

Decision of the National Commission sitting in restricted formation

on the outcome of survey No. [...] conducted at the establishment

audience A

Deliberation No. 45FR/2021 of December 1, 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 16 January 2019, the National Commission for data protection sitting in plenary session (hereafter: "Formation Plenary") had decided to open an investigation with public establishment A 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 (hereafter after "Law of August 1, 2018") and to designate 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 verifying compliance with the provisions of Regulation (EU) 2016/679 of the Parliament European Parliament and of the Council of 27 April 2016 relating to the protection of natural persons with regard to the processing of personal data and the free movement of such data, and repealing Directive 95/46/EC (hereinafter "GDPR") and the law of 1 August 2018, in particular the compliance of the monitoring measures implemented through video surveillance and geolocation systems, where applicable, installed by public institution A.

3. On February 1, 2019, CNPD agents carried out a visit to the premises of the public establishment A. The decision of the National Commission for data protection sitting in restricted formation on the outcome of the investigation (hereafter: "Restricted Training") will be limited to processing controlled by CNPD agents and carried out by public institution A.

4. Public institution A is registered in the Trade and Companies Register of Luxembourg under number [...], with registered office at L- [...] (hereinafter "the controlled"). According to article [...] of the law of [...], the auditee has legal personality and enjoys financial and administrative autonomy under the supervision of [...]. The purpose of the control is to provide activities for human health.

5. During the aforementioned visit of February 1, 2019 by CNPD officials to the controlled premises, it was confirmed to CNPD officials that the controlled uses a

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video surveillance system, but that he has not installed a geolocation device in his vehicles.<sup>1</sup>

6. According to the explanations provided to CNPD officials, it was confirmed that the CCTV system is managed by the controlled as responsible for the processing<sup>2</sup> and that the purposes of setting up the video surveillance system are protecting company assets and securing access<sup>3</sup>. It appears from the mail of the audit of April 4, 2019<sup>4</sup> that other purposes are the safety of staff, customers and visitors and accident prevention.

7. On March 19, 2019, CNPD officials sent report no. [...] and a letter to the controller in which the CNPD agents asked for clarification from about the manner in which data subjects are informed of the presence of the CCTV system. The CNPD agents also asked him to send a copy of the register of processing activities.

8. On April 4, 2019, the control produced written observations relating to the trial verbal no. [...] relating to the on-site fact-finding mission carried out on February 1, 2019.

9. At the end of his investigation, the head of investigation notified the person inspected on 8 August 2019 a Statement of Objections (hereinafter: "the Statement of Objections") detailing the shortcomings that he considered constituted in this case, and more specifically a non-compliance with the requirements prescribed by Article 13 of the GDPR with regard to the persons concerned (right to information), i.e. employees and persons

non-employees, namely customers, suppliers, service providers and visitors (hereafter after: "third parties") and non-compliance with the requirements of Article 5.1.c) of the GDPR (data minimization principle).

1 See minutes no. [...] relating to the on-site fact-finding mission carried out on February 1, 2019 to of the public institution A.

2 See minutes no. [...] relating to the on-site fact-finding mission carried out on February 1, 2019 to of the public institution A.

3 See finding 8 of minutes no. [...] relating to the on-site fact-finding mission carried out on 1 February 2019 with the public establishment A.

4 See more specifically the note "Commitment to respect information security for staff public establishment A" and chapter "A. Video surveillance system" of the "Welcome booklet" of the control.

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10. By letter dated November 7, 2019, the controller produced written observations on the statement of objections.

11. A supplementary letter to the statement of objections was sent to the checked on August 3, 2020. In this letter, the head of investigation proposed to the Restricted training to adopt three corrective measures and to inflict on the controlee a administrative fine of EUR 6,700.

12. By letter dated September 9, 2020, the controller referred to his observations writings of November 7, 2019 and the new amendments made to comply with compliance with GDPR rules and corrective measures proposed by the leader inquiry in its supplementary letter to the statement of objections.

13. The president of the Restricted Formation informed the controller by letter of 18 December 2020 that his case would be registered for the session of the Restricted Panel on 5 February 2021 and that he could attend this session. The controller confirmed his presence at said meeting dated January 19, 2021.

14. During the Restricted Training session of February 5, 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 control had the speak last.

