

Decision of the National Commission sitting in restricted formation

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

Deliberation no. 27FR/2021 of July 15, 2021

The National Commission for Data Protection sitting in restricted formation

composed of Ms. Tine A. Larsen, President, and Messrs. Thierry Lallemand and Marc

Lemmer, commissioners;

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

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

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

95/46/EC;

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

data protection and the general data protection regime, in particular

its article 41;

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

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

article 10 point 2;

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

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

in particular its article 9;

Considering the following:

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I. Facts and procedure

1. 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 the ABCDE1 group on the basis of article 37 of the law of 1 August 2018 on the organization of the National Commission for data protection and the general data protection regime (hereinafter "law of August 1, 2018") and to appoint Mr. Christophe Buschmann as head of investigation.

2. According to the decision of the Plenary Formation, the investigation carried out by the National Commission for Data Protection (hereinafter: "CNPD") had as its purpose of verifying compliance with the provisions of Regulation (EU) 2016/679 of the Parliament European Parliament and of the Council of 27 April 2016 relating to the protection of natural persons with regard to the processing of personal data and the free movement of such data, and repealing Directive 95/46/EC (hereinafter "GDPR") and the law of 1 August 2018, in particular through the installation of video surveillance systems and geolocation if necessary installed by the five companies of the ABCDE group.

3. On February 27, 2019, CNPD agents carried out a visit to the premises of the ABCDE group. Since Minutes no. [...] relating to the said fact-finding mission on the spot mentions that, among the five companies of the ABCDE group, as controller of the controlled processing "Company A",² the decision of the Commission national body for data protection sitting in restricted formation on the outcome of the investigation (hereinafter: "Restricted Training") will be limited to processing controlled by the agents of the CNPD and carried out by "Company A".

1 And more specifically with companies i) Company A, registered in the Trade and Companies Register of Luxembourg under number [...], with registered office at L-[...], ii) Company B, registered in the commercial register and Luxembourg Companies under number B [...], with registered office at L-[...], iii) Company C, registered in Luxembourg Trade and Companies Register under number B [...], with registered office at L-[...], iv) Company D, registered in the Luxembourg Trade and Companies Register under number B [...], with

registered office at L-[], and v) Company E, registered with the Luxembourg Trade and Companies Register under number B [], with registered office at L-[].

2 See in particular point 1. and 2. of Minutes no. [] relating to the on-site fact-finding mission carried out in dated February 27, 2019 with the ABCDE group.

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4. "Company A" is a [] registered in the Trade and Companies Register of Luxembourg under number B [], with registered office at L-[] (hereinafter "the controlled"). the controlled is an industrial company specializing [] in the [industrial] manufacture of [...].³

5. During the aforementioned visit of February 27, 2019 by CNPD agents to the controlled premises, it was confirmed to CNPD officials that the controlled uses a video surveillance system consisting of nine cameras, but that he did not install any geolocation device in its vehicles.⁴

6. According to the explanations provided to CNPD officials, it was confirmed that the CCTV system is managed by the controlled as responsible for the processing⁵ and that the purposes of setting up the video surveillance system are protecting company assets, securing access, reducing risks ("place at risk") as well as the safety of users and the prevention of accidents⁶.

7. On June 11, 2019, the controller produced written observations on the minutes no. [] relating to the on-site fact-finding mission carried out on February 27, 2019.

8. At the end of his investigation, the head of investigation notified the person inspected on 30 August 2019 a Statement of Objections (hereinafter: "the Statement of Objections") detailing the shortcomings that he considered constituted in this case, and more specifically a

non-compliance with the requirements prescribed by Article 13 of the GDPR with regard to employees and customers, suppliers, service providers and visitors (hereinafter: “the third parties”) and non-compliance with the requirements of Article 5.1.c) of the GDPR.

9. By email of October 10, 2019, the auditee produced written observations on statement of objections.

10. A supplementary letter to the statement of objections was sent to the checked on August 17, 2020. In this letter, the head of investigation offered the

3 According to the information provided on the website of the Trade and Companies Register of Luxembourg.

4 See minutes no. [...] relating to the on-site fact-finding mission carried out on February 27, 2019 to of the ABCDE group.

