

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

of survey No. [...] carried out with company A

Deliberation no. 49FR/2021 of December 16, 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 on January 14, 2020, the National Commission

for data protection sitting in plenary session (hereafter: "Formation Plenary") had decided to open an investigation with "[...]" on the basis of Article 37 of the law of 1 August 2018 on the organization of the National Commission for the protection data and the general data protection regime (hereinafter: "Law of the 1st August 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") was to purpose of monitoring the application of and compliance with 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, and more specifically the installation of surveillance cameras.

3. On January 30, 2020, CNPD agents carried out a visit to the the business premises operated by company A under the trade name "[...]" at L- [...].¹ The decision of the National Commission for Data Protection sitting in restricted training on the outcome of the investigation (hereinafter: "Restricted Training") will be limited processing controlled by CNPD officials.

4. Company A is a company [...] registered in the Trade and Luxembourg companies under number B[...], with registered office at L-[...] (hereinafter: the "control "). The controlled "aims [to provide beauty care]"².

5. The controlled was declared bankrupt by decision of the District Court of Luxembourg, [...]. Maître [...], lawyer at the Court, registered on the roll of the Bar Association in Luxembourg, was appointed as curator of the bankruptcy of the audited.

6. During the aforementioned visit of January 30, 2020 to the premises of the control located at [...], CNPD officials found that the video surveillance system is composed

¹ See Minutes no. [...] relating to the on-site visit carried out on January 30, 2020 to

the company [...] (hereinafter: "Minutes no. [...]").

2 Cf. Deed of incorporation of [...], Art. [...].

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a camera.³ During the investigation, it was confirmed to CNPD officers that the controlled has not installed a video surveillance system in its premises located [...].⁴

7. The controlled responded to Minutes no. [...] addressed by the agents of the CNPD by a meeting request made by email of February 21, 2020.

8. On March 3, 2020, CNPD officials held a meeting with the manager of control in the premises of the CNPD, at the time located at L-4361 Esch-sur-Alzette, 7, avenue du Rock'n'roll, in order to discuss the on-site visit to the controller dated January 30, 2020 as well as the letter requesting additional information from the CNPD of February 5, 2020.⁵

9. The controlled did not respond to Minutes no. [...] drawn up by the agents of the CNPD following said meeting.

10. At the end of his investigation, the head of investigation notified the person inspected on 16 October 2020 a Statement of Objections (hereinafter: the "Statement of grievances") detailing the breaches he considered constituted in this case, and more specifically a non-compliance with the requirements prescribed by Article 13 of the GDPR (right to information) with regard to the persons concerned, i.e. the employees and non-employees, namely customers, suppliers, service providers and visitors (hereinafter: "third parties") and non-compliance with the prescribed of Article 5.1.c) of the GDPR (data minimization principle). A copy of the statement of objections was sent to the bankruptcy trustee by letter of [...].

11. The president of the Restricted Formation informed the controller by mail of the June 17, 2021 that his case would be registered for the Restricted Panel session of the July 21, 2021. By email dated June 28, 2021, the bankruptcy trustee informed the Panel Restricted that she will not attend the said meeting.

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

4 See Minutes no. [...] relating to the meeting of March 3, 2020 with company A (hereinafter: "Trial verbal no. [...]"), point 7, finding 14.

5 See Minutes no. [...], points 1 to 5.

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12. During this session, the head of investigation presented his oral observations to the support of his written observations and answered the questions posed by the Panel Restraint.

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

13. According to Article 12.1 of the GDPR, the "controller shall 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 in which relates to the processing to the data subject in a concise, transparent, understandable easily accessible, in clear and simple terms [...]. »

14. 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 ;

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

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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. »

15. 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.⁶ 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”).

16. 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 transparency⁷.

2. In this case

17. With regard to the information of third parties about the system of

video surveillance, the head of investigation noted in the statement of objections that “when

of the visit, it was found that the presence of the video surveillance system is not

notified to the persons concerned. No signaling pictogram, nor any

poster or information notice could not be shown to CNPD officials. It emerges

therefore from these findings that the controller does not comply with his obligation

to inform the persons concerned. ⁸ He therefore held that non-compliance with

⁶ See in particular Articles 5.1.a) and 12 of the GDPR, see also recital (39) of the GDPR.

