

Decision of the National Commission sitting in restricted formation

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

Deliberation no. 7FR/2022 of March 10, 2022

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 September 28, 2018, the Commission

Data Protection Authority sitting in plenary session (hereafter: “Plenary Training”) had decided to open an investigation with group B1 on the basis of article 37 of the law of 1 August 2018 on the organization of the National Commission for data protection and the general data protection regime (hereinafter: “law of August 1, 2018”) and to appoint Mr. Christophe Buschmann as head of investigation.

2. According to the decision of the Plenary Formation, the investigation carried out by the National Commission for Data Protection (hereinafter: “CNPD”) had as its purpose of monitoring the application of and compliance with the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of persons physical with regard to the processing of personal data and to the free circulation of this data, and repealing Directive 95/46/EC (hereinafter: “GDPR”) and of the law of August 1, 2018, in particular by setting up systems for video surveillance and geolocation if necessary installed by the [less than 10] Group B companies.

3. On October 24, 2018, CNPD agents carried out two visits, including a visit to the headquarters of the company “Company A” in [locality 1]<sup>2</sup> and a visit to the site of Group B production at [location 2]<sup>3</sup>. Given that the minutes relating to the said on-site fact-finding mission only mentions, among the [less than 10] group companies B, as the controller controlled by the company “Company A”,<sup>4</sup> the decision of the National Commission for Data Protection sitting in restricted formation on the outcome of the investigation (hereinafter: “Restricted Training”) will be limited to the processing checked by CNPD officials and carried out by the company “Company A”.

1 And more specifically with the following companies: [...]

2 See point 2.a) of the minutes relating to the on-site fact-finding mission carried out on October 24, 2018 with the company “Company A” (hereinafter: the “minutes”).

3 See point 2.b) of the minutes.

4 See point 1. of the minutes.

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4. The company "Company A" is a [...] registered in the Trade and Luxembourg companies under number [...], with registered office at L-[...], [...] (hereinafter "Control "). The object of the audit "has [Activities of head offices]. »5

5. During the aforementioned visit of October 24, 2018 by CNPD agents to the premises of the controlled in [locality1], it was confirmed to the CNPD agents that the controlled uses a video surveillance system and has installed a geolocation device in a vehicle used by its employees for "the transport of [valuable items]".6 The same day in the premises of the control in [locality 2], it was confirmed to the agents of the CNPD that the controlled uses a video surveillance system but does not use to any geolocation device on this site.7

6. The controller replied to the report drawn up by the CNPD agents by letter of December 18, 2018.

7. At the end of his investigation, the head of investigation notified the person inspected on 7 February 2019 an initial Statement of Objections (hereinafter: "Statement of Objections initial") detailing the breaches he considered constituted in this case, and more precisely :

- Concerning the site of [locality 1]:

☐ with regard to video surveillance: non-compliance with the requirements prescribed by Article 13 of the GDPR (right to information) with regard to concerns the persons concerned, i.e. the employees and the

non-employees, namely customers, suppliers, service providers

of services and visitors (hereinafter “third parties”) and a non-

compliance with the requirements of article 5.1.c) of the GDPR (principle of data minimization);

□ regarding geolocation: non-compliance with the prescribed requirements

by Article 10 of the GDPR (processing of data relating to

offences) with regard to the recording of speeding

committed by the driver of the vehicle equipped with a device

geolocation.

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

6 See point 6. of the minutes.

7 See page 4 of the minutes.

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- Concerning the site of [locality 2]:

□ with regard to video surveillance: non-compliance with the requirements of the article

5.1.c) of the GDPR (data minimization principle) and a non-

compliance with the requirements of Article 5.1.e) of the GDPR (principle of limitation of data retention).

8. On March 7, 2019 and January 9, 2020, the auditee produced written observations on the initial statement of objections.

9. Following the initial Statement of Objections a new Statement of Objections

was sent to the controller on November 5, 2020 (hereinafter: the “communication of

grievances”). In this letter, the head of investigation announced that the statement of objections

will replace the initial statement of objections of 7 February 2019 and it proposed to the  
Restricted training to adopt three corrective measures and to inflict on the controlee a  
administrative fine of 3,500 euros. Unlike communication  
of the initial grievances, the head of investigation decided to no longer uphold the grievance relating to the non-  
compliance with the requirements prescribed by Article 10 of the GDPR (data processing  
relating to offences) with regard to the recording of speeding  
committed by the driver of the vehicle equipped with a geolocation device in [locality  
1]. In the statement of objections, the head of investigation thus decided to uphold the objections  
following:

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concerning the site of [locality 1]:

☐ with regard to video surveillance: non-compliance with the requirements  
prescribed by Article 13 of the GDPR (right to information) with regard to  
concerns the persons concerned, i.e. the employees and the  
third parties, and non-compliance with the requirements of Article 5.1.c)  
GDPR (data minimization principle);

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concerning the site of [locality 2]:

☐ with regard to video surveillance: non-compliance with the requirements of the article  
5.1.c) of the GDPR (data minimization principle) and a non-  
compliance with the requirements of Article 5.1.e) of the GDPR (principle of  
limitation of data retention).