5 See minutes no. [...] relating to the on-site fact-finding mission carried out on February 27, 2019 to of the ABCDE group.

6 See finding 8 of minutes no. [...] relating to the on-site fact-finding mission carried out on 27 February 2019 with the ABCDE group.

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Restricted Formation to adopt two different corrective measures, as well as to inflict an administrative fine of 3,500 EUR.

11. By email of August 18, 2020, the controller referred to his written observations on the statement of objections of 10 October 2019.

12. The President of the Restricted Formation informed the controller by letter of 16 October 2020 that his case would be registered for the session of the Restricted Panel on 4 December 2020 and that he could attend this session. The controller did not respond to this invitation.

13. 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. The control was not present during the session.

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

14. 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 [...]. »

15. Article 13 of the GDPR provides the following:

“1. When personal data relating to a person concerned are collected from this person, the data controller

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provides, at the time the data in question is obtained, all the information following:

- 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

provides 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

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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.

4. Paragraphs 1, 2 and 3 do not apply where and insofar as the data subject already has this information. »

16. The communication to data subjects of information relating to the processing of their data is an essential element in the context of compliance with

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general transparency obligations within the meaning of the GDPR.⁷ 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”).

17. 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.⁸

2. In this case

18. With regard to informing third parties about the system of video surveillance, the head of the investigation found that neither the pictogram with the mention “24-hour video surveillance” affixed to the main entrance door of the building administrative (see statement of objections, A.1.), nor the new information poster submitted to the CNPD by letter dated June 11, 2019⁹ did not contain the elements required by GDPR Article 13. He clarified that although the new information poster was more complete and made it possible to document the controlee's desire to comply with the prescribed of the GDPR, it also did not meet all the conditions set out in Article 13 of the GDPR. GDPR and that the non-compliance with article 13 of the GDPR was established on the day of the visit to site (see statement of objections, page 2, B.1. and page 3 Ad.A.1.).

19. With regard to informing employees about the system of video surveillance, the head of the investigation found that neither the pictogram with the mention “24-hour video surveillance” affixed to the main entrance door of the building administrative¹⁰ (see statement of objections, A.2.), nor the minutes of the meeting of the Joint Control Committee of 13 December 2018¹¹, submitted to the CNPD by letter of 11 June 2019, did not show that the employees had received the information

⁷ Cf. in particular articles 5.1, a) and 12 of the GDPR, see also recital (39) of the GDPR.

8 See Endorsement Decision 1/2018 of the EDPS of

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

9 See Appendix 2 of the inspection letter of June 11, 2019.

10 See A.2. of the statement of objections.

11 See Appendix 1 of the inspection letter of June 11, 2019.

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required within the meaning of Article 13 of the GDPR (see statement of objections, page 2, B.1. and page 3 Ad.A.2.). The head of investigation clarified that the non-compliance with article 13 of the GDPR as far as employees are concerned was therefore acquired.

20. By email of October 10, 2019, the controller sent the head of investigation a

copy of a new data protection notice

relating to the video surveillance intended for the personnel of the control and the

third parties¹². The controller mentioned that said information notice would be

available on the controller's website. In this email, the control also sent

to the head of investigation a photo of a new information poster¹³ which would have been placed

outside the building on the main entrance door and inside the building on a

information/communication board in the lobby and at reception. Furthermore, the

controlled sent several photos¹⁴ to show the new information poster

mentioned above in several places inside and outside its building.

21. 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, point 33).

2.1. Information from third parties:

22. The Restricted Committee notes that during the on-site visit by the agents of the CNPD, third parties were informed of the presence of the video surveillance by a pictogram with the words "video surveillance 24 hours a day" affixed to the main entrance door of the administrative building. By letter of June 11 2019, the controller sent a new poster with "permanent information"¹⁵ comprising

12 See "Personal data protection policy relating to Video Surveillance" (Appendix 1 of the email from the control of October 10, 2019).

13 See Annexes 1 of the email of October 10, 2019.

14 See Annexes 1 of the email of October 10, 2019.

15 See Appendix 2 of the inspection letter of June 11, 2019.

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- information concerning the purposes of the video surveillance,
- an e-mail address for questions regarding the use of security cameras

video surveillance and in relation to the rights of the persons concerned,

- a link to the "privacy policy" on the website of the controlled, which would have

was posted on all of its billboards.

