

Decision of the National Commission sitting in restricted formation

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

Deliberation No. 44FR/2021 of November 9, 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 Company A on the basis of Article 37 of the law of 1 August 2018 on the organization of the National Commission for the data protection and the general data protection regime (hereinafter: "Law of August 1, 2018") and to appoint Mr. Christophe Buschmann as Chief of investigation.

2. According to the decision of the Plenary Formation, the investigation carried out by the National Commission for Data Protection (hereinafter: "CNPD") was to 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 Company A.

3. On March 8, 2019, CNPD agents carried out a visit to the premises of Company A. The decision of the National Commission for the Protection of data sitting in restricted formation on the outcome of the investigation (hereinafter: "Formation Restricted") will be limited to processing controlled by CNPD agents and carried out by Company A.

4. Company A is a public limited company registered in the Trade and Luxembourg companies under number [...], with registered office at L- [...] (hereinafter "the control "). The controller [is a car dealer in Luxembourg] [...]1.

5. During the aforementioned visit of March 8, 2019 by CNPD agents to the premises of the controlled, the representative of the latter affirmed, firstly, that the controlled does not use a video surveillance system and that the latter has not installed a geolocation device in its service cars. Subsequently, contrary to this

1 According to the coordinated statutes of the control of [...].

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that had been claimed, CNPD agents spotted two surveillance cameras during

the inspection of the reception of the mechanical workshop of the controlled.<sup>2</sup>

6. On April 25, 2019, CNPD officials notified the controller of the report

relating to the on-site fact-finding mission together with a letter addressing requests

clarifications/additional questions to the controller.

7. By letter dated May 10, 2019, the auditee answered the questions posed by the

CNPD officials in the aforementioned letter.

8. At the end of his investigation, the head of investigation notified the person inspected on 8

August 2019 a statement of objections detailing the shortcomings 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 data subjects (right to information), i.e.

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

service providers and visitors (hereinafter: "third parties") and a non-

compliance with the requirements of article 5.1.c) of the GDPR (principle of minimizing

data).

9. On September 24, 2019, the auditee produced written observations on the

statement of objections.

10. A supplementary letter to the statement of objections was sent to the

checked on August 3, 2020. In this letter, the head of investigation proposed to the

Restricted training to adopt two corrective measures and to inflict on the controlee a

administrative fine of 1,500 euros.

11. By letter dated September 8, 2020, the controller produced written observations

on the supplementary letter to the statement of objections.

12. The president of the Restricted Formation informed the controller by mail of 5

January 2021 that his case would be registered for the session of the Restricted Panel on 11

2 See minutes no. [...] relating to the on-site fact-finding mission carried out on March 8, 2019 to  
of Company A.

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February 2021 and that he could attend this meeting. The controller did not respond to  
this invite.

13. During the Restricted Training session of February 11, 2021, 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

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;

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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 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;

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- 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 general transparency obligations within the meaning of the GDPR.<sup>3</sup> Said obligations have been explained by the Article 29 Working Party in its guidelines on the transparency within the meaning of Regulation (EU) 2016/679, the revised version of which has been adopted April 11, 2018 (hereinafter: “WP 260 rev.01”).

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  
<sup>3</sup> See in particular Articles 5.1.a) and 12 of the GDPR, see also recital (39) of the GDPR.

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and reapproved the documents adopted by the said Group between May 25, 2016 and May 25 2018, such as the aforementioned guidelines on transparency.<sup>4</sup>

2. In this case

18. Regarding the information of third parties, as well as employees as for the video surveillance system, the head of the investigation found that no signaling pictogram, nor any poster or information notice indicating the existence of a video surveillance system and therefore non-compliance with Article 13

of the GDPR had been acquired on the day of the on-site visit (see statement of objections, Ad. A.1. and A.2.).

19. In his letter of May 10, 2019, the person inspected indeed affirmed that he would not have been aware of its obligation to inform the persons concerned (employees and third parties) of the presence of a video surveillance system. So he would have installed the cameras in the sole purpose of ensuring that its customers should not wait in the event of a lack of its reception staff.

