of this decision, the Restricted Panel considers when there is no need to pronounce the corrective measure proposed by the chief investigation in this regard as set out in point 77 (d).

- As for the corrective measure proposed by the head of investigation mentioned under e) of point 77 of this decision concerning the obligation to implement a policy allowing the exercise of the rights of data subjects, in accordance with the provisions of Chapter III of the GDPR, the Restricted Panel notes that the audit did not did not respond to the Complainant's requests for access, but which he asserted during the session of the Restricted Training of June 30, 2021 that procedures have been put in place to respond quickly to a request for access from a person concerned. However, as the Restricted Formation does not have any documentation that such procedures have actually been put in place, it therefore considers that it is appropriate to pronounce the corrective measure proposed by the head of investigation in this regard as set out in point 77 (e).

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

- to retain the breaches of Articles 5.1.c), 12.4, 13 and 15 of the GDPR;
- impose an administrative fine on Company A in the amount of

four thousand nine hundred (4,900) euros, with regard to breaches of articles

5.1.c), 12.4, 13 and 15 of the GDPR;

- issue an injunction against Company A to bring the

processing with the obligations resulting from Article 13 of the GDPR, within two

months following the notification of the decision of the Restricted Committee, and in particular:

- inform non-employee third parties in a clear and precise manner about the

video surveillance system, either by proceeding with a first and a second

level, or by providing them in a single place with information on all

the elements required under Article 13 of the GDPR.

- individually inform employees in a clear and precise manner about the system

video surveillance either by proceeding via a first and a second level, or

by providing them, in a single place, with all the elements required under

of Article 13 of the GDPR.

- issue an injunction against Company A to bring the

processing with the obligations resulting from Article 5.1.c) of the GDPR, within a period of

two months following the notification of the Restricted Committee's decision, and in particular

- remove numbered cameras [...] or adapt their fields of vision in order to

no longer allow the permanent surveillance of employees who are working

behind the counter, the small bar, behind the sink or in the preparation area

pastries, nor to permanently target people seated in the

bar and parts of the consumption tables;

- remove the camera [...] which films the whole of the kitchen and therefore in a

permanent employees employed there.

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:

- issue an injunction against Company A to bring the processing with the obligations resulting from Articles 12 and 15 of the GDPR, within a period of two months following the notification of the decision of the Restricted Committee, and especially :
- implement an internal policy allowing the exercise of the right of access of persons concerned.

Thus decided in Belvaux on December 15, 2021.

For the National Data Protection Commission sitting in formation
restraint

Tine A. Larsen Thierry Lallemand

Marc Lemmer

President

Commissioner

Commissioner

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.

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