

Decision of the National Commission sitting in restricted formation on

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

Deliberation No. 19FR/2022 of December 13, 2022

The National Commission for Data Protection sitting in restricted formation,

composed of Mrs. Tine A. Larsen, president, and Messrs. Thierry Lallemand and Alain

Herrmann, commissioners;

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

the protection of natural persons with regard to the processing of personal data

personnel and on the free movement of such data, and repealing Directive 95/46/EC;

Having regard to the law of August 1, 2018 on the organization of the National Commission for the protection

data and the general data protection regime, in particular its article 41;

Having regard to the internal rules of the National Commission for Data Protection

adopted by decision no. 3AD/2020 dated January 22, 2020, in particular its article 10.2;

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

investigation 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 17 July 2020, the National Commission sitting in

plenary formation (hereafter: the “Plenary Formation”) has decided to open an investigation

with Company 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 regime on the

data protection (hereinafter: the “Law of 1 August 2018”) and to designate Mr.

Christophe Buschmann as head of investigation.

The said decision specified that the investigation carried out by the National Commission for the

data protection (hereinafter: the “CNPD” or the “National Commission”) had

for the purpose of monitoring the application and compliance with the GDPR and the law of August 1, 2018, and

specifically compliance with Articles 12.1, 13 and 14 of the GDPR.

2. Company A is a [...] registered in the Trade and Companies Register of

Luxembourg under number [...], with registered office at L-[...], [...] (hereinafter: the “controlled”).

The controlled [is active in the operation of internet portals and the provision of services via these

portals]¹. According to the head of the investigation, the controlled operates "an online platform [...]".

This platform also creates “the link between [...] and [...]”.²

3. The decision of the National Commission sitting in restricted formation (hereafter: the

“Restricted Training”) on the outcome of the investigation will be based

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on the processing carried out by the controller in relation to the operation of the site

internet “[...]” (hereinafter: the “website”) and checked by CNPD officials;

And

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on the legal and regulatory provisions taken into account by the head of investigation

in its Statement of Objections.

4. By letter dated August 26, 2020, the head of investigation sent a preliminary questionnaire to the

control. This moment is later referred to in this decision as "at the beginning

of the investigation ". The control responded by email of September 15, 2020. After a visit

¹ Statutes of the control of [...].

² See Statement of Objections, page 4, point 7.

³ See Statement of Objections of 13 January 2022.

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on site which took place on October 12, 2020, the control and the CNPD investigation service exchanged letters.⁴

5. Following this exchange, the head of investigation drew up Investigation Report No. [...] based on the deliberation of July 17, 2020 relating to compliance with Articles 12 point 1, 13 and 14 of the GDPR dated July 6, 2021 (hereinafter: the “Investigation Report”).

It appears from the investigation report⁵ that in order to structure the investigation work, the chief investigation has defined nine control objectives, namely:

- 1) ensure that the information is available;
- 2) ensure that the information is complete;
- 3) ensure that the absence of information is motivated by a valid exception;
- 4) ensure that information is transmitted by appropriate means;
- 5) ensure that the information is concise, transparent, understandable, and conveyed in clear and simple terms;
- 6) ensure that the information is appropriate for the category of data subjects;
- 7) ensure that information is free;
- 8) ensure that information is easily accessible; And
- 9) ensure that the information is transmitted during the key stages of the processing.

It is specified in the investigation report that the CNPD agents did not check “the legality of the processing carried out by the controller”. In this context, the example is given following: “in the event that the controller informs the data subjects that their personal data are kept for a period of 2 years, the CNPD agents will be able to verify that the controller does not keep

said data for a different duration. On the other hand, the CNPD agents do not

4 See Statement of Objections, point 9 for a detailed list of exchanges throughout the investigation.

5 Investigation report, page 8, point “3.1 Control objectives”.

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will not comment on the legality of this 2-year period applied by the person responsible for the treatment. »6

The investigation focused on the users of the audited website⁷ and did not target

other categories of data subjects such as employees of the auditee.⁸

The investigation report is annexed to the documents collected by the investigation department of the CNPD and on which the investigation report is based (appendix 1), as well as the report of the on-site visit by CNPD agents of October 12, 2020 mentioned above (appendix 2) (hereinafter: the “Report”).

6. During its deliberation of July 23, 2021, the Plenary Formation appointed Mr. Marc Lemmer, commissioner, as head of investigation replacing Mr. Christophe Buschmann, resigned.

7. At the end of his investigation, the head of investigation notified the person inspected on 13 January 2022 a statement of objections (hereinafter: the “statement of objections”) detailing the shortcomings that he considered constituted in this case in relation to the requirements prescribed by Article 12.1 of the GDPR (obligation of transparency) and by Article 13 of the GDPR (right to information).

The head of investigation proposed to the Restricted Panel to adopt three corrective measures different, as well as to impose on the controlled an administrative fine of an amount of 1,000 euros.

8. The controller replied to the statement of objections by letter dated February 8, 2022.

9. By letter dated May 20, 2022, the person inspected was informed that his case would be registered on the session of the Restricted Training of July 6, 2022 and that he could attend this session.

The controller confirmed his presence at the said meeting on May 24, 2022.

10. During this session the head of investigation, Mr. Marc Lemmer, was present. Control was represented by [...] (external data protection officer). The head of investigation and the auditee's representative presented their oral observations in support of their written observations and answered the questions posed by the Restricted Panel. There

6 Investigation report, page 7, point "2.3 Reservations".

7 At the time of the survey, the person audited did not have a mobile application (see Report, page 2).

8 Investigation report, page 6, point "2.2 Scope".

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Restricted Training gave the possibility to the controlled person to send information
additional information requested during the said session. The controller spoke last.

11. By email of July 6, 2022, the controller sent the additional information
requested by the Restricted Panel during the session of the same day.