⁷ See EDPS Endorsement Decision 1/2018 of 25 May 2018, available at:

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

⁸ See Statement of Objections, page 4, Ad.B.1.), point 14.

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article 13 of the GDPR was acquired on the day of the on-site visit, the control having not provided elements likely to demonstrate its compliance with the said article. Thus he was of the opinion that the auditee failed in its obligation to inform third parties arising from article 13.1 and 2 of the GDPR.⁹

18. Regarding

informing employees about the system of video surveillance the head of investigation in the statement of objections exposed the same observations and conclusions only for third parties (see point 17 above). It was of the opinion that the auditee failed in its obligation to inform the employees arising from GDPR article 13.1 and 2.¹⁰

19. The control during the meeting of March 3, 2020, first explained to the agents of the CNPD, that there was no joint committee or staff delegation within society¹¹. Then, after claiming to be unaware of the provisions of article L.261-1 of the Labor Code, he confirmed that no information from the labor inspection Labor and Mines (hereinafter: "ITM") had been carried out in order to inform the latter the implementation of the video surveillance system, but that information from the ITM would be carried out as soon as possible.

20. The Restricted Panel 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.). »¹³

21. 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 like for example personal data collected by means of a system of

⁹ See Statement of Objections, page 5, Ad.B.1.), point 14.

¹⁰ See Statement of Objections, page 5, Ad.B.1.), point 14.

¹¹ See Minutes no. [...], point 7, finding 1.

¹² See Minutes no. [...], point 7, finding 2.

¹³ See WP 260 rev.01, point 33.

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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, the information having the greater impact on the treatment or any treatment likely to surprise the data subjects,¹⁴ as well as a reference to the more detailed information of the second level (for example, via a QR code or a website address).¹⁵ The second level of information, i.e. all 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 regarding

third parties.¹⁶

2.1. Information from third parties

22. The Restricted Committee notes that during the on-site visit by CNPD agents

third parties were not informed of the presence of the security system

video surveillance.

23. In view of the foregoing, the Restricted Panel concurs with the opinion of Chief

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 control in terms of video surveillance for what

relates to third parties.

2.2. Employee information

24. The Restricted Committee notes that during the on-site visit by CNPD agents

the employees were not informed of the presence of the video surveillance system.

25. It also notes that the auditee did not submit any documentation

attesting that after his meeting of March 3, 2020 with CNPD officials, he informed

¹⁴ See WP 260 rev.01, point 38.

¹⁵ EDPS Guidelines 3/2019 on the processing of personal data by third parties

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

¹⁶ See WP260 rev.01, point 38.

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the ITM of the implementation of the video surveillance system. In any case, the information of

the ITM could not be qualified as individual information.

26. In view of the foregoing, the Restricted Panel concurs with the opinion of Chief

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 control in terms of video surveillance for what relates to employees.

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.¹⁷

29. 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)”.

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 using such a system, and will not then be able to use the personal data information collected for other purposes.¹⁸

¹⁷ See CNPD Guidelines, point 4., available at: <https://cnpd.public.lu/fr/dossiers-themes/videosurveillance/necessite-proportionnalite.html>.

¹⁸ See CNPD Guidelines, point 2., available at: <https://cnpd.public.lu/fr/dossiers-thematiques/videosurveillance/purpose.html>.

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.¹⁹

2. In this case

32. During the meeting of March 3, 2020, the controller explained to the CNPD agents that the purpose of video surveillance was to protect company property.

2.1. With regard to the field of vision of the camera aiming at [work] stations

33. During the on-site visit of January 30, 2020, CNPD officers observed that "the camera's field of vision allows the permanent surveillance of workstations work, in particular employees (...) occupied in [work] positions (Photo [...])."²¹ During of the meeting of March 3, 2020, they again documented the field of vision of the disputed camera by a screenshot "(see photo [...])."²²

34. The Head of Investigation stated in the Statement of Objections that while the purpose of protecting the company's assets "can find one or more bases of lawful under Article 6 [of the GDPR], the permanent monitoring of employees on their workstations, such as permanent monitoring of employees working behind the checkout and those occupied at [work] stations, noted during the on-site visit, is however, to be considered disproportionate. Indeed, such monitoring permanent can create significant psychological pressure for employees who feel and know they are being watched, especially since the surveillance measures continue in time. The fact that the employees concerned do not have a means of remove from this supervision from time to time. Such permanent monitoring is considered disproportionate to the purpose sought and constitutes a excessive interference with the private sphere of employees occupied at their workstations. In In this case, the fundamental rights and freedoms of employees must prevail over the interests