23. Finally, by email of October 10, 2019, the auditee sent a second new information poster¹⁶ which would have been placed in several places inside and outside outside the controlled building, including

- information concerning the purposes of the video surveillance,
- a new e-mail address for questions regarding the use of the CCTV cameras and the rights of data subjects, and
- a new link to a new "data protection policy relating to video surveillance"¹⁷ available on its website.

24. The Restricted Committee considers that a layered approach to Communicating transparency information to data subjects can be used in an offline or non-digital context, i.e. in an environment real, such as personal data collected by means of a CCTV system. The first level of information should general include the most essential information, namely details of the purpose of the processing, the identity of the controller and the existence of the rights of persons concerned, as well as the information having the greatest impact on the processing or any processing likely to surprise data subjects.¹⁸ The second level of information, i.e. all of the information required under Article 13 of the GDPR, could be provided or made available by other means, such as by

¹⁶ See Annexes 1 of the email of October 10, 2019.

¹⁷ See Appendix 2 of the email of October 10, 2019.

¹⁸ See WP 260 rev.01 and EDPS Guidelines 3/2019 on the processing of personal data by video devices, version 2.0, adopted on January 29, 2020.

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for example, a link on the website to an information notice with regard to the non-salaried third parties.¹⁹

25. The Restricted Committee notes, however, that neither the pictogram with the mention "24-hour video surveillance" at the time of the site visit, nor the new poster with "permanent information" sent by mail dated June 11, 2019, nor the second new information poster sent by email from October 10, 2019 only contained the required elements of the first level of information for people non-employee third parties. The Restricted Committee also notes that the new "policy of protection of personal data relating to video surveillance"²⁰, to which refers the link in the second new information poster, did not contain the full elements required by articles 13.1 and 13.2 of the GDPR.

26. In view of the foregoing, the Restricted Panel concludes that at the time of the on-site visit by CNPD agents, article 13 of the GDPR was not respected by the controlled with respect to third parties.

2.2. Employee information:

27. As far as the employees are concerned, the Restricted Committee notes that during the on-site visit by CNPD agents, the latter were informed of the presence of the video surveillance system with a pictogram bearing the words "video surveillance 24h/24h" affixed to the main entrance door of the administrative building.

28. By letter dated June 11, 2019, the controller sent the minutes of the meeting of the Joint Control Committee of December 13, 2018²¹ in which the installation of new CCTV equipment and the number of cameras have been announced. In the same letter, the auditee claimed to have posted the said report for more than three months on a panel provided for this purpose inside its building. The controlled has also claimed that a pictogram was affixed to several places on its site and it

sent out a new poster with “permanent information”²² featuring

19 See WP260 rev. 01 (item 38).

20 See Annexes 1.2 of the email of October 10, 2019.

21 See Appendix 1 of the inspection letter of June 11, 2019.

22 See Appendix 2 of the inspection letter of June 11, 2019.

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- information concerning the purposes of the video surveillance,
 - an e-mail address for questions regarding the use of security cameras
- video surveillance and in relation to the rights of the persons concerned,
- a link to the "privacy policy" on the website of the controlled, which would have
- was posted on all of its billboards.

In addition, the auditee clarified that he had decided to include a paragraph on the video surveillance in its new collective agreement, which was, at that date, in phase of renegotiation²³.

29. In its response to the statement of objections, the auditee sent a second new information poster²⁴ which would have been placed in several places in inside and outside the controlled building, including

- information concerning the purposes of the video surveillance,
 - a new e-mail address for questions regarding the use of the
- CCTV cameras and the rights of data subjects, and
- a new link to a new "data protection policy
- relating to video surveillance”²⁵ available on its website.

30. The Restricted Committee considers first of all that the mere information of the

joint committee does not ensure that the control employees have been informed individually regarding the specific elements of Article 13 of the GDPR. The Restricted Formation holds also to point out that even if the auditee decides to include a new paragraph on video surveillance in its future collective agreement, this does not guarantee that each employee, current or future, will be informed individually.

