

Decision of the National Commission sitting in restricted formation  
on the outcome of investigation No. [...] conducted with Company A  
belonging to the group of companies called “Group A”

Deliberation No. 15FR/2022 of June 30, 2022

The National Commission for Data Protection sitting in restricted formation  
composed of Messrs. Thierry Lallemand 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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Decision of the National Commission sitting in restricted formation on the outcome of  
survey no. [...] conducted with Company A. belonging to the group  
companies referred to as “Group A”

## 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 purpose of the control is [to provide social services]. . » 1

4. On May 8, 13 and 14, 2019, CNPD agents carried out visits on site with four Group A companies, including on May 13, 2019 with of the controlled, and more specifically with three buildings [offering social services] belonging to the controlled:

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[...], [...]L-[...] (hereinafter "Building A");

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[...], [...], L-[...] (hereinafter “Building B”);

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[...], [...], L-[...] (hereinafter “Building C”)<sup>2</sup>

<sup>1</sup> See the coordinated statutes of [...], article 4.

<sup>2</sup> See Minutes no. [...] relating to the on-site fact-finding mission carried out with Group A

[...] (hereinafter: “the minutes”), first page.

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Decision of the National Commission sitting in restricted formation on the outcome of  
survey no. [...] conducted with Company A. belonging to the group  
companies referred to as “Group A”

2/25

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.

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

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.

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Decision of the National Commission sitting in restricted formation on the outcome of survey no. [...] conducted with Company A. belonging to the group companies referred to as “Group A”

3/25

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.<sup>3</sup>

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.

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 video surveillance system installed around and inside

of the three buildings mentioned above in point 4 of this decision, that is to say [of the

building A], [building B], as well as [building C].

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

video surveillance, and more specifically non-compliance with the requirements prescribed by

Article 13 of the GDPR (right to information) with regard to data subjects,

i.e. employees and non-employees, i.e. customers, suppliers,

service providers and visitors (hereinafter: "third parties"), as well as by

Articles 5.1.a) and 12.1 and 12.7 of the GDPR (principle of transparency).

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

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

survey no. [...] conducted with Company A. belonging to the group

companies referred to as "Group A"

4/25

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 a corrective measure and to impose an administrative fine on the auditee for an amount of 1,000 euros.

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

17. Mr. Thierry Lallemand, 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.

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 13, 2019 and the legal provisions and regulations taken into account by the head of investigation in his new communication grievances.

## II. Place

### II. 1. As to the reasons for the decision

#### A. On the breach of the obligation to inform the persons concerned

##### 1. On the principles

20. Article 13 of the GDPR provides the following:

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Decision of the National Commission sitting in restricted formation on the outcome of survey no. [...] conducted with Company A. belonging to the group

companies referred to as “Group A”

5/25

“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;

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;

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Decision of the National Commission sitting in restricted formation on the outcome of survey no. [...] conducted with Company A. belonging to the group companies referred to as “Group A”

6/25

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.

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

concerned already has this information. »

21. 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.<sup>4</sup> Said 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”).

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

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

survey no. [...] conducted with Company A. belonging to the group

companies referred to as “Group A”

7/25

22. 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. 5

2. In this case

23. The CNPD agents noted during their visits to [building A]

that the presence of the cameras is signaled to the persons concerned at the entrance by

the affixing of a pictogram and a sticker indicating the old number of

the authorization issued by the CNPD, as well as by an information poster affixed to the

main entrance door.<sup>6</sup>

In [building B], the presence of the cameras was indicated at the entrance of the building by a sticker indicating the old number of the authorization issued by the CNPD and by the same information poster on the main entrance door [of building A].<sup>7</sup> [In building C], there is had the same information in place at the time of the CNPD agents' visit as at the time of the [building B], with the only difference that the poster mentioned was also affixed to the reception desk. <sup>8</sup>

24. Moreover, it was explained to CNPD officials that the purposes pursued by the installation of video surveillance are identical in the three buildings, i.e. that is to say that it is aimed at "the protection of property and people, the safety of users, the prevention of accidents as well as safeguarding the vital interests of people, in particular to trace any expulsions of residents. »<sup>9</sup>

25. However, the head of investigation retained in his new statement of objections whereas "some information is provided by the controlled to signal the presence of video surveillance, it must be noted that in view of the requirements of article 13 above, this information is incomplete. [...] It should therefore be noted that the

<sup>5</sup> 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](https://edpb.europa.eu/sites/edpb/files/files/news/endorsement_of_wp29_documents_en_0.pdf).

