Decision of the National Commission sitting in restricted formation

on the outcome of

Survey No. […] conducted with Company A

belonging to the group of companies called “Group A”

Deliberation No. 13FR/2022 of June 30, 2022

The National Commission for Data Protection sitting in restricted formation

composed of Messrs. Thierry Lallemang and Marc Lemmer, commissioners, and

Mr. François Thill, alternate member;

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 Articles 3, 10.2 and 12;

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. During its deliberation session of February 14, 2019, the National Commission for data protection sitting in plenary session (hereafter: “Formation Plenary”) had decided to open an investigation with company group A (hereinafter: “group A”) on the basis of article 37 of the law of August 1, 2018 on the organization of the National Commission for Data Protection and the General Data Protection Regime data protection (hereinafter "law of 1 August 2018") and to designate Mr. Christophe Buschmann as head of investigation.

2. According to the decision of the Plenary Formation, the investigation conducted by the CNPD was intended to verify compliance with the provisions of the regulations relating to the protection 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 August 1, 2018, in particular by setting up systems for CCTV and geolocation systems installed by four Group A companies, including Company A

3. Company A is a […] registered in the Trade and Companies Register of Luxembourg under number […] and having its registered office at number […], L - […] (hereafter after “the controlled”). The subject of the inspection is [all maintenance and cleaning work].1

4. On May 8, 13 and 14, 2019, CNPD agents carried out visits on site with four Group A companies, including on May 8, 2019 with of the controlled.

5. Dated 16 September 2019, a first Statement of Objections detailing the shortcomings that the head of the investigation considered constituted in this case was notified to the group A, together with the minutes of the aforementioned visits of 8, 13 and 14 May 2019.2

6. On October 16, 2019, Group A filed written submissions on the

statement of objections.

1 See the coordinated statutes of […].

2 Minutes no. […] relating to the on-site fact-finding mission carried out with Group A (here after: “the minutes”).

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7. A supplementary letter to the statement of objections was sent to the Group A dated August 24, 2020.

8. By letter dated 28 September 2020, Group A submitted written observations on the supplementary letter to the statement of objections.

9. The President of the National Commission for Data Protection sitting in a restricted formation on the outcome of the investigation (hereinafter: “Formation Restricted”) informed Group A by letter dated October 16, 2020 that its case would be registered for the Restricted Training session of December 4, 2020 and that he could attend at this session. Group A did not respond to this invitation.

10. During the Restricted Training session of December 4, 2020, the leader investigator presented his oral observations in support of his written observations and answered the questions posed by the Restricted Panel. Group A was not present during the session.

11. After the said session, the Restricted Panel considered that it was not sufficiently enlightened as to which of the different legal entities controlled from group A would be considered as data controllers, or even as joint controllers, depending on the different data processing

of a personal nature checked by CNPD officials during their visits to the site of the

May 8, 13 and 14, 2019.

The Restricted Panel therefore asked the head of investigation on March 31

2021, in accordance with Article 10.2.a) of the CNPD's internal rules,

investigate further on this point.3

12. By letter dated August 27, 2021, CNPD officials therefore requested

additional information to three companies belonging to group A, including the controlled,

i.e. Company A.

3 See additional survey of March 31, 2021 addressed to the auditee and the letter informing the group

A of the supplementary investigation of the same date.

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13. Following the departure of Mr. Christophe Buschmann, the Plenary Formation

decided during its deliberation session of September 3, 2021 that Mr. Alain

Herrmann would from that date hold the position of chief investigator for the investigation in

cause.

14. The controller responded to questions from CNPD officials on 17

September 2021, specifying that it is to be considered as the controller at the

meaning of article 4 point 7) of the GDPR concerning personal data

collected through the geolocation system installed in the vehicles of its

employees.