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10. By letter dated December 2, 2020, the controller produced written observations on the statement of objections.

11. The President of the Restricted Formation informed the controller by letter of 29 April 2021 that his case would be registered for the Restricted Panel session of July 7 2021. The controller confirmed his presence at the said meeting on June 8, 2021.

12. During the Restricted Training session of July 7, 2021, the head of investigation and the controller presented their oral observations in support of their written observations and answered the questions posed by the Restricted Panel. The President granted to the controller the possibility of sending additional information within one month.

The controller spoke last.

13. By email dated August 5, 2021,

the control sent

them

information

additional information requested by the Restricted Panel during the session of July 7 2021.

II. Place

II. 1. As to the reasons for the decision

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

1. On the principles

14. 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)”.

15. 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>8</sup>

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

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

17. Before installing a video surveillance system, the person in charge of the processing must precisely define the purpose(s) it wishes to achieve by using such a system, and will not then be able to use the personal data information collected for other purposes.<sup>9</sup>

18. 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>10</sup>

2. In this case

19. During the two on-site visits (to [location 1] and to [location 2]), it was explained CNPD officials that the purposes of setting up the system of video surveillance are the protection of company assets and the securing of access.

2.1. With regard to the field of vision of the cameras aiming at the public road on the site of [locality 1]

20. During the on-site visit of October 24, 2018, CNPD officials noted that the field of vision of the cameras referred to as “[...]” (hereinafter: “camera

1”), “[...]” (hereafter: “camera 2”) and “[...]” (hereafter: “camera 3”) allow the surveillance of parts of the public highway and more precisely

□ regarding camera 1, street [...]11;

□ regarding camera 2, street [...]12; and

guidelines

the CNPD, available

9 See Lines

of

themes/videosurveillance/necessite-proportionnalite.html.

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

11 See page 3, finding 4 of the minutes.

12 See page 3, finding 5 of the minutes.

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

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□ concerning camera 3, [the land bordering that of the controlled]13.

21. In his letter of December 18, 2018, the controller specified that the cameras mentioned above “aim to allow access only to persons authorized” and that cameras 2 and 3 “are intended to capture product theft.

(...) it had been observed that people working in the company were throwing [goods produced] through the windows on the public highway (...)”.

22. In its response to the initial statement of objections of 7 March 2019, the controlled explained that the three aforementioned cameras will be “subject to a



hide/redirect modification to remove any view of the public road”.

In his additional information letter of January 9, 2020, the controller confirmed that the fields of view of the aforementioned cameras had been changed. He annexed photos<sup>14</sup> showing that

□

camera 1 had been deleted;

□

the field of view of camera 2 had been blurred in order to limit the field of vision at the entrance to the industrial site of the controlled and then redirected from January 2020 in order to include only access to the site in its field of vision; and

□

Camera 3's field of view had been changed to monitor only the land belonging to [factory] and no longer [the land bordering that of the controlled]..

23. In his Statement of Objections, the Head of Investigation was, on the other hand, of the opinion that, despite the argument of recurring thefts of products, the surveillance of public roads by cameras 1, 2 and 3 would be considered disproportionate and that in view of the purposes pursued, it would not be necessary to include parts of the public road in the fields of view of said cameras. He thus retained against the controlled a non-compliance with the requirements of article 5.1.c) of the GDPR.

24. The Restricted Committee would like to point out that the cameras intended to monitor a place of access (entrance and exit, threshold, porch, door, awning, hall, etc.) must have a field of vision limited to the area strictly necessary to view people

<sup>13</sup> See page 3, finding 6 of the minutes.

<sup>14</sup> See Appendix 5 of the letter from the control letter of January 9, 2020.

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getting ready to get there. Those who film exterior accesses must not mark the entire width of a sidewalk along, where applicable, the building or public roads adjacent. Similarly, outdoor cameras installed near or around a building must be configured so as not to capture the public thoroughfare or the surroundings, entrances, accesses and interiors of other neighboring buildings possibly entering into their field of vision.<sup>15</sup>

25. She nevertheless admits that depending on the configuration of the premises, it is sometimes impossible to install a camera that would not include in its field of vision a part of the public thoroughfare, surroundings, entrances, accesses and interiors of other buildings. In such a case, it considers that the data controller should put in place masking or blurring techniques to limit the field of view to its property.<sup>16</sup>

26. The Restricted Panel finds that the audit letter of January 9, 2020 contains in appendix n°5 photos showing that camera 1 has been removed and that the fields of vision of cameras 2 and 3 have been modified, so that they no longer film the track public. During the hearing on July 7, 2021, the controller filed a file of documents again documenting the removal of camera 1 and the change of fields vision of cameras 2 and 3.<sup>17</sup>

2.2. With regard to the field of vision of the cameras aiming at the public road on the site from [locality 2]

27. During the on-site visit of October 24, 2018, CNPD officials noted that the field of vision of the cameras referred to as "[...]" (hereinafter: "camera 4"), "[...]" (hereafter: "camera 5"), "[...]" (hereafter: "camera 6") and "[...]" (hereafter after: "camera 7") allow the surveillance of parts of the public road and more precisely

□ regarding cameras 4, 5 and 6, [...]18;

15 See CNPD Guidelines (Point 4.1.), available at: <https://cnpd.public.lu/fr/dossiers-themes/videosurveillance/necessite-proportionnalite.html>.

