

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

of survey no.[...] conducted with Company A

Deliberation No. 32FR/2021 of August 5, 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 (hereinafter: "Formation Plenary") had decided to open an investigation with two companies of the group [...] on basis of article 37 of the law of 1 August 2018 on the organization of the Commission national data protection system and the general data protection regime. data (hereinafter: "Law of August 1, 2018") and to designate Mr. Christophe Buschmann as chief investigator.

2. According to the decision of the Plenary Formation, the investigation carried out by the National Commission for Data Protection (hereinafter: "CNPDP") had as its purpose of monitoring the application of and compliance with the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of persons with regard to the processing of personal data and to the free movement of this data, and repealing Directive 95/46/EC (hereinafter: "GDPR") and of the law of August 1, 2018, by verifying the compliance of the surveillance measures implemented implemented by the companies of the group [...], in particular by means of a system of geolocation and a video surveillance device.

3. On March 26, 2019, CNPD agents carried out a visit to the premises of Company A1. Since Minutes no. 20/2019 relating to the said fact-finding mission on the spot mentions that, among the two companies of the group [...], as controller of the controlled processing Company A, 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 CNPD agents and carried out by Company A.

4. Company A is a company [...] registered in the Trade and Luxembourg companies under number [...], with registered office at L-[...], [...], (hereinafter: the

1 See Minutes no. [...] relating to the on-site visit carried out on March 26, 2019 to Company A (hereinafter: "Minutes no. [...]").

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" control "). The object of the control is [the manufacture and distribution of goods industrial, ...]2

5. During the aforementioned visit, it was confirmed to CNPD officials that the controlled uses a video surveillance system,<sup>3</sup> but does not use a security system geolocation in its service vehicles.<sup>4</sup> CNPD agents observed that the video surveillance system is made up of twelve "fixed" type cameras, ten of which are cameras are installed outside on company property and two cameras are installed inside the controlled establishment in the computer room.<sup>5</sup>

6. The controller replied to the report drawn up by the CNPD agents by letter of July 17, 2019.

7. At the end of his investigation, the head of investigation notified the person inspected on February 6, 2020 a statement of objections detailing the shortcomings he considered constituted in this case, and more specifically a non-compliance with the prescriptions of Article 5.1.c) of the GDPR. The auditee made his observations on the communication of the grievances by letter dated February 11, 2020.

8. On February 26, 2020, the head of investigation notified the person inspected of a modified version of the statement of objections of February 6, 2020. The auditor formulated his observations on this version of the statement of objections by letter dated 3 March 2020.

9. On March 4, 2021, the head of investigation notified the controller of a new version amended statement of objections of 6 February 2020. The audit confirmed the receipt of this document by e-mail on the same day (hereinafter, any reference to the statement of objections, is a reference to the latest version of this document which has

been notified to the controller).

10. On March 4, 2021, the head of investigation also notified the controller of a letter supplementary to the statement of objections informing him that he is proposing to the Panel Restricted to adopt a corrective measure without proposing a fine

2 Cf. Statutes coordinated at [...], Article [...].

3 See Minutes no. [...], item 6.

4 See Minutes no. [...], point 8, finding 9.

5 See Minutes no. [...], point 8, finding 1.

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administration. The controller confirmed receipt and reading of this letter by his aforementioned email of March 4, 2021.

11. The president of the Restricted Formation informed the controller by mail of the June 8, 2021 that his case would be registered for the Restricted Panel session of the July 21, 2021. By email dated June 9, 2021, the auditee, referring to his exchange of correspondence with the CNPD during the written procedure, informed the Panel Restricted that he will not appear at this hearing.

12. During the meeting of July 21, 2021, the head of investigation presented his observations oral presentations in support of his written observations and answered the questions posed by the Restricted Training.