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

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

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

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

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sued by the employer. 23 Thus, he held that the conditions of Article 5.1.c) of the GDPR have not been complied with, and that the controller has breached its obligation under of Article 5.1.c) of the GDPR.²⁴

35. Control for its part, during the meeting of March 3, 2020, after explanations received relating to the modalities allowing video surveillance in the workplace and limits of such a surveillance measure, confirmed that it would "implement all technical measures to ensure that the video surveillance system put in place complies with the applicable legislation", and particularly that the field of vision of the camera would be reoriented to target only the crate.²⁵

36. 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.

37. She notes that the photo and screenshot documented by law enforcement officers CNPD during the on-site visit respectively their subsequent meeting with the controller show that the field of view of the disputed camera was aimed at employees working on workstations so that the disputed camera allowed permanent surveillance of these employees.

38. It also notes that the auditee did not submit any documentation attesting that after his meeting of March 3, 2020 with CNPD officials, he took technical measures, such as the reorientation of the disputed camera, to comply with the video surveillance system to the applicable legislation.

23 See Statement of Objections, page 5, Ad.B.2.), point 16.

24 See Statement of Objections, page 6, Ad.B.2.), point 20.

25 See Minutes no. [...], point 7, finding 13.

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39. In view of the foregoing, the Restricted Panel agrees with the head of investigation and concludes that the controller has breached its obligation under Article 5.1.c) of the GDPR on the day of the site visit by CNPD agents.

2.2. With regard to the field of vision of the camera aiming at the body

40. During the on-site visit of January 30, 2020, CNPD officials observed that "the camera's field of vision allows the permanent surveillance of workstations work, in particular employees working behind the cash desk (...) (Photo [...])."²⁶

41. The Head of Investigation explained in the statement of objections that, if "the surveillance of a checkout area can pursue the purpose of protecting property by observing customers and employees when handling funds or

registration of purchases, it follows from point 20 of Guidelines 3/2019 on the processing of personal data by video devices¹⁰ that the interest legitimate must actually exist and be current. Thus, it is recommended that those responsible for process to document the relevant incidents (date, nature, financial loss) and the related criminal proceedings. However, the company did not produce sufficient evidence to support for his assertions. Indeed, the only oral affirmation as to alleged cash differences cannot be taken into consideration, for lack of written evidence evidence in this regard. Indeed, it was specified during the said meeting that no complaint for theft was never filed with the Grand Ducal Police. In this context, the CNPD considers that the company has not produced sufficient evidence to establish the real and present nature of his interest and that, therefore, the interest of securing the payment fund cannot legitimize surveillance measures. ²⁷ Thus, he held that the conditions of article 5.1.c) of the GDPR have not been respected, and that the controller has breached its obligation arising from Article 5.1.c) of the GDPR.²⁸

42. The auditee for his part, during the meeting of March 3, 2020, explained that the disputed camera had been installed following the discovery of cash differences recurring expenses amounting to several hundred euros per month, but that despite everything no complaint had been lodged with the police concerning the said differences in cash.²⁹

²⁶ See Minutes no. [...] point 8, finding 7.

²⁷ Cf. Statement of Objections, page 5 to 6, Ad.B.2.), point 17.

²⁸ See Statement of Objections, page 6, Ad.B.2.), point 20.

²⁹ See Minutes no. [...] point 7, finding 8.

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In addition, he confirmed that he would implement technical measures to comply with the video surveillance system to the applicable legislation, and particularly that the field of vision of the camera would be reoriented in order to target only the body³⁰ (see point 35 of this decision).