16 See CNPD Guidelines (Point 4.1.), available at: <https://cnpd.public.lu/fr/dossiers-themes/videosurveillance/necessite-proportionnalite.html>.

17 See Exhibits 5 to 9 of the file of exhibits filed by the person audited during the hearing on July 7, 2021.

18 See page 5, findings 3 and 4 of the minutes.

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□ concerning camera 7, [the land bordering that of the controlled] 19.

28. In his letter of December 18, 2018, the controller specified that the cameras mentioned above “have been installed for the same purpose as on the site of [locality 1], at namely the capture of product thefts” and that public roads would have been blurred.

29. In its response to the initial statement of objections of 7 March 2019, the controlled explained that the four aforementioned cameras had been “subject to a modification of masking so that the public road is no longer visible”. He appended photos<sup>20</sup> showing the modified fields of view of cameras 4, 5, 6, and 7.

30. In his statement of objections, the head of investigation was, on the other hand, of the opinion that, despite the argument of recurring thefts of products, the surveillance of public roads by cameras 4, 5, 6 and 7 would be considered disproportionate and that in view of the purposes pursued, it would not be necessary to include parts of the public highway in the fields of view of said cameras. He thus retained against the controlled a non-compliance with the requirements of article 5.1. c) GDPR.

31. The Restricted Committee would like to point out that the cameras intended to monitor

a place of access (entrance and exit, threshold, porch, door, awning, hall, etc.) must have a field of vision limited to the area strictly necessary to view people getting ready to get there. Those who film exterior accesses must not mark the entire width of a sidewalk along, where applicable, the building or public roads adjacent. Similarly, outdoor cameras installed near or around a building must be configured so as not to capture the public thoroughfare or the surroundings, entrances, accesses and interiors of other neighboring buildings possibly entering into their field of vision.<sup>21</sup>

32. She nevertheless admits that depending on the configuration of the premises, it is sometimes impossible to install a camera that would not include in its field of vision a part of the public thoroughfare, surroundings, entrances, accesses and interiors of other buildings. In

19 See page 5, finding 6 of the minutes.

20 See Appendix 1 of the audit letter of March 7, 2019.

21 See CNPD Guidelines (Point 4.1.), available at: <https://cnpd.public.lu/fr/dossiers-themes/videosurveillance/necessite-proportionnalite.html>.

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such a case, it considers that the data controller should put in place masking or blurring techniques to limit the field of view to its property.<sup>22</sup>

33. The Restricted Panel finds that the letter from the audit dated March 7, 2019 contains in appendix n°1 photos showing that the fields of vision of all the disputed cameras (camera 4, 5, 6 and 7) have been modified, so that they no longer film the track public. In addition, the control specified by letter of December 2, 2020 and another times during the hearing of July 7, 2021 that the industrial site at [locality 2] was [...] closed

and that the industrial complex was moved to [location 3]<sup>23</sup>.

34. In view of the foregoing (chapter A.2., sub-chapters 2.1. and 2.2.), the Formation

Restricted concurs with the finding of the head of investigation<sup>24</sup> according to which the non-compliance with Article

5.1.c) of the GDPR with respect to all the aforementioned cameras (cameras 1, 2, 3,

4, 5, 6 and 7) had been acquired on the day of the site visit by CNPD agents.

B. On the breach linked to the principle of limitation of storage

1. On the principles

35. In accordance with Article 5.1.e) of the GDPR, personal data

must be kept "in a form which permits the identification of the persons

concerned for a period not exceeding that necessary with regard to the purposes

for which they are processed [...]".

36. According to recital (39) of the GDPR "personal data

should be adequate, relevant and limited to what is necessary for the purposes

for which they are processed. This requires, in particular, ensuring that the duration of

retention of data is kept to a strict minimum. Character data

personal should only be processed if the purpose of the processing cannot be

reasonably achieved by other means. In order to ensure that the data is not

<sup>22</sup> See CNPD Guidelines (Point 4.1.), available at: [https://cnpd.public.lu/fr/dossiers-](https://cnpd.public.lu/fr/dossiers-themes/videosurveillance/necessite-proportionnalite.html)

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

<sup>23</sup> Cf. Letter from the audit dated December 2, 2020 and exhibits 10 to 14 of the folder of exhibits filed by the

checked during the hearing on July 7, 2021.

<sup>24</sup> Statement of Objections, Section B.2) point 24.

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not kept longer than necessary, time limits should be set by the

controller for erasure or for periodic review [...]. "

2. In this case

37. With regard to the retention period of the images recorded by the

camera called "[...]" on the site of [locality 2], it appears from the communication of the

grievances that "officers found that the earliest footage recorded [...]

dated April 14, 2017. The total retention period on the day of the survey is therefore

559 days in total. »<sup>25</sup>. According to the head of the investigation, said retention period "exceeds

therefore the duration that is necessary to achieve the purposes for which the system has

been put in place" (see Statement of Objections, Section B, Subsection 3, point 26).