31. The Restricted Committee considers that a layered approach to Communicating transparency information to data subjects can be used in an offline or non-digital context, i.e. in an environment real, such as personal data collected by means of a

23 Penultimate sentence of the inspection letter of June 11, 2019.

24 See Annexes 1 of the email of October 10, 2019.

25 See Appendix 2 of the email of October 10, 2019.

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CCTV system. The first level of information should general include the most essential information, namely details of the purpose of the processing, the identity of the controller and the existence of the rights of persons concerned, as well as the information having the greatest impact on the processing or any processing likely to surprise data subjects.²⁶ The second level of information, i.e. all of the information required under Article 13 of the GDPR, could be provided or made available by other means, such as by example a copy of the privacy policy emailed to employees.²⁷

32. The Restricted Committee notes, however, that neither the pictogram with the mention "24-hour video surveillance" at the time of the site visit, nor the new

poster with "permanent information" sent by mail dated June 11, 2019, nor the second new information poster sent by email from October 10, 2019 only contained the required elements of the first level of information whether for the employees or non-employee third parties. The Restricted Committee also notes that the new "personal data protection policy" relative to the CCTV »²⁸, to which the link refers in the second new poster information, did not contain all the elements required by article 13.1 and 2 of the GDPR.

33. In view of the foregoing, the Restricted Panel concludes that at the time of the on-site visit by CNPD agents, article 13 of the GDPR was not respected by the controlled with regard to the employees of the controlled.

²⁶ See WP 260 rev.01 and EDPS Guidelines 3/2019 on the processing of personal data by video devices, version 2.0, adopted on January 29, 2020.

²⁷ See WP260 rev. 01 (item 38).

²⁸ See Annexes 1.2 of the email of October 10, 2019.

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

1. On the principles

34. In accordance with Article 5.1.c) of the GDPR, personal data must be "adequate, relevant and limited to what is necessary in view of the purposes for which they are processed (data minimization)".

35. The principle of data minimization in video surveillance

implies that only what appears strictly necessary to achieve

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

disproportionate.²⁹

36. Article 5.1.b) of the GDPR provides that personal data must be

be “collected for specific, explicit and legitimate purposes, and not be

further processed in a manner incompatible with those purposes; [...] (limitation of purposes)”.

37. Before installing a video surveillance system, the person in charge of the

processing must precisely define the purpose(s) it wishes to achieve by

using such a system, and will not then be able to use the personal data

personal information collected for other purposes.³⁰

38. The necessity and proportionality of video surveillance is analyzed on a case-by-case basis.

case and, in particular, with regard to criteria such as the nature of the place to be placed under video surveillance, its location, configuration or attendance.³¹

2. In this case

39. It was explained to CNPD officials that the purposes of setting up the

CCTV system are the protection of company assets, securing

access, the reduction of risks (“place at risk”) as well as the safety of users

²⁹ See CNPD Guidelines (Point 4.), available at: <https://cnpd.public.lu/fr/dossiers-themes/videosurveillance/necessite-proportionnalite.html>.

³⁰ See Guidelines for

[themes/videosurveillance/necessite-proportionnalite.html](https://cnpd.public.lu/fr/dossiers-themes/videosurveillance/necessite-proportionnalite.html).

³¹ See CNPD Guidelines (Point 4.), available at: <https://cnpd.public.lu/fr/dossiers-themes/videosurveillance/necessite-proportionnalite.html>.

under: <https://cnpd.public.lu/fr/dossiers->

the CNPD, available

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and accident prevention. In his letter of June 11, 2019, the controller mentioned additional purposes and more specifically the detection and identification of potentially suspicious or dangerous behavior that could cause accidents or incidents, the search for the origin of an incident and the timely alerting of emergency, fire or law enforcement services as well as the facilitation of their intervention.

40. During the on-site investigation, CNPD officers found that

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the field of view of the camera called "[...]" (hereinafter: "camera 1") allows the surveillance of part of the public road (communication of grievances, A.3.);

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the field of vision of the cameras called "[...]" (hereinafter: "camera 2") and camera 1 allow the surveillance of a neighboring land (communication grievances, A.4.); and

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the field of vision of the camera called "[...]" (hereinafter: "camera 3") makes it possible to monitor the control employees preparing to clock in the hours of their entries and exits (statement of objections, A.5.).