43. As regards the right of employees not to be, in principle, subject to continuous and permanent monitoring, Restricted Training refers to point 36 of this decision. As mentioned, in order to avoid permanent monitoring and continues, the data controller must limit the field of vision of the cameras to the only surface necessary to achieve the aims pursued. So, for example, the purpose of camera surveillance of a store checkout can be to protect the property of the data controller against acts of theft committed by its employees or by a client/user and to ensure the safety of its personnel. However, in order not to violate the privacy of employees, the camera must be configured in such a way that that the employees present behind a cash counter are not targeted, by directing its field of vision towards the checkout itself and the front of the counter, i.e. the space waiting for customers in front of the counter, in order to allow identification of perpetrators, for example.³¹

44. The Restricted Committee notes that the photo documented by the agents of the CNPD during the on-site visit shows that the field of view of the disputed camera aimed the employees busy behind the cash counter so that the disputed camera allowed the permanent monitoring of these employees.

45. It also notes that the auditee did not submit any documentation attesting to the alleged differences in cash, nor proof attesting that after its meeting of March 3, 2020 with CNPD agents, he took technical measures, such as the reorientation of the disputed camera, to conform the video surveillance system to the applicable legislation.

30 See Minutes no. [...], point 7, finding 13.

31 See CNPD guidelines, point 4.2., available at: <https://cnpd.public.lu/fr/dossiers-themes/videosurveillance/necessite-proportionnalite.html>.

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46. In view of the foregoing, the Restricted Panel agrees with the head of investigation and concludes that the controller has breached its obligation under Article 5.1.c) of the GDPR on the day of the site visit by CNPD officials.

2.3. With regard to the use of the video surveillance system for the verification of work instructions given to employees

47. The head of investigation explained in the statement of objections that “according to point 4.3 of guidelines of the CNPD with regard to video surveillance¹¹

the

CCTV should not be used to observe the behavior and performance of members of the controller's staff. Indeed, such monitoring is considered disproportionate to the aim sought and constitutes an infringement excessive to the private sphere of employees occupied at their workstations. In this case, the fundamental rights and freedoms of employees must prevail over the interests pursued by the employer. 32 He also noted that the person checked “did not present any proof against this non-conformity nor any mitigating elements in this regard”³³. Thus, he has held that the conditions of article 5.1.c) of the GDPR have not been respected, and that the controlled has breached its obligation arising from Article 5.1.c) of the GDPR.³⁴

48. The controlee for his part, during the meeting of March 3, 2020, affirmed that the video surveillance system was also used to check whether the instructions for work given to employees were respected by them.³⁵

49. With regard to the right of employees not to be, in principle, subject to continuous and permanent monitoring, Restricted Training refers to point 36 of this decision.

50. Furthermore, she considers that video surveillance should not be used to observe the behavior and performance of the staff of the head of the processing outside the purposes for which it was set up. Thus, a employer has the right to use the images of an employee committing theft of goods and which come from a video surveillance system used for the purpose of protection

32 See Statement of Objections, page 6, Ad.B.2.), point 18.

33 See Statement of Objections, page 6, Ad.B.2.), point 17.

34 See Statement of Objections, page 6, Ad.B.2.), point 20.

35 See Minutes no. [...] point 7, finding 9.

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goods. However, he does not have the right to take measures against an employee when, to the taste of the employer, the employee discusses too long with a customer or a colleague of work and that this behavior is recorded by the CCTV system. This would constitute purpose diversion prohibited by the GDPR.³⁶

51. The Restricted Panel notes that the controller explained to CNPD officials that the purpose of the video surveillance was to protect company property³⁷. By Consequently, it considers that the use of the disputed camera in order to verify whether the

work instructions given to employees were respected by the latter, constitutes

Purpose diversion prohibited by the GDPR.

52. In view of the foregoing, the Restricted Panel agrees with the head of investigation and concludes that the controller has breached its obligation under Article 5.1.c) of the GDPR on the day of the site visit by CNPD officials.

II. 2. On the fine and corrective measures

1. Principles

53. 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;

36 See CNPD Guidelines, point 4.3., available at: <https://cnpd.public.lu/fr/dossiers-themes/videosurveillance/necessite-proportionnalite.html>.

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

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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. »

54. 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.

55. 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 :

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“(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;

(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”.

56. 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

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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.

57. Nevertheless, the steps taken by the controller to put themselves in compliance with the GDPR during the investigation process or to remedy the shortcomings noted by the head of investigation in the statement of objections, are taken taken into account by the Restricted Training in the context of any corrective measures to pronounce.