38. Thus, the head of investigation holds that the conditions of article 5.1.e) of the GDPR

have not been respected. He is of the opinion that the auditee failed to respect the principle of

the limitation of data retention arising from Article 5.1.e) of the GDPR.<sup>26</sup>

39. By letter dated March 7, 2019, the controller explained that the retention period

footage recorded by (all) CCTV cameras on site

from [locality 2] was reduced to 14 days and he attached to his letter a photo showing

that the parameters of the video surveillance system have been modified in this sense. He repeats

its response by letter dated December 2, 2020 and indicates that the industrial site of [locality 2]

ceased its activity [...].

40. During the hearing of July 7, 2021, the controller clarified that the detention period

of 559 days of the camera named "[...]" was an error and that this error was

immediately corrected.

41. The Restricted Committee recalls that it is the responsibility of the controller

to determine, according to each specific purpose, a retention period

appropriate and necessary to achieve that purpose. As mentioned above, the controlled

considers that a retention period of 14 days is necessary in order to achieve the

25 See page 5, finding 7 of the minutes.

26 See Section B, subsection 3, point 28 of the statement of objections of 5 November 2020.

27 See letter from the audit dated March 7, 2019.

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purposes pursued, i.e. the protection of the company's assets and the securing accesses.

42. With regard to video surveillance, the CNPD considers that the images can be kept in principle for up to 8 days under the aforementioned principle of Article 5.1.e) of the GDPR. The data controller may exceptionally, for duly justified reasons, keep the images for a period of 30 days. A length shelf life longer than 30 days is generally considered to be disproportionate<sup>28</sup>.

43. In the event of an incident or violation, the Restricted Panel is of the opinion that the images may be kept beyond this period and, if necessary, be communicated to the competent judicial authorities and law enforcement authorities competent to establish or prosecute criminal offences.

44. It notes that CNPD officials noted during the on-site visit that “the retention period of the images is determined according to the exhaustion of the memory reserved for each camera that is part of the system and that the recording is activated only when motion is detected. (...) the retention period is therefore variable according to the importance of the frequentation of the zone in which is installed a camera”.<sup>29</sup> This operation therefore concerned all the cameras parts of the CCTV system at the [location 2] site and the retention period

the longest was identified at the level of the camera called "[...]". In the trial-report relating to the on-site fact-finding mission carried out on October 24, 2018, the CNPD officials noted that "the oldest images having been recorded dated from April 14, 2017" which greatly exceeded the time required in order to achieve the purposes pursued by the video surveillance system. She notes also that the controller specified in his letter of March 7, 2019 that he had changed the settings of the video surveillance system in order to limit the retention period footage from all cameras at the [location 2] site at 14 days. Furthermore, she notes that in the meantime the controlled industrial site at [locality 2] has ceased its activity.

28 See CNPD guidelines, point 4.7., available at: <https://cnpd.public.lu/fr/dossiers-themes/videosurveillance/necessite-proportionnalite.html>.

29 See page 5, finding 7 of the minutes.

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45. On the basis of all of these elements, the Restricted Panel agrees with the opinion of the head of investigation and concludes that at the time of the on-site visit by CNPD agents, article 5.1.e) of the GDPR was not respected by the controlled.

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

1. On the principles

46. 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 [...]. »



47. 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

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(f) where applicable, the fact that the controller intends to carry out a

transfer of personal data to a third country or to an organization

international community, and the existence or absence of an adequacy decision issued by the

Commission or, in the case of transfers referred to in Article 46 or 47, or Article 49,

paragraph 1, second subparagraph, the reference to the appropriate or suitable safeguards and the

means of obtaining a copy or where they have been made available;

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

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

obtained, the following additional information which is necessary to guarantee

fair and transparent treatment:

- a) the retention period of the personal data or, where this is not possible, the criteria used to determine this duration;
- b) the existence of the right to request from the controller access to the data to personal character, the rectification or erasure of these, or a limitation of the processing relating to the data subject, or the right to oppose the processing and right to data portability;
- 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;

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- 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. »

48. 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>30</sup> These obligations have been explained by the Article 29 Working Party in its guidelines on the transparency within the meaning of Regulation (EU) 2016/679, the revised version of which has been adopted April 11, 2018 (hereinafter: “WP 260 rev.01”).

49. It should be noted that the European Data Protection Board (hereinafter: “EDPS”), which has replaced the Article 29 Working Party since 25 May 2018, took over and reapproved the documents adopted by the said Group between May 25, 2016 and May 25 2018, such as the aforementioned guidelines on transparency.<sup>31</sup>

2. In this case

50. During their visit to the site of [locality 1], the CNPD agents noted that the presence of the video surveillance system was not signaled to the persons concerned at the main entrance to the plant, or at other access roads. They also have found that video surveillance inside production workshops was reported to

<sup>30</sup> See in particular Articles 5.1.a) and 12 of the GDPR, see also recital (39) of the GDPR.