20. By letter dated September 24, 2019, the inspector provided further details by report to the video surveillance system, explaining that indeed, no panel display signaled the presence of the two cameras to the persons concerned but that these cameras could not, given their size and wall installation at each side of the counter, go unnoticed and that the images captured by these cameras were not recorded. In addition, the control sent to the chief of investigation the testimony of the head of the control personnel delegation stating that the installation and purposes of the two cameras had been communicated internally in 2014<sup>6</sup>.

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

<sup>4</sup> See EDPS Endorsement decision 1/2018 of 25 May 2018, available [https://edpb.europa.eu/sites/edpb/files/files/news/endorsement\\_of\\_wp29\\_documents\\_en\\_0.pdf](https://edpb.europa.eu/sites/edpb/files/files/news/endorsement_of_wp29_documents_en_0.pdf).

<sup>5</sup> See finding 2 of minutes no. [...] relating to the on-site fact-finding mission carried out on March 8 2019 with Company A

<sup>6</sup> See Appendix 3 of the inspection letter of September 24, 2019.

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under :



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that the data controller must take concrete measures to provide the information in question to the person concerned or to actively direct the person concerned to the location of said information (for example by means of a link direct, a QR code, etc.). (WP260 rev. 01, paragraph 33).

22. The Restricted Committee notes that during the on-site visit by the agents of the CNPD, third parties and employees were not informed of the presence of the video surveillance system and that the person checked has recognized the fact of not having been at the aware of the obligations incumbent on it with regard to its system of video surveillance<sup>7</sup>.

23. With regard to the testimony of the head of the staff delegation of the controlled<sup>8</sup>, the Restricted Committee considers that the mere information of the head of the staff delegation does not ensure that the control employees have been informed individually regarding the specific elements of Article 13 of the GDPR.

24. The Restricted Committee considers in this context that a multi-pronged approach levels to communicate transparency information to people concerned can be used in an offline or non-digital context, i.e. in a real environment such as personal data collected by means of a video surveillance system. The first level of information should generally include the most essential information, namely the details of the purpose of the processing, the identity of the controller and the existence of rights of data subjects, the information having the greatest impact on the processing or any processing likely to surprise the persons concerned, as well as only a reference to the more detailed information of the second level<sup>9</sup>. 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 or

7 See the audit letters of May 10, 2019 and September 24, 2019.

8 See Appendix 3 of the inspection letter of September 24, 2019.

9 See WP260 rev. 01 (point 38.) and EDPS Guidelines 3/2019 on the processing of personal data

by video devices, version 2.0, adopted on January 29, 2020 (points 114. and 117.).

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a link on the website to an information notice for persons

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

25. In this case, the controller indicated, by letter dated September 24, 2019, that he had taken

the decision to dismantle the two cameras in question and he sent photos showing

the walls on each side of the counter after dismantling the cameras<sup>11</sup>.

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

control.

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

1. On the principles

27. 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)”.

28. 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.<sup>12</sup>

29. Article 5.1.b) of the GDPR provides that personal data must be “collected for specific, explicit and legitimate purposes, and not be further processed in a manner incompatible with those purposes; [...] (limitation of purposes)”.

30. Before installing a video surveillance system, the person in charge of the processing must precisely define the purpose(s) it wishes to achieve by

10 See WP260 rev. 01 (item 38.).

11 See Appendix 4 of the inspection letter of September 24, 2019.

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

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using such a system, and will not then be able to use the personal data personal information collected for other purposes.<sup>13</sup>

31. 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>14</sup>

2. In this case

32. It was explained to CNPD officials that the purpose of setting up the CCTV system was the staff warning of the presence of customers in the reception when the latter is unoccupied and that, consequently, the images captured by these cameras were not recorded but were

transmitted in real time to a control monitor.<sup>15</sup>

33. In the Statement of Objections of 8 August 2019, the Head of Investigation mentioned that the controller had indicated as the purpose of the video surveillance "the optimization of the customer reception process" and that he had understood that the control "for lack of indication express, intends to invoke article 6, paragraph 1., letter f) as a legal basis for justify the lawfulness of the processing".

34. During the on-site investigation, the CNPD agents noted that the field of vision of the two cameras installed in the reception of the mechanical workshop allowed the permanent monitoring of employees employed at the reception of the mechanical workshop<sup>17</sup>.