II. Place

II. 1. On the reasons for the decision

A. On the breach related to the obligation of transparency

1. On the principles

12. According to Article 12.1 of the GDPR, the "controller shall take measures
appropriate 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

concerns processing to the data subject in a concise, transparent, understandable easily accessible, in clear and simple terms, in particular for any information intended specifically for a child. The information is provided by in writing or by other means including, where appropriate, electronically.

When the data subject so requests, the information may be provided orally, provided that the identity of the data subject is demonstrated by other means. »

13. Transparency is a fundamental aspect of the principles relating to the treatment of personal data.⁹ The obligations in this area have been clarified by the Article 29 Working Party in its guidelines on transparency within the meaning of the Regulation (EU) 2016/679, the revised version of which was adopted on April 11, 2018 (hereinafter: “WP 260 rev.01” or the “transparency guidelines”).

These guidelines explain in particular the general rules of transparency established by Article 12 of the GDPR, and which are applicable to the communication of information to data subjects (Articles 13 and 14 of the GDPR), to communications addressed to data subjects regarding the exercise of their rights (Articles 15 to 22 of the

⁹ See in particular Articles 5.1.a) and 12 of the GDPR, see also recitals (39), (58) to (60) of the GDPR.

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GDPR), and communications regarding data breaches (Article 34 of the GDPR).¹⁰

14. It should be noted that the European Data Protection Board (hereinafter: the “EDPS”), which succeeded the Article 29 Working Party on 25 May 2018, took over and reapproved the

documents adopted by the said Group between May 25, 2016 and May 25, 2018, as specifically the aforementioned guidelines on transparency¹¹.

2. In this case

2.1. Regarding the requirement to provide information in a “concise and transparent” way

15. In the context of objective 512 the head of investigation expected, among other things, that “the data protection policy reflects the reality of the processing actually carried out place, that is to say without anticipation of processing that could possibly be put in place by the auditee in the future (see Test 5). »¹³

16. According to the Statement of Objections, “the CNPD officials observed that the policy of data protection of Company A indicates processing operations which are not yet in place in practice, such as interest-based advertising or the collection of information on customer habits. »¹⁴

Thus, the head of investigation held that the conditions of article 12.1 of the GDPR “as to the fairness and transparency of information” have not been respected.¹⁵

17. The controlee for his part explained in the interview of October 12, 2020¹⁶ that “the data protection policy is “broader” than what is implemented in practice to the extent that Company A did not know precisely its initial scope of action. »¹⁷

10 WP 260 rev.01, point 7.

11 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.

12 “Objective 5 - Ensure that information is concise, transparent, understandable, and transmitted in clear and simple terms”; Investigation report, page 27 et seq.

13 Investigation report, page 28, point 4.4.5.1 Expectations.

14 Statement of Objections, page 7, point 18.

15 Statement of Objections, page 7, point 20.

16 Minutes, page 3, 6th paragraph.

17 Statement of Objections, page 7, point 19.

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18. The Restricted Panel recalls first of all that Article 12.1 of the GDPR requires between

other than the required information is provided in a concise and transparent manner.

She notes that the Transparency Guidelines state that “the requirement that the

provision of information to data subjects and that communications to them

are addressed are carried out in a “concise and transparent” manner means that the

controllers should present the information/communications in a way

effective and succinct in order to avoid overwhelming the persons concerned with information. »18

19. The Restricted Committee notes that the former data protection policy

entitled “Privacy Policy”, put in place to inform users of its website

the processing of their personal data, and from which the investigation service extracted

a copy of the auditee's website dated August 28, 2020 (hereinafter: “the former

policy”), mentioned in the section “Our use of collected information”:

“We analyze your buying clothes and how you interact with our Services so that we can

suggests [...]. (...)”19.

It notes that the new data protection policy entitled “Privacy Policy”

that the control had put in place and of which the investigation service extracted a copy of the site

internet of the controlled dated October 5, 2020 (hereinafter: “the new policy”)

mentioned in the “information we collect automatically” section:

“We analyze your buying habits and how you interact with our

services so that we can suggest [...]. (...) »20

It also notes that the controller did not dispute that these treatments were not made, and even confirmed during the October 12, 2020 interview that “Company A has no advertising income although the Privacy Policy refers to behavioral advertising” and that “Company A states that the privacy policy is “broader” than what is implemented in practice, because at the beginning, Company A did not know precisely its scope of stock. »²¹

18 WP 260 rev.01, point 8.

19 Appendix 1 to the investigation report, exhibit 1, pages 2.

20 Appendix 1 to the investigation report, exhibit 2, pages 3.

21 Minutes, page 3, 6th paragraph.

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20. It considers that the provision of information to users which corresponds to processing that is not carried out, such as information on advertising based on the interests of the customer or on the collection of information on the habits of the customer appearing in the old policy and the new policy, hinders the information requirements are presented to users in an efficient and succinct manner.

21. In view of the foregoing, the Restricted Panel concludes that at the start of the Commission's investigation CNPD, the auditee had breached the obligation of transparency arising from Article 12.1 of the GDPR to provide the required information in a concise and transparent manner.

2.2. As to the requirement to provide information in an "easily accessible" way

2.2.1. In terms of updates to the data protection policy

22. In the context of objective 422 the head of investigation expected, among other things, that “that all substantial updates to the data protection policy

are the subject of active communication (informative e-mail, pop-up on the website, etc.) with a summary of the (main) modifications (cf. Test 5). »²³

23. The CNPD officials noted in this context that the inspection had brought to light the old policy in September 2020 “following the appointment of a Delegate for data protection” and that it had published the new policy on its website²⁴.

They also found that the update of the data protection policy has been announced to the customer “via the cookie banner that appears during the first connection on the “website” but that “there is no summary of the main changes carried out”²⁵.

According to the statement of objections, “this banner only appears during the first connection of the user on the website and does not constitute a support of communication specifically devoted to the modification”²⁶.

22 “Objective 4 - Ensure that information is transmitted by appropriate means; Report of investigation, page 23 et seq.