<sup>31</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).

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under :

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persons concerned only by an information panel with pictogram

affixed to the entrance door to the workshops.<sup>32</sup> Thus, the head of the investigation was of the opinion that the controlled failed in its obligation to inform "the persons concerned preparing to access the site of [locality 1]" of the presence of a video surveillance system and that the information provided to the persons concerned inside the buildings of the control "not does not meet the requirements of Article 13 of the GDPR" (initial Statement of Objections, point II.a)).

51. By his letters of March 7, 2019 and January 9, 2020, the auditee replied that he had installed "multilingual information panels" in several strategic places (and "corresponding to the perimeter of the field of action of the cameras") inside and outside outside its production site in [locality 1] to signal the presence of the cameras to the persons concerned.

52. In the Statement of Objections, the Head of Investigation considered that the information provided for by the control was "not such as to fulfill the conditions laid down by Article 13" GDPR. Thus, he was of the opinion that the controlled had breached his "duty arising from Article 13 of the GDPR with regard to the persons concerned by the video surveillance (third parties and employees)" (see statement of objections, section B, sub-part 1).

53. The Restricted Committee would first like to point out that Article 13 of the GDPR refers to the obligation imposed on the data controller to "provide" all the information mentioned therein. The word "provide" is crucial here and it "means that the data controller must take concrete measures to provide the information in question to the person concerned or to actively direct the person

concerned to the location of said information (for example by means of a link direct, a QR code, etc.). (WP260 rev. 01. paragraph 33).

54. The Restricted Committee notes that during the on-site visit by the agents of the CNPD, third parties and employees were only informed of the presence

32 See page 3 of findings 1 and 2 of the minutes.

33 Cf. Appendix 1, 2 and 4 of the inspection letter of January 9, 2020.

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of the video surveillance system inside the building of the controlled by a panel information with pictogram affixed to the entrance door to the workshops.

55. She also believes that a multi-level approach to communicating transparency information to data subjects can be used in a offline or non-digital context, i.e. in a real environment such as for example personal data collected by means of a system of video surveillance. The first level of information (warning sign, note information, etc.) should generally include the most important information essential, namely the details of the purpose of the processing, the identity of the person responsible for the processing and the existence of the rights of data subjects, information having the greater impact on the treatment or any treatment likely to surprise the data subjects<sup>34</sup>, as well as a reference to the more detailed information of the second level (e.g. via QR code or website address)<sup>35</sup>. the second level of information, i.e. all of the information required under of Article 13 of the GDPR, could be provided or made available by other means, such as a copy of the privacy policy emailed to

employees or a link on the website to an information notice with regard to

non-salaried third parties.<sup>36</sup>

56. The Restricted Panel notes that in this case, the auditee mentioned in his letter of January 9, 2020 that he had in the meantime put up “panels multilingual information boards” installed in several places inside and outside the buildings of the controlled, including a reference to a “policy for the protection of data “. According to the information provided on the “multilingual information panels”, this “data protection policy” was available on its intranet and internal site

[...]”<sup>37</sup>. The “data protection policy” document has not been sent to the head of investigation, which is why the Restricted Panel is unable to check whether it contains all the mandatory information required under Article 13 of the GDPR. The Restricted Formation also does not have documentation demonstrating

<sup>34</sup> See WP 260 rev. 01 (item 38.).

<sup>35</sup> See EDPS Guidelines 3/2019 on the processing of personal data by video devices, version 2.0, adopted on January 29, 2020 (hereinafter: “Guidelines 3/2019”) (points 114. and 117.).

<sup>36</sup> See WP 260 rev.01 (point 38.).

<sup>37</sup> See Appendix 1 to the audit letter of January 9, 2020.

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that said “data protection policy” was indeed available on the day of on-site inspection by CNPD officers.

57. During the hearing of July 7, 2021, the controller sent a folder of documents to Restricted Training. It emerges from the said file that the auditee has decided to adopt a

two-tiered approach to informing data subjects of the presence of a CCTV system. The controller indicated that the "informative panels multilingual" constituted the first level of information and that a new note entitled "Protection of personal data – Video surveillance" constituted the second level of information and that it was "intended for employees and third parties"<sup>38</sup>. He is mentioned in the said note that it is the "version [...]" and the controlled transmitted a screenshot of its internal site "[...]" to show where its employees can find the note in question. The Restricted Formation would like to point out that this is therefore a new document which was transmitted to the Restricted Training only when the hearing of July 7, 2021. On the other hand, it notes that the reference to the second level of information indicated on the "multilingual information panels" is always the "data protection policy"<sup>40</sup>. For this reason, it notes that the said signs refer to second-level information (i.e. the "policy of data protection") for which the controller has not provided any supporting document.

58. Nevertheless, it notes that the note entitled "Data protection personal data – CCTV" now contains all the information of the second level required by article 13.1 and 2 of the GDPR.

59. With regard to the information of third parties, the Restricted training however, wonders about the possibility of third parties to consult the said note.