15. On December 15, 2021, the head of investigation notified the controller of a

new statement of objections (hereinafter: “the new statement of objections”)

detailing the shortcomings that he considered constituted in this case concerning the system of geolocation, and more specifically non-compliance with the requirements prescribed by Article 13 of the GDPR (right to information) with regard to employees, as well as by Article 5.1.e) of the GDPR (principle of limitation of storage).

The head of investigation specified that "this constitutes a new communication of the grievances which also takes into account the elements that you have provided to us on of October 16, 2019, dated September 28, 2020 and dated September 15, 2021 in response to our first statement of objections of 16 September 2019, to our additional letter of August 24, 2020 and our request for information supplements of August 27, 2021."

In addition, he proposed to the Restricted Training in the new communication of the grievances to adopt two corrective measures and to impose a fine on the controlled administrative in the amount of 5,600 euros.

16. By letter dated January 13, 2022, the controller produced written observations on the new statement of objections.

17. Mr. Thierry Lallemang, commissioner, informed the controller by post of the March 25, 2022 that his case would be registered for the session of the Restricted Panel on March 25 May 2022 and that he could attend this meeting. The controller confirmed his presence at said meeting dated May 23, 2022.

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18. During the Restricted Training session of May 25, 2022, the head of investigation and the controlled party, represented by Me […], presented their oral observations in support of

their written observations and answered the questions posed by the Panel

Restraint. The controller spoke last.

19. The decision of the Restricted Panel will be limited to processing controlled by

CNPD officials on May 8, 2019 and the legal and regulatory provisions

taken into account by the head of investigation in his new statement of objections.

II. Place

II. 1. As to the reasons for the decision

A. On the breach linked to the principle of limitation of storage

1. On the principles

20. In accordance with Article 5.1.e) of the GDPR, personal data

must be kept "in a form which permits the identification of the persons

concerned for a period not exceeding that necessary with regard to the purposes

for which they are processed […]".

21. According to recital (39) of the GDPR “personal data

should be adequate, relevant and limited to what is necessary for the purposes

for which they are processed. This requires, in particular, ensuring that the duration of

retention of data is kept to a strict minimum. Character data

personal should only be processed if the purpose of the processing cannot be

reasonably achieved by other means. In order to ensure that the data is not

not kept longer than necessary, time limits should be set by the

controller for erasure or for periodic review […]. »

2. In this case

22. It appears from the minutes of the site visit of 8 May 2019 by the agents of

the CNPD in the premises of the control that the persons concerned by the geolocation

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companies referred to as “Group A”

are the company's employees who use the vehicles for their trips to the

customers.4

23. During the said on-site visit, it was explained to the CNPD agents that the

purposes of geolocation are as follows: “geographic location, protection

assets, optimal fleet management, optimization of work processes as well as

providing responses to customer complaints. »5

24. On the other hand, it appears from the inventory of the documents collected within the framework of

the on-site investigation of May 8, 2019 that a copy of an undated minutes of a meeting

of the Joint Control Committee has been given to CNPD agents and which mentions

nevertheless that

the following purposes would be pursued by

the system of

geolocation:

“- Improved site planning following the known locations of the

vehicles

- Improvement of the productivity of the company, this by reorganizing the rounds of

worksite

- Management of the vehicle fleet, for example the schedule of revisions

- Fight against theft

- Reduction of kilometers traveled (environmental protection) Restructuring of

tours with a view to the well-being of work

- Safety of the employee, the vehicle and the equipment transported

- Justification in the event of a dispute by precise documentation of the vehicle's downtime

for whom it may concern in the event of an inspection

- Assist in performing day-to-day administrative tasks, e.g. tracking and

invoicing of services

- Monitoring of working time and determination of remuneration. »

25. With regard to the retention period of data from the device

of geolocation, it appears from the observations of the CNPD agents that the most

4 See finding 8.7 of the minutes.

5 See finding 8.11 of the minutes.

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old data dated from May 8, 2018, i.e. the retention period of the

data was one (1) year.6

26. According to the head of the investigation, the said data retention period exceeded

largely that which was necessary for the achievement of the aforementioned purposes and for

which the geolocation device had been put in place. For this reason he

was of the opinion that a non-compliance with the requirements of article 5.1.e) of the GDPR was to be retained

(see points 25 and 26 of the new statement of objections).