23 Investigation report, page 23, point 4.4.4.1 Expectations.

24 Investigation report, page 25, point 4.4.4.2.5.2.

25 Investigation report, page 26, point 4.4.4.3.3.

26 Statement of Objections, point 25.

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24. For this reason, the head of the investigation held that the “conditions of article 12, paragraph 1 of the GDPR regarding the accessibility of information (at the level of updates) have not been respected. »²⁷

25. Restricted Training refers in this context to the guidelines on the

transparency indicating that the "controller should respect the same principles when communicating the initial opinion or declaration on the protection of life privacy and any subsequent material changes to this notice or this declaration" and "that a change notification should always be communicated by a suitable means (for example, e-mail, postal mail, pop-up window on a web page or other means that effectively captures the attention of the data subject) specifically devoted to modification (for example, separate from a content of direct marketing), and this communication must comply with the requirements of Article 12 [...]. The information contained in the privacy notice or statement stating that the data subject should regularly check the notice or statement on privacy in order to find out about any changes or updates are considered not only insufficient, but also unfair [...]. »²⁸

It also recalls that "the data controller should also, when notification of changes to the persons concerned, explain to them the impact that these modifications could have on them"²⁹.

26. In this context, the Restricted Committee notes that the cookie banner³⁰ does not did not constitute a communication medium specifically devoted to the modification of the old policy and that said banner did not include a summary of the main changes made, nor of the impact that these changes may have had on the persons concerned³¹.

For this reason, it considers that the users of the website of the controlled who have created a user account were not systematically actively informed of a substantial modification of the privacy policy.

27 Statement of Objections, point 26.

28 WP 260 rev.01, point 29.

29 WP 260 rev. 01, item 31.

30 See exhibits 4 of April 15, 2022 appended to the investigation report.

31 Statement of Objections, point 25.

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27. In view of the foregoing, the Restricted Panel concurs with the opinion of the head of investigation and concludes that the auditee breached the transparency obligation arising from Article 12.1 of the GDPR, and in particular the requirement to provide the required information in a way easily accessible.

2.2.2. At the level of information on cookies

28. In the context of objective 132 the head of investigation expected, among other things, that “in case of use of cookies, an informative “cookies” banner or any other means display must be present at least during the first connection to the site (see Test 2). »33.

In addition, in the context of objective 934 the head of investigation expected, among other things, to that “the information is transmitted at the following stages: [...] Before or at beginning of the data processing cycle, i.e. when the data to be personal character are collected from the data subject or obtained from a another way (cf. Tests 1 and 2); [...]. »35

29. It is apparent from the statement of objections that “according to the guidelines on the collection of the consent for the deposit of cookies, adopted on October 2, 2013 by the Group of Work "Article 29" on data protection, the operator of a website should introduce a valid consent mechanism with a clear warning, complete and visible relating to the use of cookies, when and where the consent is requested, for example on the web page on which a user

starts a browsing session (entrance page)".³⁶

30. The CNPD agents "made a first connection to the controlled website (i.e. a connection made using a browser from which all cookies have been deleted) to identify the presence of a "cookie banner""³⁷.

In this case, the head of the investigation noted that at the start of the investigation "no" banner cookies" did not appear during the first connection to the Company's website

32 "Objective 1 - To ensure that information is available"; Investigation report, page 11 et seq.

33 Investigation report, page 11, point 4.4.1.1.

34 "Objective 9 - Ensure that information is transmitted during the key stages of processing"; Investigation report, page 35 et seq.

35 Investigation report, page 35, point 4.4.9.1.

36 Statement of Objections, page 9, point 30.

37 Investigation report, page 11, point 4.4.1.2.2.1.

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A"³⁸ and that "[A]s a result, the corresponding information was not easily accessible for the user"³⁹.

On the other hand, he specified in the statement of objections that "this point has been corrected and a cookie banner with a request for consent and a reference to the policy data protection and cookie policy now appears on the first connection to the website [...]"⁴⁰.

31. Based on these findings, the head of the investigation nevertheless concluded that "the conditions of Article 12, paragraph 1, of the GDPR with regard to the accessibility of information (at the level of cookies) were not respected at the start of the investigation. »⁴¹

32. The Restricted Committee recalls that Article 12.1 of the GDPR requires, among other things, that required information must be provided in an easily accessible manner.

She notes that the guidelines on transparency specify that "the criterion" easily accessible" means that the data subject should not have to search for information but should be able to access it immediately: for example, these information could be communicated to the persons concerned directly or to the means of a link addressed to them.

It also observes that it is recommended "as a matter of good practice that, in a online context, a link to the privacy statement or notice either provided at the point of collection of the personal data, or that this information can be viewed on the same page as the one where the personal data is collected"⁴³.

33. The Restricted Panel finds that the CNPD agents recorded that no "cookie banner" (i.e. a "pop-up" type window displayed when first connection) did not appear during the first connection to the website of the checked at the beginning of the investigation.

38 Statement of Objections, page 9, point 31.

39 Statement of Objections, page 8, point 27.

40 Statement of Objections, page 9, point 32.

41 Statement of Objections, page 12, point 33.

42 WP 260 rev.01, point 11.

43 WP 260 rev.01, point 11.

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It also takes into account that the CNPD agents indicated that "this point has been corrected" before the statement of objections was sent and "that a cookie banner with a request for consent and a reference to the data protection policy data and the cookies policy now appears during the first connection on the website of Company A"⁴⁴.

34. Consequently, the Restricted Committee considers that at the start of the investigation, the information about cookies was not communicated in a transparent way and easily accessible in accordance with Article 12.1 of the GDPR.