<sup>6</sup> See finding 17 of the minutes.

<sup>7</sup> See finding 25 of the minutes

<sup>8</sup> See finding 26 of the minutes.

<sup>9</sup> See findings 22, 24 and 30 of the minutes.

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Decision of the National Commission sitting in restricted formation on the outcome of survey no. [...] conducted with Company A. belonging to the group companies referred to as "Group A"

old CNPD vignettes and pictograms at the entrance to buildings as well as the "posters" affixed by the control are not likely to meet the conditions posed by the aforementioned article 13. (New statement of objections, paragraphs 19 and 20).

26. In this context, the head of investigation took into account the explanations of the inspector contained in his letter of October 16, 2019, which he had therefore, among other things, puts in place a personal data protection policy applicable to third parties, an information notice on personal data intended for the employees of the control and which would have been distributed to them by mail electronic dated October 15, 2019 and finally that he had modified the panels of information (see points 21 to 23 of the new statement of objections).

27. However, he was of the opinion that even if "the fact of putting in place policies of protection of personal data applicable to third parties and to employees and to modify the CCTV signaling panels makes it possible to demonstrate a desire to comply, it is necessary to note that the non-compliance with article 13 of the GDPR was acquired on the day of the on-site visit. (Item 24 of the new Statement of Objections).

28. 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).

29. 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, the existence of the rights of data subjects, the information with the most

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Decision of the National Commission sitting in restricted formation on the outcome of survey no. [...] conducted with Company A. belonging to the group companies referred to as "Group A"

9/25

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)<sup>10</sup>. 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 non-salaried third parties.<sup>11</sup>

30. The Restricted Committee notes that during the visits to the three buildings of the checked, the persons concerned were informed of the presence of the video surveillance by vignettes indicating the old number of the authorization issued by the CNPD and by information posters. [In Building A], there was also a pictogram of a camera with the words "VIDEOSURVEILLANCE" on the door of entry.

31. She would first like to point out that since the old vignettes were issued by the CNPD under the former authorization regime of the amended law of 2 August 2002

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

staff which was repealed by the law of August 1, 2018, they have become obsolete and

since the entry into force of the GDPR, other rules in this area are applicable.

32. Furthermore, without prejudice to the dimension and size of the typeface

used (see in this context part II. 1. B. on the breach of the principle of

transparency), the Restricted Committee notes that the posters in place at the time of

the survey contained neither the information of the first level of information, nor of the

second level of information (see point 29 of this decision on the information to be

two levels). In particular, it lacks the legal basis for the processing, the existence of the right

to ask the data controller to rectify or delete the data,

a limitation of the processing relating to the person concerned, as well as the right to oppose

10 See 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.).

11 See WP260 rev. 01 (Item 38.)

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

survey no. [...] conducted with Company A. belonging to the group

companies referred to as "Group A"

10/25

to processing, the right to data portability and the right to lodge a complaint

with a supervisory authority.

The fact that [in building A], there was also a pictogram of a camera with the mention

"VIDEO SURVEILLANCE" on the entrance door has no effect in the context of

the analysis of compliance with article 13 of the GDPR, but will be taken into account in the part

concerning a possible breach of the principle of transparency.

33. 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 with regard to video surveillance with regard to third parties, as well as employees.

34. As for the measures taken by the control after the on-site visit of the agents of the CNPD, Restricted Training refers to point 51 as well as to Chapter II.2. Section 2.2. of this decision for the related explanations.

B. On the breach of the principle of transparency

1. On the principles

35. Section 5.1. a) GDPR requires personal data to be be "processed in a lawful, fair and transparent manner with regard to the data subject (lawfulness, fairness, transparency)".