35. According to the Statement of Objections, the Head of Investigation considered that a permanent monitoring of employees at their workstations is "to be considered as disproportionate. Indeed, such permanent monitoring can create a significant psychological pressure for employees who feel and know they are the CNPD, available

<sup>13</sup> See Guidelines for themes/videosurveillance/necessite-proportionnalite.html.

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

<sup>15</sup> See item 6 of Minutes no. [...] relating to the on-site fact-finding mission carried out on March 8 2019 with Company A

<sup>16</sup> See Statement of Objections of 8 August 2019, point B.2., Ad.A.3., page 3.

<sup>17</sup> See finding 3 of minutes no. [...] relating to the on-site fact-finding mission carried out on March 8 2019 with Company A

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

observed, especially since the monitoring measures persist over time. The fact that the employees concerned do not have a means of avoiding from time to time of this monitoring is also likely to aggravate this pressure. Such a permanent surveillance is considered disproportionate to the purpose sought and constitutes an excessive invasion of the private sphere of the employees occupied in their positions of work. In this case, the fundamental rights and freedoms of employees must prevail on the interests pursued by the employer. Thus, he held that non-compliance with article 5.1.c) of the GDPR was acquired on the day of the on-site visit and that the documentation submitted to the CNPD by letter dated May 10, 2019 did not contain any evidence against of this non-compliance, nor any explanation as to the possible necessity of such supervisory measures (statement of objections, Ad. A.3.).

36. In his letter of September 24, 2019, the controller specified again that the two cameras in question had not been installed to monitor the employees or customers but, on the one hand, with a customer service objective, on the other hand “also and above all, for the sake of security, to prevent access by customers to an access area restricted, i.e. the mechanical workshop”.

37. La Formation Restreinte would like to point out that employees have the right not to be subject to continuous and permanent supervision in the workplace. To reach the purposes pursued, it may seem necessary for a data controller installing a CCTV system in the workplace. On the other hand, respecting the principle of proportionality, the controller must use the means of most protective of the employee's private sphere and, for example, limit the fields of vision of the cameras to the only surface necessary to reach the purpose(s) pursued.

38. The Restricted Panel notes that in its letter of September 24, 2019, the person checked indicated that he had dismantled the two cameras in question and sent photos showing the walls on either side of the ticket office and where the screen was of viewing<sup>18</sup>. In said letter, the controller also pointed out (and demonstrated by a photo) that the two cameras had been replaced by a counter where there would be a

18 Annex 4 to the audit letter of September 24, 2019.

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hostess whose function would be to regulate the flow of visitors and ensure their security.<sup>19</sup>

39. 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 concerning the two cameras in question had been acquired on the day of the site visit.

## II. 2. On corrective measures and fines

### 1. Principles

40. 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;

19 Annex 5 to the audit letter of September 24, 2019.

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- 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. »

41. 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

the state or municipalities.

42. 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;

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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 pursuant to sections 25 and 32;

e) any relevant breach previously committed by the controller or the subcontractor ;

f) the degree of cooperation established with the supervisory authority with a view to remedying the breach and to mitigate any negative effects;

g) the categories of personal data affected by the breach;

h) the manner in which the supervisory authority became aware of the breach, in particular whether, and to what extent the controller or processor notified the breach;



(i) where measures referred to in Article 58(2) have previously been ordered against the controller or processor concerned for the same purpose, compliance with these measures;

(j) the application of codes of conduct approved pursuant to Article 40 or certification mechanisms approved under Article 42; and

k) any other aggravating or mitigating circumstance applicable to the circumstances of the species, such as the financial advantages obtained or the losses avoided, directly or indirectly, as a result of the breach”.

43. 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.

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44. Nevertheless, the steps taken by the control to put itself 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

45. In its supplementary letter to the statement of objections of 3 August 2020, the head of investigation proposed to the Restricted Panel to impose a fine

administrative control of an amount of 1,500 euros.

46. In his response to said additional letter of September 8, 2020, the controller again underlined that the head of the staff delegation had given his agreement to the implementation of the video surveillance system and the controller reaffirmed that, since then, no cameras had been put back in place.

47. 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 Panel notes that with regard to the breach of the obligation to inform data subjects in accordance with Article 13 of the GDPR, the Restricted Training recalls that information and transparency relating to the processing of personal data are essential obligations weighing on data controllers so that individuals are fully aware of the use that will be made of their personal data staff, 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 under the terms of the GDPR, which testifies to their particular importance. It should be noted that at the time of the site visit by

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CNPD agents, no signaling pictograms, nor any poster or information notice could not be shown to CNPD officials.