35. It further notes that the requirement to obtain the prior consent of the user to the depositing or reading "non-essential" cookies (for example, a cookie deposited at purposes of behavioral monitoring) on his terminal equipment, after having provided him required information, is required by article 4.3.e) of the amended law of 30 May 2005 relating to the specific provisions for the protection of the person with regard to the processing personal data in the electronic communications sector (hereafter after: the "modified law of 30 May 2005")⁴⁵, and which the CNPD recommends to operators of websites and applications to inform users also of the fact that they use "essential" cookies⁴⁶.

36. However, given that monitoring the application and compliance with the amended law of 30 May 2005 was not within the scope of the investigation in question, the Restricted Panel does not rule not in this decision on the compliance of the audit with the requirements posed by this law, and in particular the validity of the consent mechanism deployed by the control and the information to be provided to users in this context.

⁴⁴ Statement of Objections, page 9, point 32.

⁴⁵ CNPD guidelines on cookies and other tracers, point 2., available at : <https://cnpd.public.lu/fr/dossiers-thematiques/cookies/contexte-juridique.html> .

⁴⁶ CNPD guidelines on cookies and other tracers, point 3.1.2., available

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2.3. As for the requirements to provide information in a way that is "understandable" and "in clear and simple terms"

2.3.1. At the translation level

37. In the context of objective 547 the head of investigation expected, among other things, that "the data protection policy is available in the same languages as those offered on the website, i.e. the languages of the customers targeted by the services of the controlled (cf. Test 3)"⁴⁸.

38. According to the Statement of Objections, "the CNPD officials noted that at the beginning of the survey, the data protection policy and the cookies policy were not available only in English while the website was available in other languages"⁴⁹.

The head of the investigation clarified that "the new data protection policy, same as the cookies policy, are now available in the languages, in which the translation of the website is available (German, French, Luxembourgish, English, Spanish, Italian and Portuguese)"⁵⁰.

He nevertheless concluded that the conditions of Article 12.1 of the GDPR "as to the character comprehensible information (at the translation level)" were not respected at the start of the investigation.

39. The controller, for his part, told the CNPD agents already during the on-site visit, that the data protection policy as well as the cookie policy have in the meantime been translated into different languages.

40. The Restricted Committee recalls that Article 12.1 of the GDPR requires, among other things, that required information must be provided in an understandable way.

She notes that the Transparency Guidelines state that “the requirement that this information is “understandable” means that it should be able to be

47 “Objective 5 - Ensure that information is concise, transparent, understandable, and transmitted in clear and simple terms”; Investigation report, page 27 et seq.

48 Investigation report, page 28, point 4.4.5.1.

49 Statement of Objections, page 10, point 37.

50 Statement of Objections, page 10, point 38.

51 Statement of Objections, page 10, point 39.

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understood by the majority of the target audience”, “comprehensibility is closely linked to the requirement to use clear and simple terms” and “a data controller knows the people about whom it collects information and can leverage that knowledge to determine what that audience would be likely to understand.

With regard to the above requirement to provide the required information in Plain and simple terms, the Transparency Guidelines indicate more specifically that a “translation into one or more languages should be provided when the data controller targets data subjects who speak these languages»⁵³.

41. The Restricted Committee notes that at the start of the CNPD's investigation, the former policy was only available in English although the website was available in languages Luxembourgish, French, German, Portuguese, Italian, Spanish and English.

It considers that the fact that the controller made the website available to users in other languages besides English, shows that it was also aimed at an audience not necessarily fluent in English, and from which he could not expect he would be likely to include a data protection policy written in English.

42. It therefore considers that the auditee did not provide the required information in a form easily understandable, because while its website was available in seven languages, its data protection policy should have been available in all these languages.

43. In view of the foregoing, the Restricted Panel concurs with the opinion of the head of investigation and concludes that at the start of the CNPD's investigation, the control had failed in the obligation to transparency arising from Article 12.1 of the GDPR and more specifically from the requirements of provide the required information in a way that is understandable and in terms that are clear and simple.

52 WP 260 rev.01, point 9.

53 WP 260 rev.01, point 13.

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2.3.2. At the level of retention periods

44. In the context of objective 254 the head of investigation expected, among other things, that “the following information is accessible through the data protection policy [...] [...] The data retention period or, where this is not possible, the criteria used to determine this period (cf. Test 8 [...])”⁵⁵.

In addition, in the context of objective 556 the head of investigation expected, among other things, to that the information is “transmitted in clear and simple terms, without structures

complex linguistics, without abstract or ambiguous terms, without vague terms and without leave room for different interpretations (cf. Test 2)”⁵⁷.

45. According to the statement of objections, “the CNPD officials did not find in the data protection policy clear indication of the retention period personal data. According to the policy in force at the start of the investigation, it is stated that personal information will be retained when Company A has a legitimate business need to do so (for example, while the data subject holds a Company A account or to enable Company A to meet its legal, tax or accounting obligations). »⁵⁸.

The head of investigation concluded that the conditions of article 12.1 of the GDPR “as to the comprehensibility of the information (in terms of retention periods)” were not not respected at the start of the investigation.

46. The controller, for his part, confirmed to the CNPD agents during the on-site visit of the October 12, 2020, that the retention periods were mentioned only in a way general, both in the old policy and in the new policy. However, he has clarified that precise retention periods would be found in its register of treatment⁶⁰.

47. The Restricted Committee recalls that Article 12.1 of the GDPR requires, among other things, that “any information referred to in Articles 13 and 14” must be provided in a way that is “understandable and

54 “Objective 2- Ensure that the information is complete”: Investigation report, page 13 et seq.

55 Investigation report, page 13, point 4.4.2.1.

56 “Objective 5 - Ensure that information is concise, transparent, understandable, and transmitted in clear and simple terms”; Investigation report, page 27 et seq.

57 Investigation report, page 28, point 4.4.5.1.

58 Statement of Objections, page 10, paragraph 44.

59 Statement of Objections, page 11, paragraph 45.

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[...] in clear and simple terms [...]". Article 13.2.a) of the GDPR requires that "the

controller provides the data subject, at the time the data to be

personal character are obtained [...]: a) the retention period of the data to

personal character or, where this is not possible, the criteria used to determine

this duration; [...]".