36. With specific regard to the transparency of information and communications, Article 12 of the GDPR provides the following:

"1. The controller shall take appropriate measures to provide any information referred to in Articles 13 and 14 as well as to carry out any communication to the under Articles 15 to 22 and Article 34 with regard to personal processing concerned in a concise, transparent, comprehensible and easily accessible manner, clear and simple terms, in particular for any information intended specifically to a child. Information is provided in writing or by other means including, where appropriate, electronically. When the data subject makes the

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Decision of the National Commission sitting in restricted formation on the outcome of survey no. [...] conducted with Company A. belonging to the group companies referred to as "Group A"

request, the information may be provided orally, provided that the identity of the data subject is demonstrated by other means.

[...]

7. The information to be communicated to the persons concerned pursuant to Articles 13 and 14 can be provided with standardized icons to provide good easily visible, understandable and clearly legible overview of the processing intended. When the icons are presented electronically, they are readable by machine.

[...]. »

37. Recital (58) of the GDPR specifies in this context that the “principle of transparency requires that any information addressed to the public or to the data subject be concise, easily accessible and easy to understand, and stated in clear terms simple and, in addition, where appropriate, illustrated with visual elements. »

2. In this case

38. During visits to the three buildings belonging to the controlled, the agents of the CNPD noted that the presence of the cameras is signaled to the people concerned by the affixing of "a sticker indicating the old number of the authorization issued by the CNPD and an information "poster" (small and showing a text whose font size is quite small) [...]"<sup>12</sup>

39. In the new Statement of Objections, the Head of Investigation considered that the information "provided is not to be considered as easily visible, nor clearly legible, especially given the small size of the posters and the small font size used. The information is also not easily accessible in view of a significant proportion of the population of the people concerned (elderly people), nor accompanied by icons standardized (such as pictograms) making it easy to understand that it is a video surveillance that is implemented on the sites

concerned. He was also of the opinion that these “arguments can also be

12 See findings 17, 25 and 26 of the minutes.

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Decision of the National Commission sitting in restricted formation on the outcome of survey no. [...] conducted with Company A. belonging to the group companies referred to as “Group A”

12/25

applied to the problem of the absence of specific information provided to members of staff regarding video surveillance. (Points 28 and 29 of the new statement of objections).

40. In this context, the head of investigation took into account the explanations of the inspector contained in his letter of October 16, 2019 stating that he had modified the information panels to make them more readable and visible .

However, even if the fact of modifying the road signs of the video surveillance made it possible to demonstrate a desire to comply, the head of investigation was of the opinion that on the day of the on-site visit, the controller failed in its obligation to respect the principles of transparency arising from articles 5.1.a) and 12.1 and 12.7 of the GDPR (points 23, 24 and 30 of the new statement of objections).

41. The Restricted Committee takes into account in this context that the principle of transparency provided for in Article 5.1. a) of the GDPR applies practice in Articles 12 and following of Chapter III of the GDPR. While Articles 13 and 14 concretely specify which data must be provided by the data controller. processing to a data subject for a given processing, Article 12 takes up, between others, the obligations incumbent on the data controller as well as the terms specific to implement.

Furthermore, it considers that “the quality, accessibility and intelligibility of the information



are as important as the actual content of the information in terms of transparency

to be provided to data subjects. (WP 260 rev. 01, point 4).

42. Taking into account that the vignettes indicating the old number of authorizations issued by the CNPD were the size of a business card and by comparing the size of the said thumbnail to that of the posters in place at the time of the visit to the three controlled buildings, on the one hand, and considering the small font size of writing used for the said posters, on the other hand, the Restricted Formation joins the opinion of the head of investigation that the information provided was not to be considered as easily visible, nor clearly legible. Moreover, as the majority of people concerned are elderly people, the control should have taken into account "the vulnerabilities of these people in its analysis of how to ensure respect for its obligations of transparency with regard to these data subjects. This requirement

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Decision of the National Commission sitting in restricted formation on the outcome of survey no. [...] conducted with Company A. belonging to the group companies referred to as "Group A"

13/25

is linked to the need for the controller to assess the likely level of understanding of its audience [...]. (WP 260 rev. 01, point 16).

43. Furthermore, she notes that a single size and color was used for the information indicated on the posters and that no standardized icon was there easily allowing the persons concerned (third parties and employees) to understand that video surveillance was being implemented. The purpose of use of icons is precisely to improve "transparency for the persons concerned by possibly reducing the need to present large quantities written information to them. (WP 260 rev. 01, point 52).