27. The Restricted Committee recalls that it is the responsibility of the controller

to determine, according to each specific purpose, a retention period

appropriate and necessary to achieve that purpose. Thus, as the system of

geolocation set up by the controller had several purposes, the duration of

conservation are to be individualized for each specific purpose.

28. With regard to the geolocation of employee vehicles, the Training

Restreinte believes that the following retention periods meet this principle:

- personal data obtained by geolocation can in principle

only be kept for a maximum period of two months;

- if the geolocation device is installed for working time verification purposes

(when this is the only possible means), the personal data obtained by the

geolocation which make it possible to check the working time can nevertheless be

kept for a maximum period of three years in accordance with the

prescription laid down in article 2277 paragraph 1 of the Civil Code in matters of action for payment

of employee compensation. In the public sector, this data can be

kept for a maximum period of five years;

- if the personal data obtained by geolocation are used by

the data controller for the purposes of proof for the invoicing of the services

carried out for its customers, the data necessary for such invoicing can be

6 See finding 8.10 of the minutes.

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kept for a period of 1 year, provided that it is not possible to return the

proof of services by other means;

- in the event of an incident, the data may however be kept beyond the time limits

mentioned above, in the context of the transmission of data to judicial authorities

competent authorities and to the law enforcement authorities competent to establish or to prosecute

criminal offences.

The data obtained by geolocation can also be kept beyond

of the aforementioned durations, if these have previously been made anonymous, that is

that is to say that it is no longer possible to make a link – direct or indirect – between this data and

a specific employee.

29. In the present case, it appears from the minutes of the on-site visit by the agents of the

CNPD that the retention period of all data from the

geolocation was one year.7

30. The Restricted Committee therefore considers that, as the system of

geolocation set up by the controller had several purposes, the controller

had not determined, according to said purposes, retention periods

individualized for each specific purpose at the time of the on-site visit by the agents

of the CNPD.

31. In view of the foregoing, she thus agrees with the opinion of the head of investigation8 and concludes

that at the time of the on-site visit by CNPD officials, Article 5.1.e) of the GDPR was not

not respected by the controlled with regard to its geolocation device.

32. As for the measures taken by the control after the on-site visit of the agents of

the CNPD, as detailed in its letters of October 16, 2019, September 17, 2021

and of January 13, 2022, the Restricted Training refers to point 50 as well as to Chapter

II.2. Section 2.2. of this decision for the related explanations.

7 See finding 8.12 of the minutes.

8 Paragraph 26 of the new statement of objections.

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

1. On the principles

33. 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 […]. »

34. 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;

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;

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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;

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.

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4. Paragraphs 1, 2 and 3 do not apply where and to the extent that the person

concerned already has this information. »

35. 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.9 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”).

36. 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

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

2018, as precisely the aforementioned guidelines on transparency.10

2. In this case

37. During the on-site visit, it was explained to CNPD officials that the

persons concerned by the geolocation are only the employees of the company

who use the vehicles for their journeys to customers.11 The agents of the

CNPD also noted the absence of proof that “the employees concerned were

validly informed of the installation of the geolocation device in vehicles

[…]. »12

38. The head of investigation considered in this context in the new communication

grievances that in “his letter of October 16, 2019, the control specifies having disseminated

to employees an information notice on the protection of personal data

by e-mail dated October 15, 2019. This information notice is

online on the Group A intranet. […]” However, he was of the opinion that even “if the fact of informing

employees on the protection of personal data by means of a notice

9 See in particular Articles 5.1.a) and 12 of the GDPR, see also recital (39) of the GDPR.

10 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.