She notes that the Transparency Guidelines state that "the period of

conservation (or the criteria for determining it) can be dictated by different factors

such as regulatory requirements or industry guidelines, but it

should be formulated in such a way that the data subject can assess, according to the

situation in which it finds itself, what will be the retention period with regard to

specific data or in case of specific purposes. The controller does not

may simply state in a general way that the personal data

will be kept for as long as the legitimate purpose of the processing requires. The case

where appropriate, different storage periods should be mentioned for the different

categories of personal data and/or the different processing purposes,

including periods for archival purposes. »61.

48. She notes that the former policy⁶² of the controlled mentioned that "Company A will retain

your personal information where we have an ongoing legitimate business need to do so

(for example, while you hold an account with us or to enable us to meet our legal, tax or

accounting obligations). If you object to us processing certain categories of your personal

information (including in relation to receiving marketing communications from us), we will

retain a record of your objection to the processing of your information so that we can continue to respect your wishes. [...]”⁶³.

It also notes that the CNPD agents noted in the investigation report that the new policy⁶⁴ of the controlled mentioned that "Your personal data is stored by Company A only for the time in connection with the purpose of our exchanges of communication (contact us via our contact form) or your order or until you unsubscribe from our newsletter, if you are there

⁶¹ WP 260 rev.01, Annex "Information to be communicated to a data subject at the title of article 13 or article 14", pages 46 to 47.

⁶² Investigation Report, Appendices, Exhibit 1.

⁶³ Investigation report, page 17, point 4.4.2.2.8.2. ; Exhibit 1, page 3, item 5.

⁶⁴ Investigation Report, Appendices, Exhibit 2.

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subscribed (an unsubscribe link is available in each newsletter that we send). »⁶⁵.

Furthermore, it takes into account the fact that the control's processing register specifies actually in the "Description of treatment" section of the retention periods for each treatment.

49. She considers that neither the old policy nor the new policy was formulated in a in such a way that a data subject could have assessed, within the framework of a order on the website of the controlled, what would be the retention period concerning his data as a user of the website. She believes that the sentence "[...] are stored [...] for the time in relation to the purpose of our exchanges of

communication [...] or your order [...]”⁶⁶ is too vague to deduce a duration

precise retention.

Furthermore, it notes that the precise retention periods mentioned in the register

processing of the controlled are not accessible to users of the website and

are therefore not appropriate to rectify this lack of information.

50. In view of the foregoing, the Restricted Panel concurs with the opinion of the head of investigation that at

start of the CNPD investigation, the control had breached the obligation of transparency

arising from Article 12.1 with regard to Article 13.2.a) of the GDPR and more specifically to the

requirements to provide the required information in an understandable way and in

plain and simple terms.

2.3.3. At the level of the legal bases

51. Under objective 267 the head of investigation expected, among other things, that “the

following information is accessible through the data protection policy

[...]: [...] The purpose(s) and the legal basis of the processing (it is expected that the

specific legal basis of the processing is informed and not simply the list of bases

that exist under the GDPR) (cf. Test 3)), [...]”⁶⁸.

⁶⁵ Investigation report, page 17, point 4.4.2.2.8.2. ; Exhibit 2, page 5, item 7.

⁶⁶ Investigation Report, Appendices, exhibit 2, point 7.

⁶⁷ “Objective 2- Ensure that the information is complete”: Investigation report, page 13 et seq.

⁶⁸ Investigation report, page 13, point 4.4.2.1.

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52. According to the Statement of Objections, “the CNPD officials observed that the policy

of data protection which was in force at the beginning of the investigation mentioned the bases

legal in general and that it was difficult for the data subject to understand which legal basis corresponded to which data processing. »⁶⁹.

The head of investigation clarified that “in the new updated version of the policy of data protection, a new part has been added in which each database legal is attached to a treatment, which makes the reading and understanding of the much clearer policy”.⁷⁰

He nevertheless concluded that the conditions of Article 12.1 of the GDPR “as to the character comprehensible information (at the level of the legal bases)” were not respected at the start of the investigation.

53. The control on his side confirmed during the on-site visit of October 12, 2020 that the old policy mentioned the legal bases in a general way and it specified that a new policy has been created in which each processing of data to personal character was linked to a specific legal basis.

54. The Restricted Committee recalls that Article 12.1 of the GDPR requires, among other things, that “any information referred to in Articles 13 and 14” must be provided in a way that is “understandable and [...] in clear and simple terms [...]”. Article 13.1.c) of the GDPR requires that “the controller provides the data subject, at the time the data to be personal character are obtained [...]: c) the purposes of the processing for which the personal data as well as the legal basis for the processing; [...]”.

55. She notes that the Transparency Guidelines indicate that “in addition to establishing the purpose of the intended processing for the personal data, the legal basis applied under Article 6 must be clarified”⁷².

56. She noted that the old policy referred to information relating to the purposes of processing in a section entitled “Our use of the information collected”⁷³ and

⁶⁹ Statement of Objections, page 11, point 50.

⁷⁰ Statement of Objections, page 11, paragraph 51.

71 Statement of Objections, page 12, point 52.

72 WP 260 rev.01, Annex “Information to be communicated to a data subject at the title of Article 13 or Article 14”, page 42.

73 Investigation Report, Appendices, Exhibit 1, page 2.

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that the legal bases were not attached to the processing. The legal bases were only mentioned generally in a section entitled “Legal basis for processing of personal information”.