## 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

15. 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

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34 with regard to the treatment to the data subject in a concise manner,  
transparent, understandable easily accessible, in clear and simple terms [...]. »

#### 16. Article 13 of the GDPR provides the following:

“1. When personal data relating to a person  
concerned are collected from this person, the data controller  
provides, at the time the data in question is obtained, all the information  
following:

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

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

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

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

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

(f) where applicable, the fact that the controller intends to carry out a transfer of personal data to a third country or to an organization international community, and the existence or absence of an adequacy decision issued by the Commission or, in the case of transfers referred to in Article 46 or 47, or Article 49, paragraph 1, second subparagraph, the reference to the appropriate or suitable safeguards and the means of obtaining a copy or where they have been made available;

2. In addition to the information referred to in paragraph 1, the controller provides to the data subject, at the time the personal data is obtained, the following additional information which is necessary to guarantee fair and transparent treatment:

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a) the retention period of the personal data or, where this is not possible, the criteria used to determine this duration;

b) the existence of the right to request from the controller access to the data to

personal character, the rectification or erasure of these, or a limitation of the

processing relating to the data subject, or the right to oppose the processing and

right to data portability;

c) where the processing is based on point (a) of Article 6(1) or on Article 9,

paragraph 2(a), the existence of the right to withdraw consent at any time,

without affecting the lawfulness of the processing based on the consent made before the

withdrawal thereof;

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

(e) information on whether the requirement to provide data to

personal nature has a regulatory or contractual nature or if it conditions the

conclusion of a contract and whether the data subject is obliged to provide the data to

personal character, as well as on the possible consequences of the non-provision of

those data;

f) the existence of automated decision-making, including profiling, referred to in Article

22, paragraphs 1 and 4, and, at least in such cases, useful information concerning the

underlying logic, as well as the significance and intended consequences of such processing

for the person concerned.

3. When he intends to carry out further processing of personal data

personal data for a purpose other than that for which the personal data

have been collected, the data controller provides the data subject beforehand

concerned information about this other purpose and any other information

relevant referred to in paragraph 2.

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4. Paragraphs 1, 2 and 3 do not apply where and insofar as the

data subject already has this information. »

17. 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>5</sup> Said obligations have been

explained by the Article 29 Working Party in its guidelines on the

transparency within the meaning of Regulation (EU) 2016/679, the revised version of which has been adopted

April 11, 2018 (hereinafter: "WP 260 rev.01").

18. 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, as precisely the aforementioned guidelines on transparency.<sup>6</sup>

2. In this case

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

video surveillance, the head of the investigation noted that the thumbnails indicating the number

the former authorization<sup>7</sup> issued by the CNPD under the repealed law of August 2, 2002 and

affixed to the bottom of access doors in various places were the only source

information about the CCTV system. In addition, the chief investigator has

mentioned that even if the controlled had explained in his letter of April 4, 2019 that

said vignettes will be replaced by stickers which "will be affixed in the

next few days"<sup>8</sup>, the non-compliance with article 13 of the GDPR was acquired no later than

day of the on-site visit and that the documentation submitted by said letter did not contain

no evidence against this non-compliance.

20. With regard to informing employees about the system of

video surveillance, the head of the investigation noted that the thumbnails indicating the number

5 Cf. in particular articles 5.1, a) and 12 of the GDPR, see also recital (39) of the GDPR.



6 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).

7 Deliberation No. [...] of the CNPD relating to the request for prior authorization in terms of video surveillance of the controlled.

8 See Letter from the audit dated April 4, 2019.

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under :

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the former authorization<sup>9</sup> issued by the CNPD under the repealed law of August 2, 2002 and

affixed to the bottom of access doors in various places were the only source

information about the CCTV system. He clarified that the

documentation sent by the control by mail of April 4, 2019, namely the note

"Commitment to respect information security for the personnel of the

public establishment A" (which would be sent and countersigned by the employees in the

part of a future information campaign) and the "welcome booklet" (which would in future be

given to all new employees), did not make it possible to show that the employees

had received all the information required within the meaning of Article 13 of the GDPR<sup>10</sup>. More

in particular, the head of investigation noted that the analysis of the two aforementioned documents

had shown that the auditee omitted to provide information on the rights of

data subjects and on the right to lodge a complaint with a data protection authority.

control.