On the one hand, it stands out from the "multilingual information panels" (installed inside and outside outside the controlled buildings) that the persons concerned can consult the intranet of the controlled or the site "[...] – Section "Data protection policy""

38 Cf. Exhibits 1 and 3 of the folder of exhibits sent to the Restricted Panel during the hearing of July 7 2021.

39 Cf. Exhibits 3 and 4 of the folder of exhibits transmitted to the Restricted Panel during the hearing of July 7 2021.

40 Cf. Exhibit 1 of the folder of exhibits sent to the Restricted Panel during the hearing of July 7, 2021:

on the panels it is indicated that "(...) To find out more about the management of your personal data and your rights, go to the intranet or [...] – "Data protection policy" section.

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to find out more about the management of their personal data<sup>41</sup>. On the other hand, it appears from  
the folder of exhibits transmitted to the Restricted Panel during the hearing of July 7, 2021<sup>42</sup>

that data subjects have the opportunity to consult the note entitled "Protection  
personal data – Video surveillance" on the controller's intranet and on the website  
internal control "[...]". However, the Restricted Panel retains that persons

third parties do not have access to the intranet or the internal site "[...]" of the controlled.

60. With regard to the individual information of the employees of the auditee, the auditee  
produced in July 2021, after a question posed by the Restricted Panel during  
the hearing of July 7, 2021, documents in support of the sending of the note entitled "Protection  
personal data – Video surveillance" to all its employees (together with the  
payslip for the month of July 2021)<sup>43</sup>.

61. In view of the foregoing, the Restricted Panel nevertheless agrees with the opinion of the  
head of investigation and concludes that at the time of the on-site visit by CNPD agents,  
Article 13 of the GDPR was not respected by the video surveillance control,  
neither for third parties nor for employees.

## II. 2. On the fine and corrective measures

### 1. Principles

62. 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;

41 See Exhibit 1 of the folder of exhibits sent to the Restricted Panel during the hearing of July 7, 2021.

42 Cf. Exhibits 3 and 4 of the folder of exhibits transmitted to the Restricted Panel during the hearing of July 7 2021.

43 See Appendix 1 of the controller's email of August 5, 2021.

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

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

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

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

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

(h) withdraw a certification or order the certification body to withdraw a

certification issued pursuant to Articles 42 and 43, or order the body to

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

(i) impose an administrative penalty under section 83, in addition to or in addition to instead of the measures referred to in this paragraph, depending on the characteristics specific to each case;

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

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

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64. Article 83 of the GDPR provides that each supervisory authority shall ensure that the administrative fines imposed are, in each case, effective, proportionate and deterrents, before specifying the elements that must be taken into account to decide whether an administrative fine should be imposed and to decide on the amount of this fine :

“(a) the nature, gravity and duration of the breach, taking into account the nature, scope or the purpose of the processing concerned, as well as the number of data subjects affected and the level of damage they suffered;

b) whether the breach was committed willfully or negligently;

c) any action taken by the controller or processor to mitigate the damage suffered by the persons concerned;

- d) the degree of responsibility of the controller or processor, account given the technical and organizational measures they have implemented under the sections 25 and 32;
- e) any relevant breach previously committed by the controller or the subcontractor ;
- f) the degree of cooperation established with the supervisory authority with a view to remedying the breach and to mitigate any negative effects;
- g) the categories of personal data affected by the breach;
- h) the manner in which the supervisory authority became aware of the breach, in particular whether, and to what extent the controller or processor notified the breach;
- (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;
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- (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".

65. 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.

66. 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

67. In the Statement of Objections of 5 November 2020, the Head of Investigation proposed to the Restricted Panel to impose an administrative fine on the control of a amount of 3,500 euros.

68. In its response to the statement of objections of 2 December 2020, in view of its compliance demonstrated by letters sent with supporting documents before the communication of the corrective measures proposed by the head of investigation, their good collaboration and the fact that the site of [locality 2] ceased its activity in May 2020, the control requested the leniency of the Restricted Training. He emphasized more precisely that his letters of March 7, 2019 and January 9, 2020 would have brought responses to all grounds for grievances and that he felt that the responses provided in his letters would not have (or only partially) been taken into account in

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the statement of objections of 5 November 2020 which replaced the statement of initial grievances.

69. In order to decide whether to impose an administrative fine and to decide,

where applicable, the amount of this fine, the Restricted Panel takes into account the elements provided for in Article 83.2 of the GDPR:

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As to the nature and seriousness of the breach (Article 83.2.a) of the GDPR), the Restricted Formation notes that with regard to breaches of Articles 5.1.c) and e) of the GDPR, they constitute breaches of the principles fundamentals of the GDPR (and data protection law in general), to namely the principle of data minimization and the limitation of the data retention set out in Chapter II "Principles" of the GDPR.

As regards the breach of the obligation to inform the persons concerned in accordance with article 13 of the GDPR, the Restricted Training recalls that information and transparency relating to the processing of personal data personnel are essential obligations incumbent on those responsible for processing so that individuals are fully aware of the use that will be made of their personal data, once collected. A breach of Article 13 of the GDPR thus constitutes an infringement of the rights of the persons concerned. This right to information has also been reinforced in terms of the GDPR, which demonstrates its particular importance.