## II. Place

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

On the breach of the principle of data minimization

#### 1. On the principles

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

14. The principle of data minimization in video surveillance implies that it should only be filmed what is strictly necessary to achieve the the purpose(s) pursued and that the processing operations must not be disproportionate.<sup>6</sup>

15. Article 5.1.b) of the GDPR provides that personal data must be be “collected for specific, explicit and legitimate purposes, and not be

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

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

16. 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 data collected for other purposes.<sup>7</sup>

17. The necessity and proportionality of video surveillance is analyzed on a case-by-case basis. case and, in particular, with regard to criteria such as the nature of the place to be placed under video surveillance, its location, configuration or attendance.<sup>8</sup>

2. In this case

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

of the implementation of the video surveillance system are the protection of the property of the responsible for processing as well as securing access (entries and exits).<sup>9</sup>

19. They found that the fields of view of the cameras "[cameras 1 to 7]" allow, among other things, the surveillance of part of the public thoroughfare.<sup>10</sup>

20. In the Statement of Objections, the Head of Investigation recalls that any controller has the obligation to take into account the principles general provisions of Article 5.1 of the GDPR and that processing is only lawful if at least one of the conditions of article 6.1 of the GDPR are met. He believes that even if the purposes aforementioned indicated by the controller meet one or more conditions of article 6.1 of the GDPR, in this case the surveillance of public roads and surrounding land is however disproportionate.<sup>11</sup>

21. He considers that the audit letters of March 26, 2019 and July 17, 2019 do not do not contain facts or information allowing another assessment. He holds back

7 See CNPD guidelines, point 2., available at: <https://cnpd.public.lu/fr/dossiers-thematiques/videosurveillance/purpose.html>.

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

9 See Minutes no. [...], point 8, finding 3.

10 See Minutes no. [...], point 8, finding 7.

11 See Statement of Objections, page 2, Ad.B., point 1.).

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in particular that the auditee has taken corrective measures, namely the blurring of the parts respective public roads and neighboring land, after the visit to

website.<sup>12</sup>

22. Thus, the head of investigation notes that the control failed in its obligation arising from Article 5.1.c) of the GDPR.<sup>13</sup>

23. The Restricted Committee would like to point out that the cameras intended to monitor a place or the surroundings of a building or site must have a limited field of vision on the surface strictly necessary to visualize the people preparing to access it.

Cameras installed near or around a building must be configured accordingly.

so as not to capture the public road, nor the surroundings, entrances, accesses and interiors of other neighboring buildings possibly falling within their field of vision. In terms of configuration of the premises, it is sometimes impossible to install a camera that does not would not include in his field of vision a part of the public road, surroundings, entrances, accesses and interiors of other buildings. In such a case, the CNPD considers that the responsible for processing must put in place techniques for masking or blurring to limit the field of view to its property.<sup>14</sup>

24. She notes that by two emails of March 26, 2019, the controller confirmed having pixelated the public highway and that he attached to these emails screenshots showing the fields of view of the disputed cameras. It notes, however, that the control has not adapted the fields of view of the cameras in question only after the on-site visit.

25. In view of the foregoing, the Restricted Panel concurs with the finding of Chief investigation and concludes that at the time of the on-site visit by CNPD agents, article 5.1.c) of the GDPR was not respected by the controlled.

<sup>12</sup> See Statement of Objections, page 2, Ad.B., point 1.).

<sup>13</sup> See Statement of Objections, page 2, Ad.B., point 1.).

<sup>14</sup> See CNPD guidelines, point 4., available at: <https://cnpd.public.lu/fr/dossiers-themes/videosurveillance/necessite-proportionnalite.html>.

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## II. 2. On corrective measures and fines

### 1. On the principles

26. In accordance with article 12 of the law of 1 August 2018, the CNPD has the power to adopt all the corrective measures provided for in Article 58.2 of the GDPR:

"(a) notify a controller or processor of the fact that the operations of the envisaged processing are likely to violate the provisions of this Regulation;

(b) call a controller or processor to order when the processing operations have resulted in a breach of the provisions of this Regulation;

(c) order the controller or processor to comply with requests submitted by the data subject with a view to exercising their rights under this these regulations;

d) order the controller or the processor to put the operations of processing in accordance with the provisions of this Regulation, where applicable, of specific manner and within a specified time;

(e) order the controller to communicate to the data subject a personal data breach;

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

g) order the rectification or erasure of personal data or the limitation of processing pursuant to Articles 16, 17 and 18 and the notification of these measures to the recipients to whom the personal data have been disclosed pursuant to Article 17, paragraph 2, and Article 19;

(h) withdraw a certification or order the certification body to withdraw a certification issued pursuant to Articles 42 and 43, or order the body to



certification not to issue certification if the requirements applicable to the certification are not or no longer satisfied;

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(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. »

27. 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.