21. By letter dated November 7, 2019, the control sent to the head of investigation

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confirmation that the new "information posters" intended for

third parties had been affixed to the entrances and exits of the buildings of the

checked by attaching a copy of the said "information poster",

- a copy of the new chapter VII.A. of its "welcome booklet" intended for

new employees of the control and processing the information in relation to its

CCTV system, and

- a copy of the new note "Commitment to respect the safety of

information for the staff of public establishment A" intended for employees

of the control and the confirmation that the said note had been "delivered to each

collaborator"<sup>11</sup>.

22. By letter dated September 9, 2020, the controller replied to the letter

supplementary to the statement of objections of August 3, 2020 from the head of investigation and he

said it follows a two-tiered approach to informing third parties

9 Deliberation No. [...] of the CNPD relating to the request for prior authorization in terms of

video surveillance of the controlled.

10 See B.1. statement of objections.

11 See page 1 of the inspector's letter of 7 November 2019.

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since March 2020 and he attached to his letter a new "A6 size poster" and a

new excerpt from its "privacy policy".

23. 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, point 33).

24. The Restricted Committee considers that a layered approach to Communicating transparency information to data subjects can be used in an offline or non-digital context, i.e. in an environment real, such as personal data collected by means of a CCTV system. The first level of information (warning sign, information note, 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>12</sup>, as well as a reference to the more detailed information of the second level (e.g. via QR code or website address)<sup>13</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>14</sup>

#### 2.1. Information from third parties

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

<sup>12</sup> See WP 260 rev.01 (point 38.).

<sup>13</sup> See EDPS Guidelines 3/2019 on the processing of personal data by video devices, version 2.0, adopted on January 29, 2020 (points 114. and 117.).

<sup>14</sup> See WP260 rev. 01 (item 38.).

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video surveillance only by the CNPD vignettes indicating the number of

the former authorization<sup>15</sup> issued by the CNPD under the repealed law of August 2, 2002 and

affixed to the bottom of access doors in various places. By letter dated April 4, 2019, the

inspected claimed that said decals will be replaced by stickers which

"will be affixed in the coming days"<sup>16</sup> and he attached a copy of the new

stickers. By letter dated November 7, 2019, the controller confirmed that the "new

information posters" had been affixed to all accesses to their buildings and he,

again attached a copy of said stickers. The Restricted Panel finds that

the content of the stickers has not changed since the first mail from the control.

26. Finally, by letter dated September 9, 2020, the controller sent a new

"A6 size poster" which had been "affixed to all exits (entrances / exits) (...)

in April 2019" by informing the head of investigation that he has decided to follow an approach "in

two levels (...) from March 2020" to communicate information on the

CCTV system. The new "A6 size poster" represented the first

level of information and the second level of information would be available on the website

internet of the controlled: [...].

27. The Restricted Panel notes that the CNPD sticker indicating the number

of the old authorisation<sup>17</sup> was the only source of information in relation to the system of

video surveillance. She also notes that the new "information posters"

sent by the control between April 4, 2019 and November 7, 2019 did not contain

all the required elements of Article 13 of the GDPR. If the "information posters"

contained the most important information for a first communication with

a data subject<sup>18</sup>, they nevertheless did not contain any reference to the complete information required under Article 13.1. and 2. GDPR. By mail from September 9, 2020, the audited said it was following a two-tiered approach to the information of third parties since March 2020. The Restricted Committee notes that the new "A6 size poster", sent by said courier, now contains the 15 Deliberation No. [...] of the CNPD relating to the request for prior authorization in terms of video surveillance of the controlled.

<sup>16</sup> See Letter from the audit dated April 4, 2019.

<sup>17</sup> Deliberation No. [...] of the CNPD relating to the request for prior authorization in terms of video surveillance of the controlled

<sup>18</sup> See WP260 rev. 01, item 36.

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required elements of the first level of information<sup>19</sup> and it also refers to the site internet of the controlled on which is the second level of information<sup>20</sup> (i.e. the new " privacy policy "). It also notes that the chapter on the "policy of confidentiality" dealing with video surveillance, sent to the CNPD by said letter, contains now all the elements required by article 13.1. and 2. GDPR.

28. The Restricted Committee nevertheless notes that all the documentation of the first and second level of information was put in place only after the on-site visit CNPD officers.

29. In view of the foregoing, the Restricted Panel concludes that at the time of the on-site visit by CNPD agents, article 13 of the GDPR was not respected by the controlled with respect to third parties.