41. With regard to cameras 1 and 2, the head of investigation was of the opinion that "[...]" surveillance of the public road and neighboring land should however be considered

as disproportionate. Indeed, in view of the aforementioned purposes for which is operated video surveillance, it is not necessary to encompass parts of the public road or of neighboring land in the fields of view of the cameras listed under point

A. hereof. (statement of objections, Ad.A3. and A.4.)

42. The controlled on his side explained in his response email to the statement of objections of 10 October 2019 that the fields of view of cameras 1 and 2 have been adjusted to no longer monitor parts of public areas and land neighbours. However, as the auditee did not present any mitigating elements for this subject in its response of June 11, 2019 to the minutes drawn up by CNPD officials,

32 See finding 8 of minutes no. [...] relating to the on-site fact-finding mission carried out on 27 February 2019 with the ABCDE group.

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the head of investigation concluded that the non-compliance with article 5.1.c) of the GDPR was established on the day of the visit.

43. With regard to camera 3, the chief investigator was of the opinion that “The permanent monitoring of the employees' clocking machine, as described under the point A.5. above, is also to be considered disproportionate, in view of the purposes indicated by the company. Indeed, surveillance by video cameras of access to the building has, according to the explanations given during the site visit, the purpose of securing said access. The purpose of installing a time clock is to manage and control the working hours and the time of presence of employees at the workplace. Including the time clock in the field of view of the access cameras results in a additional supervision which is not necessary. Such treatment is therefore

consider as excessive and disproportionate in relation to the purposes invoked by the society. (statement of objections, Ad. A.5.)

44. The controlled on his side explained in his response email to the Statement of Objections dated October 10, 2019 that Camera 3 has been withdrawn. Nevertheless, as the auditee did not present any mitigating elements on this subject in its response of June 11, 2019 to the minutes drawn up by the CNPD agents, the head of the investigation concluded that the non-compliance with Article 5.1.c) of the GDPR was established on the day of the visit.

45. As for cameras 1 and 2, the Restricted Panel finds that the controlled has sent two videos showing the adjustment of the fields of view of the cameras in question attached to its email of October 10, 2019. In addition, the Restricted Panel notes that the cameras in question monitor neighboring land composed solely of wooded area as well as a small part of the public road³³.

46. Nevertheless, the Restricted Committee would like to point out that the cameras intended to monitor a place where the surroundings of a building or site must have a field of vision limited to the area strictly necessary to view people getting ready to access it. Cameras installed near or around a building must be configured so as not to capture the public road, nor the surroundings, entrances, access and interiors of other neighboring buildings possibly falling within their scope of

³³ See the elements taken into account by the head of investigation in his additional letter to the communication of grievances of August 17, 2020, page 2.

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vision. Depending on the configuration of the premises, it is sometimes impossible to install a camera that does not include part of the public road in its field of vision,

surroundings, entrances, accesses and interiors of other buildings. In such a case, the CNPD considers that the data controller must put in place techniques for masking or blurring to limit the field of view to its property.³⁴

47. As for camera 3, the Restricted Panel notes that the field of view of the camera 3 did not initially monitor the time clock of the controlled but an entrance airlock of the administrative building. It would like to point out that the cameras intended to monitor a access point (e.g. entrance and exit) must have a field of vision limited to the surface strictly necessary to visualize the people about to access it. If the purpose was not to monitor people about to use the clock, the fact remains that it is in the field of vision of this camera.

48. In addition, the Panel finds that the controller attached to his email of 10 October 2019 photos of where camera 3 was installed before (i.e. above above the pointing machine of the controlled employees) showing that the camera in question has been removed.

49. In view of the foregoing, the Restricted Panel concurs with the finding of Chief of investigation according to which the non-compliance with Article 5.1.c) of the GDPR was acquired on the day the on-site visit by CNPD agents concerning the three cameras.

II. 2. On corrective measures and fines

1. Principles

50. 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;

³⁴ See CNPD Guidelines (Point 4.), available at: <https://cnpd.public.lu/fr/dossiers-topics/video-surveillance/necessity-proportionality.html>

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- (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. »

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51. 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.