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As for the breach of Article 5.1.c) of the GDPR, it constitutes a breach of the fundamental principles of the GDPR (and the right to the protection data in general), namely the principle of data minimization devoted to Chapter II “Principles” of the GDPR.

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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 upon 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 provided for in the said law was available from the CNPD, in particular through mandatory prior authorizations for video surveillance and the guidance available on the CNPD website.

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As for the number of data subjects (Article 83.2.a) of the GDPR), the Restricted Training notes that these are employees working on the site of the controlled as well as all the people 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.

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In this case, the Restricted Committee is of the opinion that the facts and breaches found reflect a deliberate intention to violate the GDPR on the part of the controlled while the representative of the controlled had affirmed at the time of the visit of 8 March 2019 that it does not use a video surveillance system<sup>20</sup>.

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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.

48. 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.

49. The Restricted Committee also notes that while several measures have been implemented place by the auditee in order to remedy in whole or in part certain shortcomings, these were only adopted following the control of CNPD agents on 8 March 2019 (see also point 43 of this decision).

50. 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.

51. 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 20 Cf. Point 6 of Minutes no. [...] relating to the on-site fact-finding mission carried out on March 8 2019 with Company A

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that can be withheld amounts to 20 million euros or 4% of the annual turnover worldwide, whichever is higher.

52. In view of the relevant criteria of Article 83.2 of the GDPR mentioned above, the Restricted Formation considers that the pronouncement of a fine of 1,500 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

53. 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 put in place the measures

information intended for persons concerned by video surveillance,

in accordance with the provisions of Article 13, paragraphs (1) and (2) of the GDPR in

indicating in particular the identity of the data controller, the purposes of the

processing and its legal basis, the categories of data processed, the interests

legitimate interests pursued by the control, the recipients, the retention period of the

data as well as the indication of the rights of the person and the manner of

exercise ;

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 device so as not to film employees at their workstation, for example

by removing or reorienting the two fixed cameras that are installed in the

reception of the mechanical workshop.

54. In his response letter of September 8, 2020 to the additional letter

statement of objections, the audit referred to the corrective modifications

made to demonstrate its compliance with the rules of the GDPR.<sup>21</sup>

<sup>21</sup> As detailed in its reply letter to the statement of objections of 24 September 2019.

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55. As for the corrective measures proposed by the head of investigation and by reference to point 44 of this decision, the Restricted Formation takes into account the steps taken by the control, following the visit of the CNPD agents, in order to comply with the provisions of Articles 5.1.c) and 13 of the GDPR, as detailed in his letters of May 10, 2019, September 24, 2019 and September 8, 2020. More in particular, it takes note of the following facts:

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As for the implementation of information measures intended for employees and third parties affected by the video surveillance, in accordance with the provisions of Article 13.1 and 2 of the GDPR, the auditee affirmed that the two cameras in question have been dismantled and replaced by a counter where would find a hostess whose function would be to regulate the flow of visitors.

Consequently, the controlled no longer uses a video surveillance system and the Restricted Panel therefore considers that there is no need to pronounce the corrective action proposed by the head of investigation in this regard in point 53 under has).

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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 securing access and, in particular, adapting the video device so as not to not film employees at their workstation, Restricted Training refers to the previous paragraphs according to which the controlled no longer uses a system

video surveillance.

The Restricted Panel therefore considers that there is no need to pronounce the corrective action proposed by the head of investigation in this regard in point 53 under b).

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Decision of the National Commission sitting in restricted formation on the outcome of Survey No. [...] conducted with Company A

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In view of the foregoing developments, the National Commission sitting in restricted formation and deliberating unanimously decides:

- to note breaches of Articles 13 and 5.1.c) of the GDPR; and
- impose an administrative fine on Company A in the amount of one thousand five hundred euros (1,500 euros), with regard to breaches of articles 13 and 5.1.c) of the GDPR.

Thus decided in Belvaux on November 9, 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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Decision of the National Commission sitting in restricted formation on the outcome of

Survey No. [...] conducted with Company A

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