## 2.2. Employee information

30. With regard to employees, Restricted Training notes that during the on-site visit by CNPD agents, the latter were informed of the presence of the CCTV system only by

- the CNPD vignettes indicating the number of the old authorization<sup>21</sup> issued by the CNPD under the repealed law of August 2, 2002 and affixed to the bottom of the access doors to different places, and
- by information sent in 2004 to the members of the Joint Committee of the controlled<sup>22</sup>, without the controlled having provided evidence in support of this assertion.

31. By letters dated April 4, 2019 and November 7, 2019, the controller sent a copy of new stickers ("information posters"), two versions of the note "Commitment to respect information security for the personnel of the public institution A" and two versions of the "welcome booklet". Restricted Training notes that the first versions of the two aforementioned documents were adapted between April 19 See Point 24. of this decision for more information on the two levels of information.

20 See Point 24. of this decision for more information on the two levels of information.

21 Deliberation No. [...] of the CNPD relating to the request for prior authorization in terms of video surveillance of the controlled.

22 See Letter from the audit dated April 4, 2019.

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and November 2019 and they now expressly mention the right of access, the right

of opposition and the right of erasure of the persons concerned and the right to introduce a complaint to the CNPD.

32. Finally, by letter dated September 9, 2020, the auditee firstly sent a new "A6 size poster", which represented the first level of information for data subjects, and which refers to the second level of information that can be consulted on the website of the controlled ([...]), i.e. the "privacy policy" of the controlled<sup>23</sup>. Else hand, the controller returned the latest versions of the note "Commitment to respect information security for the staff of public establishment A", which would have been "given to each employee", and the "welcome booklet", which would be sent to all new entrants.

33. With regard to the individual information of employees, the Training Restreinte considers first of all that simply informing the joint committee does not ensure that the control employees have been individually informed of the precise elements of section 13.1. and 2. GDPR. However, it notes that employees are now informed by the transmission of the note "Commitment to respect the security of information for the staff of public establishment A" for current employees and the "booklet d'accueil" for newcomers. However, the Restricted Committee notes that the two aforementioned documents have not been adapted since the letter from the inspector of 7 November 2019. They do not mention the existence of the right to request from the controller processing the rectification of personal data, nor the right to a limitation processing relating to the data subject, or the right to data portability. By Consequently, Restricted Training considers that employees receive incomplete documents with respect to article 13.1. and 2. GDPR. The fact that employees can consult the "privacy policy", available on the website of the controlled, in which there is an exact explanation of the rights of the persons concerned, does not change the fact that the individual information of employees is

incomplete. Because the “privacy policy” can be qualified as a collective information, but not as individual employee information. Furthermore, the Restricted Training considers that all of the second level information must be

23 See Point 24. of this decision for more information on the two levels of information.

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be “consultable in a single place or in the same document (in digital form on a website or in paper format)”<sup>24</sup> which must be easily accessible in the case where the data subjects would like to consult all the information. In species, the information is dispersed in different documents available in various locations, making it difficult for people to get to know this information. employees.

34. In view of the foregoing, the Restricted Panel concludes that at the time of the on-site visit by CNPD agents, article 13 of the GDPR was not respected by the controlled with regard to the employees of the controlled.

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

1. On the principles

35. 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)”.

36. 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>25</sup>

37. 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)”.

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

24 See WP 260 rev. 01 (item 33).

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

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using such a system, and will not then be able to use the personal data  
information collected for other purposes.<sup>26</sup>

39. 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>27</sup>

2. In this case

40. It was explained to CNPD officials that the purposes of setting up the  
CCTV system were the protection of company assets, securing  
access<sup>28</sup> and also the safety of staff, customers and visitors and the  
accident prevention<sup>29</sup>. However, the Restricted Committee observes that in the register of  
processing relating to video surveillance provided by the controlled, the purpose described is as  
follows: “Ensure the safety of users and the prevention of accidents as well as the protection

company assets. \*allow visual control of access to the main cash desk. "30.

It therefore turns out that the purpose invoked during the investigation, i.e. "the securing of access", is not included in the processing register relating to video surveillance<sup>31</sup>.