11 See finding 8.7 of the minutes.

12 See finding 8.8 of the minutes.

information makes it possible to demonstrate a desire to comply, it is up to

find that the non-compliance with article 13 of the GDPR was established on the day of the visit

on the site. (Points 20 and 21 of the new Statement of Objections).

39. In his letter of January 13, 2022, the controller mentioned having informed by

through internal communication to all employees that their vehicles were equipped

a geolocation system.13

40. The Restricted Committee would first like to point out that Article 13 of the GDPR refers 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 concerned to the location of said information (for example by means of a link direct, a QR code, etc.). (WP260 rev. 01. paragraph 33).

41. 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 geolocation. 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, the existence of the rights of data subjects, the information with the most strong impact on the treatment or any treatment likely to surprise the data subjects, as well as a reference to the more detailed information of the second level (e.g. via QR code or website address) 14. 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

13 See Exhibit 1 attached to the letter from the audit dated January 13, 2022.

14 Cf.WP260 rev 01 (point 38) and EDPS Guidelines 3/2019 on data processing of a personal nature by video devices, version 2.0, adopted on 29 January 2020 (points 114. and 117.).

employees or a link on the website to an information notice with regard to
non-salaried third parties.15

42. The Restricted Committee notes in this context that in its letter of 17
September 2021 in response to the CNPD's additional investigation, the controller specified
that during a meeting of the joint committee on January 21, 2014 “the
purposes and main characteristics of the planned geolocation system. ". As
the purposes are identical to those already contained in the copy of a report not
dated a meeting of the Joint Control Committee given to CNPD agents during their
on-site visit of 8 May 2019 (see point 24 of this decision), it concludes that there
These are the same minutes of the joint committee dated January 21, 2014.
However, the Restricted Committee wishes to specify that the simple information, or even the agreement
of the Joint Control Committee on the implementation of a geolocation system, 16
does not ensure that the controlled employees had been individually informed about
the specific elements of Article 13 of the GDPR, unless the controller could not demonstrate
the contrary, which is not the case here.

43. Furthermore, she notes that she does not have any documentation that the note
on the geolocation dated April 25, 2016, but unsigned, and attached to the letter of the
of January 13, 202217 was given to the employees. Moreover, the said note is addressed
to "[...]" personnel and it does not contain the required elements of the first level
of information, nor of the second level of information (see point 41 on information at two
levels).

44. In view of the foregoing, it therefore concludes that at the time of the on-site visit CNPD agents, article 13 of the GDPR was not respected by the control in geolocation for employees.

15 See WP260 rev. 01 (Item 38.)

16 See the said minutes of the joint audit committee of January 21, 2014.

17 See attachment no. 1 to the audit letter of January 13, 2022.

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45. As for the measures taken by the control after the on-site visit of the agents of the CNPD, Restricted Training refers to point 50 as well as to Chapter II.2. Section 2.2. of this decision for the related explanations.

II. 2. On corrective measures and fines

1. Principles

46. 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;

(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. »

47. 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

of the state or the municipalities.

48. 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".

49. 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.

50. 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 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

51. Taking into account the elements provided for in Article 83.2 of the GDPR, the head

investigation proposed in the new statement of objections to the Restricted Panel to impose an administrative fine on the person checked in the amount of 5,600 euros (see points 29 to 31 of the new statement of objections).

52. In his letter of January 13, 2022, the auditee considered that the shortcomings reproached remain minimal, that the first measures to remedy them were adopted almost immediately and that he was never subject to any punitive and that no administrative or judicial record is to be deplored against him. For these reasons, he called for clemency from the Restricted Panel in order to "requalify the fine pecuniary proposed by the head of investigation, as a first simple warning. Alternatively, if the Restricted Committee nevertheless came to the conclusion to decide a fine, Company A kindly asks him to limit it to the total amount of 3,500.- €. »

53. In order to decide whether to impose an administrative fine and to decide, where applicable, the amount of this fine, the Restricted Panel also analyzes the elements provided for by said article 83.2 of the GDPR:

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As to the nature and seriousness of the breach (Article 83.2.a) of the GDPR), the Restricted Panel notes that with regard to the breach of Article 5.1.e) of the GDPR, it constitutes a breach of a fundamental principle of the GDPR (and data protection law in general), namely the principle of limitation of storage set out in Chapter II “Principles” of the GDPR.