52. 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;

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(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".

53. 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.

54. 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

55. In its supplementary letter to the statement of objections of 17 August

2020, the head of investigation proposed to the Restricted Panel to impose a fine administrative control for an amount of 3,500 euros.

56. In its response to said additional letter of August 18, 2020, the audited referred to his email of October 10, 2019 in which he had taken a position with regard to all the shortcomings mentioned in the statement of objections, inter alia, in

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sending photos and new documents attached to said email showing the actions taken by the controller.

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

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As to the nature and seriousness of the breach (Article 83.2.a) of the GDPR), the Restricted Formation notes that with regard to breaches of Article 5.1.c) of the GDPR, they constitute breaches of a fundamental principle of the GDPR (and data protection law in general), namely the principle minimization of data dedicated to 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 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.

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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. The Restricted Formation reminds here that two years separated the entry into force of the GDPR from its entry into application to enable data controllers to comply with the obligations incumbent on them. Moreover, an obligation to respect the principle of minimization, as well as a comparable information obligation already existed pursuant to Articles 4.1. b), 10.2 and 26 of the repealed law of 2 August 2002 on the protection of individuals with regard to the processing of personal data. Guidance on principles and obligations

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provided for in the said law was available from the CNPD, in particular through mandatory prior authorization for video surveillance.

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As for the number of data subjects (Article 83.2.a) of the GDPR), the Restricted Training finds that these are all employees working on the site of the controlled, as well as all third parties, i.e. customers,

suppliers, service providers and visitors to this site.

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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 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 than its desire to comply with the law as soon as possible.

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As for the measures taken by the auditee to mitigate the damage suffered by the persons concerned (article 83.2.c), the Restricted Training takes into account the measures taken by the auditee and refers to chapter II.2. section 2.2. of this decision for the related explanations.

58. 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.

59. 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,

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these were only adopted following the inspection by CNPD officials on 27 February 2019 (see also point 53. of this decision).

60. Consequently, the Restricted Committee considers that the imposition of a fine administrative is justified with regard to the criteria laid down by article 83.2 of the GDPR for breach of Articles 5.1.c) and 13 of the GDPR.

61. 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.

62. 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 3,500 euros appears both effective, proportionate and dissuasive, in accordance with the requirements of Article 83.1 of the GDPR.

2.2. About taking corrective action

63. The adoption of the following corrective measures was proposed by Chief of investigation to the Restricted Training in its additional letter to the statement of objections:

“a) Order the controller to complete the information measures

intended for persons concerned by video surveillance in accordance with the provisions of Article 13, paragraphs (1) and (2) of the GDPR by providing in particular the identity of the controller, the purposes of the processing and its legal basis, the categories of data processed, the legitimate interests pursued by the controller, the recipients, the retention period of the data as well as

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the indication of the rights of the person and the manner of exercising them (concerning the employees, it should be noted that the information must be provided both for new employees than for employees who have been with the company for some time);

b) Order the controller to only process data

relevant, adequate and limited to what is necessary in relation to the purposes of protection of property and securing access and, in particular, adapting the video system so as not to film employees when they pass through the the pointer, for example by deleting or reorienting the cameras. »

64. In its response to the said supplementary letter to the Statement of Objections of August 18, 2020, the controller referred to his email of October 10, 2019 in which he claimed to have already sent all the evidence requested to show its implementation compliance.

65. As for the corrective measures proposed by the head of investigation, the Panel Restreinte takes into account the steps taken by the auditee, following the visit to the CNPD officials, in order to comply with the provisions of Articles 5.1.c) and 13 of the GDPR, as detailed in his letter of June 11, 2019 and his emails of October 10 2019 and August 18, 2020. More specifically, it takes note of the following facts:

As for the implementation of information measures intended for third parties and to employees by video surveillance in accordance with the provisions of Article 13.1 and 2 of the GDPR, the controller has drawn up and displayed on its premises and outside from its premises a new information poster³⁵ featuring

- information concerning the purposes of the video surveillance,
- a new e-mail address for questions regarding the use of video surveillance cameras and in relation to the rights of the persons concerned, and
- a link to a “personal data protection policy” relating to video surveillance” available on its website.