44. The fact that [in building A] there was also a pictogram of a camera with the mention "VIDEOSURVEILLANCE" written in red and black on the entrance door allows to increase transparency and understanding of the processing in question by the majority of the persons concerned in this case (elderly people). Nevertheless, the thumbnail and the poster in place at the time of the visit [to building A] were the same as those in place in [building B], and [in building C], and the Restricted Formation therefore returns to its related comments in points 42 and 43 above.

45. In view of the foregoing, the Restricted Panel therefore concludes that at the time visits to the three controlled buildings by CNPD agents, the articles 5.1.a), 12.1 and 12.7 of the GDPR were not respected by the control in terms of video surveillance for third parties, as well as employees.

46. As for the measures taken by the control after the visits of the agents of the CNPD, Restricted Training refers to point 51 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

47. 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:

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Decision of the National Commission sitting in restricted formation on the outcome of survey no. [...] conducted with Company A. belonging to the group companies referred to as "Group A"

14/25

"(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;

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

survey no. [...] conducted with Company A. belonging to the group

companies referred to as “Group A”

j) order the suspension of data flows addressed to a recipient located in a third country or an international organisation. »

48. 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.

49. 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;

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

survey no. [...] conducted with Company A. belonging to the group

companies referred to as “Group A”

16/25

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”.

50. 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.

51. 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

52. 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 1,000 euros (see points  
33 to 35 of the new statement of objections).

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Decision of the National Commission sitting in restricted formation on the outcome of  
survey no. [...] conducted with Company A. belonging to the group  
companies referred to as “Group A”

17/25

53. In his letter of January 13, 2022, the auditee confirmed his agreement to the  
Restricted training with the said fine proposed by the head of investigation.

54. 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:

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.a)  
of the GDPR, combined with the breach of Article 12.1 and 12.7 of the GDPR, it is  
constituting a breach of a fundamental principle of the GDPR (and of the law of the  
data protection in general), namely the principle of transparency enshrined  
in Chapter II “Principles” of the GDPR.

This principle, “when respected by data controllers, allows  
data subjects to control their personal data and  
to require data controllers and processors to provide  
accounts in this regard, for example by granting or withdrawing their consent  
informed and enforcing their rights as data subjects. »

(WP 260 rev.01, point 4).

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 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 Training nevertheless takes into account that partial information data subjects did indeed take place, but that it was incomplete and

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Decision of the National Commission sitting in restricted formation on the outcome of survey no. [...] conducted with Company A. belonging to the group companies referred to as “Group A”

18/25

not transparent, especially in view of the fact that the majority of people concerned were elderly people.

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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 a comparable information obligation already existed in application of articles 10.2 and 26 of the repealed law of 2 August 2002 relating to the

protection of individuals with regard to the processing of personal data

personal. Guidance relating to the principles and obligations provided for in said

repealed law was available from the CNPD, in particular through

prior authorizations for video surveillance, 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

Restricted Training notes that these are employees who work at the three

buildings belonging to the controlled, i.e. [building B], [building A] and

[in building C], as well as all third parties, i.e. customers,

suppliers, service providers and visitors, who go there [...].

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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

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

survey no. [...] conducted with Company A. belonging to the group



companies referred to as “Group A”

19/25

that the co-operation of the auditee throughout the investigation was good, as well as than its desire to comply with the law as soon as possible (point 34.d. of the new statement of objections).

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.

55. 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.

56. 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 inspection by CNPD officials on 13 May 2019 (see also point 50 of this decision).

57. 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.a), 12.1, 12.7 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, 12 and 13 of the GDPR is accused of 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 Formation considers that the pronouncement of a fine of one thousand (1,000) euros appears to be both effective, proportionate and dissuasive, in accordance with the requirements of GDPR Article 83.1.