As regards the breach of the obligation to inform the persons concerned in accordance with article 13 of the GDPR, the Restricted Training recalls that

companies referred to as “Group A”

information and transparency relating to the processing of personal data
personnel are essential obligations incumbent on those responsible for
processing so that individuals are fully aware of the use that
will be made of their personal data, once collected. A
breach of Article 13 of the GDPR thus constitutes an infringement of the rights
of the persons concerned. This right to information has also been reinforced in
terms of the GDPR, which demonstrates their particular importance.
The Restricted Panel nevertheless takes into account that the joint committee of the
controlled had been informed and had validated during its installation the use of
geolocation in 2014.

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As for the duration criterion (article 83.2.a) of the GDPR), the Restricted Training
notes that these shortcomings have persisted over time, at least since the
May 25, 2018 and until the day of the on-site visit. She recalls here that two years
have separated the entry into force of the GDPR from its entry into force for
enable data controllers to comply with the obligations
are incumbent, even if an obligation to respect the principle of the limitation of
retention, as well as a comparable information obligation existed
already in application of articles 4.1. d), 10.2, and 26 of the repealed law of August 2, 2002
on the protection of individuals with regard to the processing of personal data
personal character. Guidance on the principles and obligations provided
in the said repealed law was available from the CNPD in particular through
prior authorizations in terms of geolocation, as well as on the site
CNPD website.

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As for the number of data subjects (Article 83.2.a) of the GDPR), the Formation Restreinte notes that it was explained to CNPD officers during their on-site visit that "certain vehicles are allocated to employees specific and that in principle only the employees concerned are authorized to use their respective vehicles."18 Thus, she considers that these are the different

18 Finding 8.7 of the minutes.

controlled employees who used the […] cars equipped with a geolocation who are affected by the data processing carried out by the geolocation system.

The Restricted Formation takes into account in this context the assertion of the chief investigation that the geolocation system is not installed in all of the controlled company cars (point 30.b. of the new communication of the grievances).

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As to whether the breaches were committed deliberately or not (by negligence) (article 83.2.b) of the GDPR), the Restricted Panel reminds that "not deliberately" means that there was no intention to commit the breach, although the controller or processor has not complied with the duty of care incumbent upon it under the law.

In this case, the Restricted Committee is of the opinion that the facts and breaches

observed do not reflect a deliberate intention to violate the GDPR on the part of

of the controlled.

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As for the degree of cooperation established with the supervisory authority (Article 83.2.f) of the

GDPR), the Restricted Training takes into account the assertion of the head of investigation

that the co-operation of the auditee throughout the investigation was good, as well as

that of its will to comply with the law as soon as possible (point 30.c. of

the new statement of objections).

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As for the measures taken by the auditee to mitigate the damage suffered by the

data subjects (article 83.2.c) of the GDPR), the Restricted Training takes

account of the measures taken by the auditee and refers to Chapter II.2. section 2.2.

of this decision for the related explanations.

54. 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.

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55. The Restricted Committee also notes that while several measures have been implemented

place by the auditee in order to remedy in whole or in part certain shortcomings,

these were only adopted following the control of CNPD agents on 8

May 2019 (see also point 49 of this decision).

56. With regard to the breach of Article 5.1.e) of the GDPR (principle of limitation of

retention of data), the Restricted Committee considers that the head of investigation did not take into account the conformity of the control with respect to the duration of conservation corrected for the geolocation system at the time of the adoption of the new statement of objections and this nor with regard to the corrective measures proposed nor with regard to the amount of the proposed administrative fine. Good that the breach was established on the day of the on-site visit, it nevertheless considers, that in view of the circumstances of the case, the amount of the fine should be reduced administrative due to the compliance of the audited with respect to the breach in Article 5.1.e) of the GDPR before the adoption of the new Statement of Objections.