She also notes that the new policy contained two separate dedicated parts, on the one hand, to the processing purposes (“Purpose of data processing”⁷⁵) and, on the other part, to the legal bases (“Legal basis”⁷⁶). Said new policy mentioned 7 processing, each of which was linked to a specific legal basis⁷⁷:

☐ Processing related to the information and services requested → Legal basis:

Consent

☐ Processing related to cookies → Legal basis: Legitimate interest

☐ Processing related to product updates and customer support → Legal basis:

Consent

☐ Processing related to registration information → Legal basis: Obligation contractual

☐ Processing related to transaction information → Legal basis: Obligation contractual

☐ Processing related to information on marketing preferences → Legal basis:

Consent

□ Processing related to the publication of notices or messages and to contacts within the framework

of questions, problems or comments → Legal basis: Legitimate interest

57. It notes that during the on-site visit of October 12, 2020, the controller did not

contested that the old policy (verified by CNPD agents at the beginning of

the survey⁷⁸) mentioned the legal bases only in a general way and that they

were unrelated to treatment. She also notes that the auditee changed

the old policy very soon after the start of the investigation and that the new policy

already existed at the time of the on-site visit of 12 October 2022.

58. In view of the foregoing, the Restricted Panel concurs with the opinion of the head of investigation that at

start of the CNPD investigation, the control had breached the obligation of transparency

74 Investigation Report, Appendices, Exhibit 1, page 3.

75 Investigation Report, Appendices, Exhibit 2, page 1.

76 Investigation Report, Appendices, Exhibit 2, page 3 and 4.

77 Investigation report, page 14, point 4.4.2.2.3.2.

78 The sending of the preliminary questionnaire by mail dated August 26, 2020.

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arising from Article 12.1 with regard to Article 13.1.c) of the GDPR and more specifically to

requirements to provide the required information in an understandable way and in

plain and simple terms.

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

1. On the principles

59. Article 13 of the GDPR provides the following:

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

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

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

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

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

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

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

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

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

international community, and the existence or absence of an adequacy decision issued by the Commission or, in the case of transfers referred to in Article 46 or 47, or Article 49,

paragraph 1, second subparagraph, the reference to the appropriate or suitable safeguards and the means of obtaining a copy or where they have been made available;

2. In addition to the information referred to in paragraph 1, the controller shall provide the

the data subject, at the time the personal data is obtained,

the following additional information which is necessary to guarantee a fair and transparent treatment:

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a) the retention period of the personal data or, where this is not

possible, the criteria used to determine this duration;

b) the existence of the right to request from the controller access to the data to personal character, the rectification or erasure of these, or a limitation of the processing relating to the data subject, or the right to oppose the processing and right to data portability;

c) where the processing is based on point (a) of Article 6(1) or on Article 9, paragraph 2(a), the existence of the right to withdraw consent at any time, without affecting the lawfulness of the processing based on the consent made before the withdrawal thereof;

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

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

f) the existence of automated decision-making, including profiling, referred to in Article 22, paragraphs 1 and 4, and, at least in such cases, useful information concerning the underlying logic, as well as the significance and intended consequences of such processing for the person concerned.

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

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

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

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of transparency within the meaning of the GDPR.⁷⁹ These obligations were clarified by the Group of Article 29 in its guidelines on transparency which have been taken up and re-approved by the EDPS.⁸⁰

61. For the rest, the Restricted Panel refers to points 12 to 14 of this decision with regard to the principles to be observed under the obligation to transparency in accordance with Article 12.1 of the GDPR.

2. In this case

Regarding information on data transfers to third countries

62. Under objective 281 the head of investigation expected, among other things, that “the following information is accessible through the data protection policy

[...]: [...] Transfers to third countries where applicable (cf. Tests 7 and 19)”⁸².

63. According to the Statement of Objections, CNPD officials analyzed the former policy

(i.e. the data protection policy in force at the start of the survey) and they have

found that “data transfers to third countries were not mentioned

in the policy”⁸³ while “certain data could be transferred” to certain

third countries⁸⁴ . They also found that the controlled could not take advantage of

the exception provided for in Article 13.4 of the GDPR because, in this case, the persons

concerned did not already have this information in their possession⁸⁵.

However, CNPD officials noted that “this point has been added to the new

version of the data protection policy which indicates that certain data such as

that the IP address can be collected by partners [...]”⁸⁶.

⁷⁹ See in particular Articles 5.1.a) and 12 of the GDPR, see also recital (39) of the GDPR.

⁸⁰ See points 13 and 14 of this decision.

⁸¹ “Objective 2- Ensure that the information is complete”: Investigation report, page 13 et seq.

⁸² Investigation report, page 13, point 4.4.2.1.

⁸³ Statement of Objections, page 13, paragraph 58.

⁸⁴ Statement of Objections, page 13, paragraph 60.

⁸⁵ Statement of Objections, page 13, paragraph 56.

⁸⁶ Statement of Objections, page 13, paragraph 61.

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The head of investigation was nevertheless of the opinion that the conditions of article 13.1.f) of the GDPR

“as to the information on data transfers to third countries were not

complied with at the start of the investigation”⁸⁷.

⁶⁴. The control on his side confirmed during the on-site visit of October 12, 2020 that

the old policy did not mention the possibility of data transfers to

third country. On the other hand, he clarified that the new policy contained a section entitled

“Third party” in which it was mentioned that certain data could be collected

by its partners in certain third countries.⁸⁸

⁶⁵. The Restricted Panel recalls that Article 13.1.f) of the GDPR requires that in the event that the

controller intends to transfer personal data

personnel to a third country or to an international organisation, he must inform the

data subject, at the time the personal data is obtained.

⁶⁶. She notes that the old policy did not mention the existence of data transfers

of a personal nature to third countries.

67. She also notes that it is stated in the investigation report that “this point was added in the new policy” and that said new policy mentions that “certain data such as the IP address may be collected by partners [...]”⁸⁹, including a partner is specified.

68. In view of the foregoing, the Restricted Panel concurs with the opinion of the head of investigation and concludes that at the start of the CNPD's investigation, the control had failed in its obligation to inform the persons concerned of the intention to carry out a transfer of data to personal character to a third country or to an international organization resulting from Article 13.1.f) of the GDPR.