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As for the duration criterion (article 83.2.a) of the GDPR), the Restricted Training notes that these shortcomings have persisted over time, at least since the May 25, 2018 and until the day of the on-site visit. The Restricted Formation reminds here that two years separated the entry into force of the GDPR from its entry into application to enable data controllers to comply with the obligations incumbent on them, even if an obligation to respect the principle data minimization and limitation of data retention, all

as a comparable information obligation already existed in application of the articles 4.1. b) and d), 10.2 and 26 of the repealed law of 2 August 2002 relating to the protection of individuals with regard to the processing of personal data

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personal. Guidance relating to the principles and obligations provided for in said law was available from the CNPD, in particular through authorizations mandatory prerequisites for video surveillance.

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As for the number of data subjects (Article 83.2.a) of the GDPR), the Restricted Training notes that for video surveillance, it is all the employees working on the two controlled sites, as well as all persons third parties, i.e. customers, suppliers, service providers and visitors visiting these sites.

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As to whether the breaches were committed deliberately or not (by negligence) (article 83.2.b) of the GDPR), the Restricted Panel reminds that “not deliberately” means that there was no intention to commit the breach, although the controller or processor has not complied with the duty of care incumbent upon it under the law.

In this case, the Restricted Committee is of the opinion that the facts and breaches observed do not reflect a deliberate intention to violate the GDPR on the part of of the controlled.

~

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 the this Decision for the related explanations.

70. 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.

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71. The Restricted Committee also notes that while several measures have been implemented place by the auditee in order to remedy in whole or in part certain shortcomings, these were only adopted following the inspection by CNPD officials on 24 October 2018 (see also point 65 of this decision).

72. With regard to breaches of Article 5.1.c) of the GDPR (principle of minimization of data) and Article 5.1.e) of the GDPR (principle of limitation of the retention of data), the Restricted Panel considers that the head of investigation did not not taken into account the compliance of the controlled with respect to the fields of vision adapted from all disputed cameras and in relation to the duration of storage

corrected for the [location 2] site CCTV system at the time of adoption  
of the statement of objections<sup>44</sup> and this neither with regard to the corrective measures  
proposed nor with regard to the amount of the proposed administrative fine. Good  
that the shortcomings were established on the day of the on-site visit, it nevertheless considers,  
that in view of the circumstances of the case, the amount of the fine should be reduced  
administrative due to the compliance of the control with the  
breaches of Articles 5.1.c) and e) before the adoption of the Statement of Objections.

73. Consequently, the Restricted Committee considers that in principle 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 e) and 13 of the GDPR.

74. 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 breaches of  
Articles 5 and 13 of the GDPR are blamed on the controlled, the maximum amount of the fine  
that can be withheld amounts to 20 million euros or 4% of the annual turnover  
worldwide, whichever is higher.

75. With regard to the relevant criteria of Article 83.2 of the GDPR mentioned above, the  
Restricted Panel considers that the imposition of a fine of one thousand two hundred and twenty-

44 The statement of objections of 5 November 2020 which replaced the initial statement of objections of 7  
February 2019.

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five euros (1,225 euros) appears to be both effective, proportionate and dissuasive, in accordance



the requirements of Article 83.1 of the GDPR.

## 2.2. About taking corrective action

76. In his Statement of Objections of 5 November 2020, the Head of Investigation proposed to the Restricted Panel to adopt the following corrective measures:

“a.) Order the controller to complete the information measures

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

b.) Order the controller to only process data

relevant, adequate and limited to what is necessary in relation to the purposes and, especially :

i. to carry out or have carried out the removal or modification of the field of vision of the cameras called "[...]", "[...]" and "[...]" comprising parts of the public road (production site of [locality 1]);

ii. to carry out or have carried out the removal or modification of the field of vision of the cameras called "[...]", "[...]", "[...]" and "[...]" comprising parts of the public road (production site of [locality 2]);

c.) Order the data controller to limit the storage of data to

a period not exceeding that necessary with regard to the purposes for which the data is collected and processed. »

77. As for the corrective measures proposed by the head of investigation and by reference to point 66 of this decision, the Restricted Formation takes into account the steps taken by the control, following the visits of the CNPD agents to the

two controlled sites, in order to comply with the provisions of Articles 5.1.c) and e) and 13 of the GDPR, as detailed in his letters of March 7, 2019, January 9, 2020, 2

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December 2020, as well as in the folder of documents transmitted to the Restricted Formation during the hearing of July 7, 2021 and his email of August 5, 2021. More specifically, it takes note of the following facts:

1. With regard to the corrective measure proposed by the head of investigation mentioned under b) of the point 76 of this Decision concerning the obligation to deal only with relevant, adequate and limited data to what is necessary in view of the purposes for which they are processed in accordance with Article 5.1.c) of the GDPR, and, in particular, adapt the video device concerning cameras 1, 2 and 3 (at the site of [locality 1]) and regarding cameras 4, 5, 6 and 7 (at the site of [locality 2]) in order to no longer film public roads, the Restricted Panel notes that
  - camera 1 has been deleted and the fields of view of cameras 2 and 3 have been modified, so as to no longer film the public thoroughfare<sup>45</sup> (for the site of [locality 1]), and
  - the controller has changed the fields of view of cameras 4, 5, 6 and 7 so as not to no longer film the public road<sup>46</sup> (for the site of [locality 2]) and that its industrial site in [location 2] was [...] closed.