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

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

(i) where measures referred to in Article 58(2) have previously been

ordered against the controller or processor concerned for the

same purpose, compliance with these measures;

(j) the application of codes of conduct approved pursuant to Article 40 or

certification mechanisms approved under Article 42; and

k) any other aggravating or mitigating circumstance applicable to the circumstances of

the species, such as the financial advantages obtained or the losses avoided, directly or

indirectly, as a result of the violation. »

29. 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.

30. 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

31. It follows from the additional letter to the statement of objections of the March 4, 2021 that the head of investigation took into account:

- The fact that the purpose of video surveillance is the protection of property as well as the securing access and that video surveillance has been extended to public roads unintentionally;

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- The good cooperation of the auditee throughout the investigation as well as his willingness to adopt measures as quickly as possible in order to bring the system of video surveillance to the law;

In particular, the person inspected took corrective measures again on the day of the inspection on site and informed the CNPD by letter dated March 26, 2019;

- The fact that the contentious fields of vision are mostly blurred and do not capture only a small number of people so that a breach can be assumed

minor.<sup>15</sup>

32. Thus, the head of investigation proposes to the Restricted Panel not to retain a administrative fine and issue a call to order.<sup>16</sup>

33. The Restricted Formation agrees with the developments of the head of investigation and considers therefore that it is not appropriate to impose an administrative fine on against the control.

## 2.2 Regarding the taking of corrective measures

34. The adoption of corrective measures was proposed by the head of investigation to the Restricted Panel in its supplementary letter to the Statement of Objections:

- a) Issue a call to order against the controller for cause of violation of the provisions of the GDPR.
- b) Draw the attention of the data controller to the fact that in order to guarantee the lawfulness of the purposes of the video surveillance (namely the protection of property and the securing access), it must only process data that is adequate, relevant and limited to what is necessary with regard to these purposes, and, in particular, adapt the video surveillance system so that public roads are not filmed, for example by removing the disputed cameras or

15 See additional letter of March 4, 2021, pages 2 to 3.

[...]

16 See additional letter of March 4, 2021, page 3.

[...]

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by reorienting or masking the fields of vision of the cameras disputed, unless this has already been implemented.<sup>17</sup>

35. As for the corrective measures proposed by the head of investigation and by reference to point 30 of this decision, the Restricted Formation takes into account

the steps taken by the controller, following the on-site visit by CNPD agents, in order to comply with the provisions of Article 5.1.c) of the GDPR, as detailed in his aforementioned emails of March 26, 2019, recalled in his letters of February 11, 2020 and March 3, 2020. More specifically, she notes that the control attached to her emails from March 26, 2019 several screenshots showing among other things the adjustments of the fields of vision of the cameras "[cameras 1 to 7]" in order to, and as far as possible, no longer film the public road and surrounding land.

36. Under Article 58.2 b) of the GDPR, the CNPD may call to order a controller or a processor when the processing operations have resulted in a violation of the provisions of the GDPR.

37. Considering the fact that the audited violated the principle of minimization of data resulting from Article 5.1.c) of the GDPR, which is a fundamental principle of the GDPR (and data protection law in general), the Restricted Committee considers that it is justified in adopting the corrective measure proposed by the head of investigation in this regard<sup>18</sup> and issue a call to order against the controlled.

38. In consideration of the compliance measures taken by the control in case and point 30 of this decision, it is of the opinion that there is no reason to draw the attention of the controller to the fact that the planned processing operations are likely to violate the provisions of the GDPR<sup>19</sup>, while the audit has demonstrated that it has come into compliance.

<sup>17</sup> See additional letter of March 4, 2021, page 2.

[...]

<sup>18</sup> See additional letter of March 4, 2021, page 2, point a).

<sup>19</sup> See additional letter of March 4, 2021, page 2, point b).

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In view of the foregoing developments, the National Commission sitting

in restricted formation and deliberating unanimously decides:

- to uphold the breach of Article 5.1.c) of the GDPR;
- to pronounce against Company A a call to order for having violated Article 5.1.c) GDPR.

Thus decided in Belvaux on August 5, 2021.

For the National Data Protection Commission sitting in formation

restraint

Tine A. Larsen Thierry Lallemand

Marc Lemmer

President

Commissioner

Commissioner

Indication of remedies

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

three months following its notification. This appeal is to be brought before the administrative court.

and must be introduced through a lawyer at the Court of one of the Orders of

lawyers.

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