57. Consequently, the Restricted Committee considers that in principle the delivery of a administrative fine is justified with regard to the criteria set out in Article 83.2 of the GDPR for breach of Articles 5.1.e) and 13 of the GDPR.

58. With regard to the amount of the administrative fine, the Restricted Panel recalls that paragraph 3 of Article 83 of the GDPR provides that in the event of breaches multiple, as is the case here, the total amount of the fine cannot exceed the amount fixed for the most serious violation. To the extent that a breach of articles 5 and 13 of the RGPD is reproached to the controlled, the maximum amount of the fine that can be withheld amounts to 20 million euros or 4% of the annual turnover worldwide, whichever is higher.

59. With regard to the relevant criteria of Article 83.2 of the GDPR mentioned above, the Restricted Panel considers that the pronouncement of a fine of one thousand four hundred (1,400) euros appears to be effective, proportionate and dissuasive, in accordance with the requirements of Article 83.1 of the GDPR.

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companies referred to as “Group A”

20/25

2.2. About taking corrective action

60. The adoption of the following corrective measures was proposed by Chief

inquiry to the Restricted Panel in its new statement of objections:

"- Order the controller to complete the information measures intended for the persons

affected by geolocation, in accordance with the provisions of Article 13,

paragraphs 1 and 2 of the GDPR by providing in particular:

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the identity and contact details of the controller;

the purposes of the processing for which the personal data are intended

as well as the legal basis of the processing;

the legitimate interests pursued by the controller;

the recipients or categories of recipients of the personal data

personal ;

the length of the conversation ;

the existence of the right to request from the controller access to the

personal data, rectification or erasure thereof, or

restriction of processing relating to the data subject; and

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the right to lodge a complaint with a supervisory authority.

- Order the data controller to implement a retention period 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. »

61. As for the corrective measures proposed by the head of investigation and by

reference to point 50 of this decision, the Restricted Formation takes into account

the steps taken by the control, following the visit of the CNPD agents, in order to

comply with the provisions of Articles 5.1.e) and 13 of the GDPR, as detailed in

his letters of October 16, 2019, September 28, 2020, and January 13, 2022.

More specifically, it takes note of the following facts:

- As for the corrective measure proposed by the head of investigation included in the first

indent of point 60 of this Decision concerning the introduction of measures

information for people affected by

the system of

geolocation in accordance with the provisions of Article 13 of the GDPR, the controlled

appended to its letter of October 16, 2019 a document entitled “policy of

data protection of Group A employees” sent to them by post

dated October 15, 2019 and posted on their intranet.19

The Restricted Committee believes that said policy contains some of the

mentions provided for in article 13 of the GDPR. However, she finds that she

mentions all the legal bases applicable to the various processing operations carried out

by the controlled, without making a differentiation by targeted treatment,

and that therefore there is no legal basis for the processing of personal data

personnel operated by the geolocation device.

Furthermore, while point 5 of the data protection policy of

Group A employees relates to the recipients or categories of recipients of

personal data, said point mentions all the recipients

potential of the various treatments carried out by the controlled party, without

differentiate by targeted treatment. In addition, Restricted Training

notes that the parent company of group A, to which the controlled party belongs, can

receive personal data from employees. Now, like the house-

mother is located [in a third country], the controlled must inform the employees of his

intention to transfer personal data to a

recipient in a third country and […] of the existence of an adequacy decision

issued by the European Commission20 or, in the case of transfers referred to in

articles 46, 47 and 49 of the GDPR, the reference to the appropriate or adapted safeguards

and how to obtain a copy or where they have been made available

in accordance with section 13.1. f) GDPR.