In consideration of the compliance measures taken by the control in case and point 66 of this decision, the Restricted Panel considers when there is no need to pronounce the corrective measure proposed by the chief investigation in this regard as set out in point 76 (b) with regard to the

contentious cameras.

2. As for the corrective measure proposed by the head of investigation mentioned under c) of the point 76 of this Decision concerning the obligation to limit the duration of retention of personal data for a period not exceeding that necessary with regard to purposes for which they are processed,

in accordance with the provisions of Article 5.1.e) of the GDPR, the Training

Restricted notes that the controller attached to his letter of March 7, 2019 a photo demonstrating that the CCTV system settings have been changed

45 Cf. Appendix No. 5 of the audit letter of January 9, 2020.

46 See Annex No. 1 to the inspection letter of March 7, 2019.

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in order to limit the retention period of the images of all the cameras on the site of [locality 2] at 14 days. The Restricted Committee also notes that the site industrialist in [locality 2] has meanwhile ceased its activity.

In consideration of the compliance measures taken by the control in case and point 66 of this decision, the Restricted Panel considers when there is no need to pronounce the corrective measure proposed by the chief investigation in this regard as set out in point 76 (c) with regard to the retention period of images from the video surveillance system on the former industrial site of [locality 2].

3. As for the corrective measure proposed by the head of investigation mentioned under a) of the point 76 of this Decision concerning the introduction of measures

information for people

third parties

affected by

the

video surveillance, in accordance with the provisions of article 13.1 and 2 of the GDPR,

the controller attached to his letters of January 9, 2020 and December 2, 2020

photos of the "panels

multilingual information" (i.e.

the first level

information) and, during the hearing of July 7, 2021, he sent a new note

entitled "Protection of personal data – Video surveillance" (i.e. the

second level of information). The Restricted Committee notes that the new

note entitled "Protection of personal data – Video surveillance"

now contains all the information required by article 13.1 and 2 of the GDPR.

On the other hand, it also notes that the "multilingual information panels"

(i.e. the first level of information) do not contain a reference to this

new note, i.e. the first level of information does not refer to the

second level of information. The "multilingual information panels" make

only reference to a "data protection policy" which would be

accessible via the intranet of the controlled or the internal site "[...]" of the controlled.

However, the third parties affected by the video surveillance have not

access to the intranet or internal site "[...]" of the auditee and the document "policy

of data protection" was never transmitted to the head of investigation or to the

Restricted Training. Thus, the reference to the "policy for the protection of

data" contained on the "multilingual information panels" no longer seems

in this case and it also prevents third parties from taking

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knowledge (see also point 59. of this decision). The first level

information should indeed refer to the new note entitled "Protection

personal data – Video surveillance" and this, for example, via a code

QR or a website address accessible to third parties.

In view of the insufficient compliance measures taken by the

controlled in this case and point 66 of this decision, the Restricted Panel

therefore considers that it is appropriate to pronounce the corrective measure proposed by

the head of investigation in this regard as set out in point 76 (a) with regard to

concerned

information of people

third parties as to the system of

video surveillance.

4. As for the corrective measure proposed by the head of investigation mentioned under a) of the

point 76 of this Decision concerning the introduction of measures

information intended more specifically for employees affected by the

video surveillance, in accordance with the provisions of article 13.1 and 2 of the GDPR,

the control sent an email in August 2021 (after question posed by the

Restricted Panel during the hearing of July 7, 2021) containing exhibits

the support of the sending of the note entitled "Protection of personal data –

CCTV" to all its employees (together with the salary slip for the month

of July 2021)<sup>47</sup>.

In consideration of the compliance measures taken by the control in case and point 66 of this decision, the Restricted Panel considers when there is no need to pronounce the corrective measure proposed by the chief investigation in this regard as set out in point 76 (a) with regard to informing employees about the video surveillance system.

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

- to retain the breaches of Articles 5.1.c) and e) and 13 of the GDPR;

<sup>47</sup> See Appendix 1 of the controller's email of August 5, 2021.

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- to pronounce against the company "Company A" an administrative fine of one amount of one thousand two hundred and twenty-five euros (1,225 euros) with regard to the breaches constituted in Articles 5.1.c) and e) and 13 of the GDPR;

- to pronounce against the company "Company A" an injunction to enforce compliance of the processing with the obligations resulting from article 13.1 and 2 of the GDPR, within two months following the notification of the decision of the Restricted Committee, and especially :

- ☐ regarding the breach of the obligation to inform third parties of the processing of their personal data (Article 13 GDPR):

- adapt the "multilingual information panels" (i.e. the first level information) by changing the reference to the more detailed information of the second level which must appear on said panels and which must be accessible

for third parties (see point 77 (3.) of this decision).

Thus decided in Belvaux on March 10, 2022.

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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