³⁵ See Annexes 1 of the email of October 10, 2019.

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The Restricted Panel considers that said information poster does not contain all the information required by article 13 of the GDPR. Thus, the identity and the contact details of the controller, which are to be considered as a first level information is not shown on the poster. Furthermore, the Restricted Formation notes that the note "data protection policy relating to video surveillance" (to which the link refers in the new information poster), also does not contain all the information required by Article 13 of the GDPR. Thus, the identity and contact details of the controller (i.e. first level information) and the explanation of the rights of data subjects, more specifically the right of access, the right to

rectification or erasure, the right to restriction of processing, the right to object and the right to the portability of personal data (i.e. second level information), are not indicated in this note. As to the rights of data subjects, they are mentioned in general in this note and it is stated that

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employees could find more information on the “[...]” page or on the “Intranet page of [...]”³⁶, and third parties could find more information in the “[...]” available at: [...].

The Restricted Panel considers that all of the information from the second level must be "available in a single place or in the same document (in digital form on a website or in paper format)"³⁷, which must be easily accessible should data subjects wish to view all the information. In this case, the information is scattered in different documents available in various places, which makes it difficult to become familiar with this information, both for employees only for third parties.

With regard more specifically to controlled employees, Training Restreinte considers that the controlled employees must be informed individually regarding the specific elements of Article 13 of the GDPR and that the

36 The Restricted Panel was unable to verify these two sources of information.

37 See WP 260 rev. 01 (item 33).

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new poster together with the note "data protection policy

personal information relating to video surveillance” are not sufficient in this context.

Individual employee information may be provided or made available by

other means, such as a copy of the note “policy of

protection of personal data relating to video surveillance” sent by

e-mail to employees of the control.

In consideration of the compliance measures taken by the control in

case, the Restricted Panel therefore considers that it is appropriate to pronounce the

corrective action proposed by the head of investigation under a) both with regard to

concerns third parties as well as the employees of the audited and to add in this

with regard to employees, an obligation to provide individual information.

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As for the obligation to only process data that is relevant, adequate and

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

access security, the controller attached to his email of October 10, 2020

videos showing the adjustment of the fields of view of cameras 1 and 2 and

photos of where camera 3 was installed before (i.e. above the

clocking machine of the controlled employees) showing that camera 3 was

uninstalled. In view of the compliance measures taken by the

controlled in this case and point 48. of this decision, the Restricted Panel

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

by the head of investigation under b).

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In view of the foregoing developments, the National Commission sitting

in restricted formation and deliberating unanimously decides:

- to retain the breaches of Articles 5.1.c) and 13 of the GDPR;
- to pronounce against the company "Company A" an administrative fine of one amount of three thousand five hundred euros (3,500 euros), with regard to the violation of articles 5.1.c) and 13 GDPR.

- to pronounce against the company "Company A" an injunction to enforce compliance of the processing with the provisions of Article 13 of the GDPR, within a period of two months following the notification of the decision of the Restricted Panel, in particular:

- i. inform third parties and employees in a clear and complete manner

in accordance with the provisions of Article 13 of the GDPR, in particular by providing

information relating to the identity and contact details of the controller

(i.e. first level information), both on the poster installed inside and outside

outside the control building as in the note "policy for the protection of

personal data relating to video surveillance" and to complete the latter

by specifying the rights of the persons concerned (i.e. information of the second

level) so that all the information required by Article 13 of the GDPR can be found

in the same document;

- ii. inform employees individually about the specific elements of the

Article 13 of the GDPR by sending, for example, an adapted copy of the note

"personal data protection policy relating to video surveillance" at

all employees of the control.

Thus decided in Belvaux on July 15, 2021.

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For the National Data Protection Commission sitting in formation
restraint

Tine A. Larsen Thierry Lallemand

Marc Lemmer

President

Commissioner

Commissioner

Indication of remedies

This administrative decision may be the subject of an appeal for review in the
three months following its notification. This appeal is to be brought before the administrative court.
and must be introduced through a lawyer at the Court of one of the Orders of
lawyers.

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