2.1. With regard to the field of vision of the cameras filming the employees

41. During the on-site investigation, CNPD officials noted that

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the field of view of the numbered cameras [...] (hereinafter: "cameras [...]")

allowed permanent monitoring of employees employed in the

reception [...] (statement of objections, A.3.);

the CNPD, available

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

26 See Guidelines for

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

27 See CNPD Guidelines (Point 4.), available at: <https://cnpd.public.lu/fr/dossiers->

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

28 See finding 8 of minutes no. [...] relating to the on-site fact-finding mission carried out on 1 February

2019 with the public establishment A.

29 See the note "Commitment to respect information security for the personnel of the establishment

public A" and chapter "A. Video surveillance system" of the "Welcome booklet" of the controlled.

30 See "Video surveillance – Internal reference: [...]" processing register sent to the CNPD by mail from  
checked on April 4, 2019.

31 See "Video surveillance – Internal reference: [...]" processing register sent to the CNPD by mail from  
checked on April 4, 2019.

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the field of view of camera number [...] (hereinafter: "camera [...]")

allowed, among other things, the permanent monitoring of employees employed

behind the counter (statement of objections, A.4.);

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the field of view of camera number [...] (hereinafter: "camera [...]")

allowed the permanent surveillance of employees employed at the "entrance

[...]" (statement of objections, A.5.); and

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the field of view of camera number [...] (hereinafter: "camera [...]")

allowed permanent monitoring of employees working at reception

[...]" (statement of objections, A.6.) .

42. The head of investigation considered that "(...) the permanent monitoring of employees on their workstations is to be considered disproportionate. Indeed, a such permanent surveillance can create significant psychological pressure for employees who feel and know they are being watched, especially since the measures of monitoring persist over time. The fact that the employees concerned do not have of a means of evading this monitoring from time to time is also to likely to aggravate this pressure. Such permanent monitoring is considered as disproportionate to the aim pursued and constitutes an excessive interference with the private sphere of employees occupied at their workstations. In this case, the rights and fundamental freedoms of employees must prevail over the interests pursued by the employer. Thus, he held that non-compliance with Article 5.1.c) of the GDPR was acquired on the day of the on-site visit and that the documentation submitted to the CNPD by the letter of April 4, 2019 did not contain any evidence against this non-compliance, nor

no explanation as to the possible need for such monitoring measures

(statement of objections, Ad. A.3. to A.6.).

43. The auditee for his part explained in his reply letter to the statement of objections of 7 November 2019 (and again in its letter of 9 September 2020) that the field(s) of vision

- cameras [...] have been masked in order to no longer monitor areas of work of employees at reception [...];

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- of the camera [...] has been temporarily reoriented and masked in order to monitor only the front door [...];

- of the camera [...] has been hidden in order to no longer monitor work areas permanent staff [...]; and

- of the camera [...] has been hidden in order to no longer monitor work areas employees at the reception [...].

44. The Restricted Panel finds that the controller attached to his letter of 7 November 2019 and again to his mail of September 9, 2020 captures screen showing the adjustments of the five aforementioned cameras. However, she notes also that the inspected mentioned in said letters that the masking and reorientation of the camera's field of view [...] are only temporary because work would be planned in the future for “a new location of this camera (...) in order to film the attacks more clearly [...]”<sup>32</sup>. Furthermore, she finds that masking the field of vision of the camera [...] does not prevent the permanent monitoring of employees [...]<sup>33</sup>.

45. 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.

46. In view of the foregoing, the Restricted Committee concurs with the finding of Chief of investigation according to which the non-compliance with Article 5.1.c) of the GDPR was acquired on the day of the on-site visit by CNPD agents concerning the five cameras that allowed permanent monitoring of the workstations of the employees employed there.

32 See Letter from the audit dated November 7, 2019.

33 See Letter from the audit dated November 7, 2019.

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## 2.2. Regarding the field of vision of cameras filming [clients]

47. During the on-site investigation, the CNPD agents noted that

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the field of vision of the camera [...] allowed, among other things, surveillance  
[...] (statement of objections, A.4.);

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the field of view of camera number [...] (hereinafter: "camera [...]")  
allowed surveillance of a corridor [...] (statement of objections, A.7.);

and

-

the field of view of camera number [...] (hereinafter: "camera [...]")

allowed the surveillance of a reserved space [...] (communication of grievances, A.8.).