Furthermore, taking into account the different purposes pursued by the system

geolocation21 (see points 23, 24 and 42 of this decision), said

19 Appendices 2 and 3 of the audit letter of October 16, 2019.

20 […]

21 See minutes of the Joint Audit Committee of January 21, 2014, as well as the letter from the

controlled on September 17, 2021.

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policy does not contain all of the purposes pursued within the meaning of Article

13.1.c) GDPR.22

Regarding the note on geolocation dated April 25, 2016, but not

signed, as well as the “Car Policy Group A Luxembourg” dated 31 May 2019 and

appended to the control letter of January 13, 2022, the Restricted Training

notes that the two documents do not contain either the required elements of the first

level of information, nor of the second level of information (see point 41 of the

this decision on information at two levels). In particular, it lacks the base

legal basis for the processing, the recipients or categories of recipients of the

personal data, the retention period of the personal data

staff, as well as the existence of the various rights mentioned in article 13.2

points b) and d) of the GDPR.

Moreover, the said note is addressed to the staff "[...]" and not to the staff

of Company A.

In view of the insufficient compliance measures taken by the

controlled in this case and point 50 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 the first indent of point 60 in

concerning the information of employees about the geolocation system.

- As for the corrective measure proposed by the head of investigation listed under

second indent of point 60 of this Decision concerning the obligation to

implements a retention period policy for personal data

personnel in accordance with article 5.1.e) of the GDPR, not exceeding the necessary duration

for the purposes for which they are collected, the controller had specified in

his letter of October 16, 2019 that the retention period of the data of

geolocation has been reduced to thirty days and that this "modification is

effective since October 15 in our geolocation tool […]". In appendix

22 The policy in question only mentions on page 6 the following purposes: "To optimize the

work process by a better distribution of available resources, improve safety

property and above all guarantee security in the event of an incident. »

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of said mail was an email from said company […], which makes available

the geolocation tool of the controlled, and in which the said company indeed specified

that the retention period has been reduced to one month both for the data of

geolocation, data concerning working hours, only for

connections and user actions and data related to the "EcoDrive" function.

In addition, the data protection policy for employees of group A

appended to the audit letter of October 16, 2019 also mentions a

retention period of one month and the reports in attachment 2 of the mail of the

of January 13, 2022 also illustrate that the retention period has been

fixed at one month.

In its response letter to the new statement of objections of 13 January

2022, the controller indicated on the other hand that he “signed a subcontracting contract

of data with the supplier […], which enabled us to reduce, by a

remote control, the retention period of this data, to six months. »

However, as the controller confirmed during the Restricted Training session of the

25 May 2022that the indication of a duration of six months in the aforementioned letter of 13

January 2022 was a clerical error and the retention period was

reduced immediately after the on-site investigation to one month, the Training

Restricted decided that it is the duration of one month that is to be taken into account.

Considering the sufficient compliance measures taken by the

controlled in this case and point 50 of this decision, the Restricted Panel

therefore considers that there is no reason to pronounce the corrective measure proposed

by the head of investigation in this regard as set out in the second indent of point 60.

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.e) and 13 of the GDPR;

- impose an administrative fine on Company A in the amount of

one thousand four hundred (1,400) euros, with regard to the breaches constituted in articles 5.1.

e) and 13 GDPR;

- issue against Company A an injunction to bring the

processing with the obligations resulting from articles 13.1 and 13.2 of the GDPR, within a period

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

particular :

-

individually inform employees in a clear and precise manner about the measures

geolocation as set out in point 61 of this decision, either by

proceeding via a first and a second level, or by providing them, in a

single place or in the same document (in paper or electronic format),

information on all the elements required under Article 13 of the GDPR

by adapting and supplementing the “employee data protection policy”

of group A" to which Company A belongs.

Thus decided in Belvaux on June 30, 2022.

For the National Data Protection Commission sitting in formation

restraint

Thierry Lallemang

Marc Lemmer

Francois Thill

Commissioner

Commissioner

Substitute member

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.