2. In this case

2.1. Regarding the imposition of an administrative fine

58. In the Statement of Objections, the Head of Investigation proposed to the Panel Restricted to impose an administrative fine to the control of an amount of two thousand five hundred (2,500) euros.^{38I}

59. 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:

- As to the nature and seriousness of the violation (Article 83.2.a) of the GDPR), it is that with regard to breaches of Article 5.1.c) of the GDPR, they are constituting breaches of a fundamental principle of the GDPR (and the right to data protection in general), namely the principle of minimization of

data devoted to Chapter II “Principles” of the GDPR.

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

38 See Statement of Objections, page 8, Ad.C., point 25.

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of the persons concerned. This right to information has also been reinforced in terms of the GDPR, which demonstrates their particular importance.

It should be noted that at the time of the on-site visit by CNPD officials, no signaling pictogram, nor any poster or information notice could be communicated to CNPD officials with regard to the information of employees and third parties regarding the video surveillance system.

- As for the duration criterion (article 83.2.a) of the GDPR), the Restricted Training notes that these shortcomings have lasted over time, at least since the installation of the video surveillance system during the month of August 2019³⁹ and until the day of the meeting of March 3, 2020. She reminds that guidance relating to the principles and obligations provided for by the GDPR was available from the CNPD, and in particular through its website.

- As for the number of data subjects (Article 83.2.a) of the GDPR), the

Restricted Training finds that these are all employees working on the site

of the controlled, as well as all third parties, i.e. customers,

suppliers, service providers and visitors to this site.

- 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 the present case, it is of the opinion that the facts and breaches found do not

do not reflect a deliberate intention to violate the GDPR on the part of the controller.

- As to 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.⁴⁰

³⁹ See Minutes no. [...], point 8, finding 10.

⁴⁰ See Statement of Objections, page 8, Ad.C., point 24.d.

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60. 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.

61. 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.

62. With regard to the amount of the administrative fine, it recalls that the paragraph 3 of Article 83 of the GDPR provides that in the event of multiple infringements, such as this is the case here, the total amount of the fine may not exceed the amount set for the most serious violation. To the extent that a breach of Articles 5 and 13 of the GDPR is accused of the controlled, the maximum amount of the fine that can be withheld is €20 million or 4% of worldwide annual revenue, whichever is greater being retained.

63. With regard to the relevant criteria of Article 83.2 of the GDPR mentioned above, the Restricted Panel considers that the pronouncement of a fine appears to be both effective, proportionate and dissuasive, in accordance with the requirements of Article 83.1 of the GDPR.

64. However, the Restricted Panel notes that the auditee was declared bankrupt dated [...]. Following the request of the President of the Restricted Formation, the curator of the auditee explained [...] that the assets of the auditee in bankruptcy would be insufficient to cover the costs of bankruptcy. Given that there are no longer any prospects of recovering a debt, the Restricted Committee considers that it is not appropriate to impose a fine administration in this case.

2.2. Regarding the taking of corrective measures accompanied by a penalty payment

65. In the Statement of Objections, the Head of Investigation proposed to the Panel Restricted to adopt the following corrective measures:

"which should be implemented within 1 month, under penalty of amount of EUR 50 per day of delay:

has. Order the controller to put in place the measures information intended for persons concerned by video surveillance,

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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 modify the field of vision of the contentious camera in such a way that employees are no longer targeted permanently at their workstations. »⁴¹

66. The Restricted Panel notes the explanations of the curator of the bankruptcy audited in his email of June 28, 2021, which states: "on the day of the declaration of bankruptcy, the company only carried on business in [...]. According to the manager, the lease of the premises at [...] was terminated at the end of July 2020". It therefore concludes that following the cessation of the activities of the controlled at the premises controlled by the CNPD, it is also not appropriate to pronounce or corrective measures or on-call duty.

In view of the foregoing developments, the National Commission sitting in restricted formation and deliberating unanimously decides: to close the investigation opened during the January 14, 2020 meeting of the Commission national data protection authority with bankrupt company A.

Thus decided in Belvaux on December 16, 2021.

⁴¹ See Statement of Objections, page 7, Ad.C., point 22.

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For the National Data Protection Commission sitting in formation

restraint

Tine A. Larsen Thierry Lallemand

Marc Lemmer

President

Commissioner

Commissioner

Indication of remedies

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

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