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Decision of the National Commission sitting in restricted formation on the outcome of survey no. [...] conducted with Company A. belonging to the group companies referred to as "Group A"

20/25

## 2.2. About taking corrective action

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

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

"Order the controlled person to complete the information measures intended for the persons affected by video surveillance, in accordance with the provisions of Article 13, paragraphs 1 and 2 of the GDPR by providing in particular:

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the legal basis for the processing;

the legitimate interests pursued by the controller;

the recipients or categories of recipients of the personal data

personal ;

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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. »

61. As to the corrective measure proposed by the head of investigation and by reference  
in point 51 of this decision, the Restricted Panel 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.a), 12.1 and 12.7 and Article 13 of the GDPR,  
as detailed in his letters of October 16, 2019, September 28, 2020, as well as  
as of January 13, 2022. More specifically, it notes the following facts:

- As for the corrective measure proposed by the head of investigation mentioned in point 60  
of this Decision concerning the introduction of information measures on  
the video surveillance system intended for third parties in accordance with  
to the provisions of Article 13 of the GDPR, the controller specified in his letter  
of October 16, 2019 that to “perfect the level of information of third parties, we  
have prepared a notice relating to our data protection policy.

The latter can be viewed on our website but is also available  
with our hostesses on request" and that he had modified the panels

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Decision of the National Commission sitting in restricted formation on the outcome of  
survey no. [...] conducted with Company A. belonging to the group  
companies referred to as “Group A”

information dated October 15, 2019 "so that they are more readable and visible".<sup>13</sup>

The Restricted Panel considers that the new information panel contains the required elements of the first level of information and it notes that the information on said sign is in a larger font than on the poster in place at the time of the on-site inspection, only two different colors are used, and that a pictogram of a camera is displayed there. In what concerns the aforementioned notice, it is of the opinion that it contains the majority of the elements required for the second level, i.e. all of the information provided for in article 13 GDPR, except recipients or categories of data recipients collected through the CCTV system.

In view of the insufficient compliance measures taken by the controlled in this case and point 51 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 60 with regard to informing third parties about the video surveillance system.

- As for the corrective measure proposed by the head of investigation mentioned in point 60 of this Decision concerning the introduction of information measures on the video surveillance system for employees in accordance with the provisions of Article 13 of the GDPR, the controller specified in his letter of 16 October 2019 that an employee data protection policy has been drafted and distributed "dated October 15 to all of our employees and posted on our intranet. »<sup>14</sup>

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 different processing operations

carried out by the person controlled, without however carrying out a differentiation by

13 See Appendices 1 and 4 of the audit letter of October 16, 2019

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

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Decision of the National Commission sitting in restricted formation on the outcome of  
survey no. [...] conducted with Company A. belonging to the group  
companies referred to as “Group A”

22/25

intended processing, and therefore the legal basis for the data processing is missing  
of a personal nature operated by the video surveillance system.

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 [...], the controlled must inform the employees of his intention

to carry out a transfer of personal data to a recipient in

a third country and[...] the existence of an adequacy decision issued by the

European Commission<sup>15</sup> 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 the means  
to obtain a copy or the place where they have been made available

in accordance with section 13.1. f) GDPR.

In view of the insufficient compliance measures taken by the

controlled in this case and point 51 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 60 with regard to informing employees about the video surveillance system.

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.a), 12.1, 12.7 and 13 of the GDPR;

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Decision of the National Commission sitting in restricted formation on the outcome of survey no. [...] conducted with Company A. belonging to the group companies referred to as “Group A”

23/25

- impose an administrative fine on Company A in the amount of one thousand (1,000) euros, with regard to the breaches constituted in articles 5.1.a), 12.1, 12.7 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 :

□

inform non-employee third parties in a clear and precise manner about the video surveillance system, either 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, either by proceeding by a first and a second level by adapting the information of the second

level of information so that they contain all the information at the meaning of Article 13 of the GDPR, including information on the recipients or categories of recipients of the data collected through the system of video surveillance.

□  
individually inform employees in a clear and precise manner about the system video surveillance 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.

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Decision of the National Commission sitting in restricted formation on the outcome of survey no. [...] conducted with Company A. belonging to the group companies referred to as “Group A”

24/25

Thus decided in Belvaux on June 30, 2022.

For the National Data Protection Commission sitting in formation  
restraint

Thierry Lallemand

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.

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Decision of the National Commission sitting in restricted formation on the outcome of survey no. [...] conducted with Company A. belonging to the group companies referred to as “Group A”