48. The head of the investigation considered that the surveillance of these spaces "should be considered as disproportionate when the persons present there will be, in a way permanent, subject to video surveillance as they choose these places as meeting places [...]. However, the persons concerned who remain in this type of place for a more or less long period of time, must be able to legitimately expect to not to be filmed during these private moments. The use of cameras in these spaces is likely to film the behavior of the persons concerned and may create discomfort or even psychological pressure for the latter who feel observed throughout their presence in these spaces. Such monitoring permanent constitutes an invasion of the privacy of the persons concerned. " Thereby, he retained that the non-compliance with article 5.1.c) of the GDPR was established on the day of the visit on site (statement of objections, Ad. A.4., A.7. and A.8.).

49. The auditee for his part explained in his reply letter to the statement of objections of 7 November 2019 (and again in its letter of 9 September 2020) than the field of vision

- of the camera [...] has been temporarily reoriented in order to monitor only the front door [...];

- of the camera [...] has been temporarily masked in order to no longer monitor the areas [...]; and

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- of the camera [...] has been masked in order to no longer monitor the areas [...].

50. The Restricted Panel finds that the controller attached to his letter of 7

November 2019 and again to his mail of September 9, 2020 captures

screen showing the adjustments of the three aforementioned cameras. On the other hand, she notes that the

controlled mentioned in said mails that the masking and redirection of the field

vision of the camera [...] are only temporary (see point 44. of this

decision) and that the masking of the field of vision of the camera [...] would also be

temporary because work would be planned in the future for “a new

installation of this camera (...) in order to film the exterior access door of the [...]”<sup>34</sup>. The

Formation Restrictée would like to remind you that customers [...] who choose to switch from

time in these types of places must be able to expect not to be filmed during these

private times. She also wonders about the need for cameras [...] and their

utilities to achieve the purposes sought by the auditee. Regarding the

camera [...], the Restricted Panel notes that its field of vision encompasses a corridor which

acts as “[...] and that it is not necessary to film this corridor to achieve the finality

to “secure the exterior access door [...]”<sup>35</sup>. Moreover, it considers that in this case

the interests and fundamental rights [of clients] not to be filmed while waiting [...]

prevail in this specific case over the legitimate interest of the controlled party to want to secure its

exterior access. Indeed, there are less intrusive alternative means to achieve the

purpose invoked by the controller. Regarding the camera [...], she also notes

that it does not seem necessary to film the whole corridor, [...], especially since there is

obviously no access door in the field of vision of said camera.

52. The Restricted Committee also wishes to point out that the cameras intended

to monitor an access point (e.g. entrance and exit) must have a limited field of vision

on the surface strictly necessary to visualize the people preparing to access it.

If the main purpose of the three aforementioned cameras was not to monitor customers [...] getting ready to spend time in dedicated spaces [...], the fact remains that these are in the field of view of said cameras.

53. In view of the foregoing, the Restricted Panel concurs with the finding of Chief of investigation according to which the non-compliance with Article 5.1.c) of the GDPR was acquired on the day

34 See Letter from the audit dated November 7, 2019.

35 As indicated by the controller in his letter of November 7, 2019.

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the on-site visit by CNPD agents concerning the three cameras that allowed  
customer monitoring [...].

## II. 2. On corrective measures and fines

### 1. Principles

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

- "(a) notify a controller or processor of the fact that the operations of the envisaged processing are likely to violate the provisions of this regulation;
- (b) call a controller or processor to order when the processing operations have resulted in a breach of the provisions of this Regulation;
- (c) order the controller or processor to comply with requests submitted by the data subject with a view to exercising their rights under this these regulations;
- d) order the controller or the processor to put the operations of



processing in accordance with the provisions of this Regulation, where applicable, of specific manner and within a specified time;

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

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

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

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(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. »

55. 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.

56. 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;

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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”.

57. 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.

58. 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.

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2. In this case

2.1. Regarding the imposition of an administrative fine

59. In its supplementary letter to the statement of objections of 3 August

2020, the head of investigation proposed to the Restricted Panel to impose a fine administrative audit for an amount of 6,700 euros.

60. In his response to said additional letter of September 9, 2020, the

checked referred, on the one hand, to his letter of November 7, 2019 and on the other hand, he took once again position in relation to all the shortcomings mentioned in the statement of objections by sending new explanations and new documents in relation to Article 13 of the GDPR and attaching the same photos as in his letter of November 7, 2019 in relation to article 5.1.c) of the GDPR.