87 Statement of Objections, page 14, point 62.

88 Minutes, page 6; Investigation Report, Appendices, Exhibit 2, point 6.

89 Investigation report, page 16, point 4.4.2.2.7.2. ; Investigation Report, Appendices, Exhibits 2, page 5, item 6.

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II. 2. On the fine and corrective measures

1. On the principles

69. In accordance with article 12 of the law of 1 August 2018, the National Commission has the powers 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

this Regulation;

(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 the 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(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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j) order the suspension of data flows addressed to a recipient located in a

third country or an international organisation. »

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

71. Article 83 of the GDPR provides that each supervisory authority shall ensure that fines administrative measures 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 the extent to which 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”.

72. The Restricted Committee would like to point out that the facts taken into account in the context of the

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.

73. Nevertheless, the steps taken by the control to comply with the

the GDPR during the investigation procedure or to remedy the shortcomings identified

by the head of investigation in the statement of objections, are taken into account by the

Restricted training as part of any corrective measures to be taken

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

74. In the statement of objections, the head of investigation proposes to the Restricted Panel to

pronounce against the controlled an administrative fine relating to the amount of

1,000 euros.

75. In order to decide whether to impose an administrative fine and to decide, if applicable, of the amount of this fine, the Restricted Panel analyzes the criteria set by article 83.2 of the GDPR:

- As for the nature and seriousness of the violation (article 83.2 a) of the GDPR), it recalls in with regard to breaches of Articles 12 and 13 of the GDPR, that transparency applicable to the processing of personal data and information relating to this processing are essential obligations incumbent on those responsible for

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processing so that individuals are fully aware of the use that will be made of their personal data, once collected. A

breach of these articles of the GDPR thus constitutes an infringement of the rights of persons concerned. The right to transparency and the right to information have have been reinforced under the GDPR, which demonstrates their very importance. particular.

- As for the duration criterion (article 83.2.a) of the GDPR), the Restricted Panel finds that these shortcomings have lasted over time, at least since the beginning of the investigation and until, if necessary, a possible modification of the policy of Data protection. It recalls that guidance relating to the principles and obligations provided for by the GDPR was available from the CNPD, in particular on his website.

- As for the number of data subjects (article 83.2. a) of the GDPR), the Training Restricted finds that these are all users of the controlled website. She takes into account the assertion of the head of investigation according to which the control "counts

approximately [...] customers (according to figures communicated in October 2020)”⁹⁰.

- As to whether the breaches were committed deliberately or not

(by negligence) (article 83.2.b) of the GDPR), the Restricted Panel recalls that "no deliberately" means that there was no intention to commit the violation, although the controller or the processor has not complied with the obligation to due diligence required by 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 control.

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

⁹⁰ Statement of Objections, page 16, point 66.b).

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In this context, it also takes into account the assertion of the head of the investigation according to which the controlled "showed great reactivity by appointing as early as September 2020 an external Data Protection Officer [...]"⁹¹.

- As to the degree of cooperation established with the supervisory authority (Article 83.2. f) of the GDPR), the Restricted Panel takes into account the statement of the head of investigation according to which the auditee has shown constructive participation throughout investigation.⁹²

76. The Restricted Committee notes that the other criteria of Article 83.2 of the GDPR are not

neither relevant nor likely to influence its decision on the imposition of a fine

administrative and its amount.

77. It also notes that while several measures have been put in place by the control in order to

remedy in whole or in part certain shortcomings, these were only adopted

following the launch of the investigation by CNPD agents on August 26, 2020

(see also point 68 of this decision).

78. Consequently, the Restricted Committee considers that the imposition of an administrative fine

is justified with regard to the criteria set out in Article 83.2 of the GDPR for breaches of the

articles 12.1 and 13.1.f) of the GDPR.

79. With regard to the amount of the administrative fine, the Restricted Panel recalls that

Article 83.5 of the GDPR provides that violations of the rights enjoyed by individuals

concerned under Articles 12 to 22 of the GDPR may be subject to fines

administrative costs of up to EUR 20,000,000 or, in the case of a company,

up to 4% of the total worldwide annual turnover of the preceding financial year, the amount

higher being retained.

80. In view of the relevant criteria of Article 83.2 of the GDPR mentioned above, the Training

Restricted considers that the pronouncement of a fine of seven hundred (700) euros appears to

effective, proportionate and dissuasive, in accordance with the requirements of Article 83.1 of the

GDPR.

91 Statement of Objections, page 16, point 66.c).

92 Statement of Objections, page 16, point 66.d).

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2.2 Regarding the taking of corrective measures

81. In the statement of objections, the head of investigation proposes to the Restricted Panel to adopt the following corrective measures "within a period of 1 month from the notification to Control of the decision taken by the Restricted Training:

Order, pursuant to Article 58 (2) d) of the GDPR, the Controlled to comply with Article 12 (1) of the GDPR by making the following changes:

a) Update the data protection policy ensuring that the information contained therein reflects reality, particularly in terms of treatments that are not in place in practice in particular advertising based on the interests of the customer and the collection of information on the habits of the customer ;

b) Review the methods used to communicate to the persons concerned the update of the data protection policy in order to ensure that the changes can be read by most recipients with the use of a means adapted and specifically devoted to the said modifications. There notification should also contain a summary of the impact that these changes could have on the persons concerned;

c) Specify in the data protection policy the information on the durations data retention. »93.

82. As to the corrective measures proposed by the head of investigation and with reference to point 73 of this decision, the Restricted Panel takes into account the steps carried out by the controlled in order to comply with the provisions of Articles 12.1 and 13.1.f) of the GDPR, as detailed in its emails of June 16, 2021, February 8, 2022 and July 6, 2022. More specifically, it takes note of the following facts:

1. As for the corrective measure proposed by the head of investigation mentioned under a) of point 81 of this decision concerning the update of the data protection policy data by ensuring that the information contained therein reflects the reality

(particularly at the level of processing which is not in place in practice in

particular advertising based on the interests of the customer and the collection of information on the

93 Statement of Objections, page 15, paragraph 64.

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habits of the customer), the Restricted Panel finds that after the question asked by

the Restricted Panel during the hearing of July 6, 2022, which the controlled sent

an email containing a link to the current version of its privacy policy

data⁹⁴.

The Restricted Committee notes that the current version of the protection policy

of the controlled data always contains the same sentence in point 2 (sub-chapter

“Information We Collect Automatically”) under the heading “Information

on the activity” which reads as follows: “We analyze your shopping habits and the

how you interact with our services so that we can suggest

[...]. »⁹⁵

In the event that the controlled person still does not perform this type of processing of

personal data (in particular the collection of information on the habits

of its customers and advertising based on the interests of the customer), the Restricted Training

refers to points 15 to 22 of this decision and notes that this information

which correspond to processing which is not carried out, prevent the

required information is presented to users of the audited website

efficiently and succinctly.

In view of the insufficient compliance measures taken by the

controlled in this case and point 73 of this decision, the Restricted Panel

therefore considers that the corrective measure proposed by the head of investigation in this respect and taken up in point 81 of this decision under a).

2. As for the corrective measure proposed by the head of investigation mentioned under b) of point 81 of this decision concerning "the methods used to communicate to data subjects the updating of the data protection policy in order to ensure that changes can be read by most recipients" (and also ensuring that a summary of the impact that these changes could have on the data subjects is contained in this notification)⁹⁶, the Formation

Restricted notes that the control informed the head of investigation in his email of 8

⁹⁴ See email from the audit dated July 6, 2022.

⁹⁵ Cf. Privacy Policy of the controlled: [...] (last update: [...]).

⁹⁶ See Transparency Guidelines, point 29.

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February 2022 that the creation of "a separate banner to warn the user of the changes made" would be in progress. The controller also specified in said mail that "the changes made to the data protection policy are explained point by point in a window specially created for this purpose".

Having taken note of the email from the controller sent on July 6, 2022 (sent directly after the hearing of the same day) which contained the link to the website of the controlled, the Restricted Training finds that such a separate banner informing users of the website of the update of the "privacy policy" has effectively been created. Having followed the link suggested in the said banner, she noticed that the also makes available a summary of the impact that these changes

could have on the persons concerned.

In consideration of the sufficient compliance measures taken by the control in this case and point 73 of this decision, the Restricted Panel considers when there is no reason to pronounce the corrective measure proposed by the chief investigation in this regard and taken up in point 81 of this decision under b).

3. As for the corrective measure proposed by the head of investigation mentioned under c) of point 81 of this decision concerning the update of the data protection policy data relating to information on the retention periods of personal data staff, the Restricted Panel notes that the controlled mentioned in his email of 8 February 2022 (in response to the statement of objections) that it had amended Article 7 of its current protection policy "to integrate information on the durations data retention". The controlled mentioned in said email that Article 7 (titled "Storage period") read as follows: "Your personal data is stored by Company A only for the time in connection with the purpose of our exchanges of communication (when you contact us via our form of contact) or your order or until you unsubscribe from our newsletter, if you are registered (an unsubscribe link is available in every newsletter we send).".

97 Cf. website of the controlled: [...]

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The Restricted Committee notes that Article 7 quoted above had exactly the same content in the new policy of October 5, 2020 (taken into account by the CNPD agents in the investigation report, exhibit 298) and it refers to points 44

to 50 for further explanations regarding the opinion of the Restricted Panel on the insufficiency of this information.

After a question posed by the Restricted Panel during the hearing of July 6, 2022, the controlled has sent an email containing a link to the current version of their policy of data protection⁹⁹. The Restricted Committee notes that the current version of the data protection policy of the controlled always contains the same article 7 (entitled “Storage period”) which always has exactly the same content¹⁰⁰ as article 7 already mentioned in the new policy of October 5, 2020. Therefore, it notes that the current version of the data protection policy of the audited still does not contain sufficient information with respect to the period retention period (or the criteria for determining it) so that a user can assess, according to the situation in which he finds himself, what will be the period of retention of personal data.

Given the insufficient compliance measures taken by the audited in this case and point 73 of this decision, the Restricted Committee therefore considers that it there is reason to pronounce the corrective measure proposed by the head of investigation in this regard and repeated in point 81 of this decision under c).

In view of the foregoing developments, the National Commission sitting in restricted formation, after having deliberated, decides:

- to retain the breaches of Articles 12.1 and 13.1.f) of the GDPR;
- to impose an administrative fine on Company A in the amount of seven one hundred (700) euros, with regard to the breaches constituted in Articles 12.1 and 13.1.f) of the GDPR;

⁹⁸ See Investigation Report, Appendices, Exhibits 2, page 5, point 7.

⁹⁹ See email from the audit dated July 6, 2022.

¹⁰⁰ Cf. Article 7 of the “Privacy Policy” of the controlled ([...])

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- issue against Company A an injunction to bring the

processing with the obligations resulting from article 12.1 of the GDPR, within a period of 2

(two) months following the notification of the decision of the Restricted Panel, and, in

particular,

o ensure that the information contained in the data protection policy

of Company A reflect the reality of the processing, in particular at the level of the

advertising based on the interests of the customer and the collection of information on the habits

of the customer, and consequently, to delete the information which corresponds to

processing that is not carried out;

o add retention periods in the data protection policy

specific for the different processing of personal data or,

where this is not possible, the criteria used to determine this duration of

storage so that the data subject can assess, depending on the situation

in which it is located, what retention period will be applied.

Belvaux, December 13, 2022.

For the National Commission for Data Protection sitting in restricted formation

Tine A. Larsen Thierry Lallemand

President

Commissioner

Alain Hermann

Commissioner

Indication of remedies

This administrative decision may be subject to an appeal for review within 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 Bar Associations.

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