61. In order to decide whether to impose an administrative fine and to decide, where applicable, the amount of this fine, the Restricted Panel takes into account the elements provided for in Article 83.2 of the GDPR:

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As to the nature and seriousness of the breach (Article 83.2.a) of the GDPR), the Restricted Panel notes that with regard to the breach of the obligation to inform data subjects in accordance with Article 13 of the GDPR, the Restricted Training recalls that information and transparency relating to the processing of personal data are essential obligations weighing on data controllers so that individuals are fully aware of the use that will be made of their personal data staff, once collected. A breach of Article 13 of the GDPR thus constitutes an infringement of the rights of the persons concerned. This right to information has also been reinforced under the terms of the GDPR, which testifies to their particular importance.

As for breaches of Article 5.1.c) of the GDPR, they constitute breaches of a fundamental principle of the GDPR (and the right to the protection of data in general), namely the principle of data minimization devoted in Chapter II "Principles" of the GDPR.

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As for the duration criterion (article 83.2.a) of the GDPR), the Restricted Training notes that these shortcomings have persisted over time, at least since the May 25, 2018 and until the day of the on-site visit. The Restricted Formation reminds here that two years separated the entry into force of the GDPR from its entry into application to enable data controllers to comply with the obligations incumbent upon them. Moreover, an obligation to inform comparable, as well as an obligation to respect the principle of minimization already existed pursuant to Articles 4.1. b), 10.2 and 26 of the repealed law of 2 August 2002 on the protection of individuals with regard to the processing of personal data. Guidance on principles and obligations provided for in the said law was available from the CNPD, in particular through mandatory prior authorization for video surveillance.

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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, [...].

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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.

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As for the degree of cooperation established with the supervisory authority (Article 83.2.f) of the  
GDPR), the Restricted Training takes into account the assertion of the head of investigation  
that the co-operation of the auditee throughout the investigation was good, as well as  
than its desire to comply with the law as soon as possible.

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As for the measures taken by the auditee to mitigate the damage suffered by the  
persons concerned (article 83.2.c), the Restricted Training takes into account the

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measures taken by the auditee and refers to Chapter II.2. section 2.2. of this  
decision for the related explanations.

62. 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.

63. 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  
27 February 2019 (see also point 57. of this decision).

64. 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 13 and 5.1.c) GDPR.

65. With regard to the amount of the administrative fine, the Restricted Panel recalls that paragraph 3 of Article 83 of the GDPR provides that in the event of breaches multiple, as is the case here, the total amount of the fine cannot exceed the amount fixed for the most serious violation. To the extent that a breach of articles 13 and 5 of the RGPD is reproached to 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.

66. With regard to the relevant criteria of Article 83.2 of the GDPR mentioned above, the Restricted Formation considers that the pronouncement of a fine of 6,700 euros appears both effective, proportionate and dissuasive, in accordance with the requirements of Article 83.1 of the GDPR.

## 2.2. About taking corrective action

67. The adoption of the following corrective measures was proposed by Chief of investigation to the Restricted Training in its additional letter to the statement of objections:

“a) Order the controller to complete the information measures intended for third parties ([...]) 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 contact details of the data protection officer, 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 the indication of the human rights and how to exercise them.

b) Order the controller to complete the information measures

intended for employees affected by

video surveillance,

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

informing in particular of the existence of the right to ask the person responsible for the

processing access to personal data, rectification or erasure

of these, or a limitation of the processing relating to the data subject and the right

lodge a complaint with a supervisory authority.

c) Order the controller to process only relevant data,

adequate and limited to what is necessary with regard to the purposes of protection

property and securing access and, in particular, adapting the video system

so as not to film employees at their workstations, nor to film third parties in

areas in

which one

such monitoring is considered

disproportionate, for example by removing or reorienting the cameras. »

68. In its reply to the said supplementary letter to the statement of objections

of September 9, 2020, the controller referred to his letter of November 7, 2019 in which

he had taken a position with regard to all the shortcomings mentioned in the

statement of objections, and he once again took a position with regard to all these

breaches, among other things, by sending new documents as an appendix to said

letter showing the measures taken by the control.

69. As for the corrective measures proposed by the head of investigation, the Panel



Restreinte takes into account the steps taken by the auditee, following the visit to the CNPD officials, in order to comply with the provisions of Articles 13 and 5.1.c) of the GDPR, as detailed in its letters of April 4, 2019, November 7, 2019 and 9 September 2020. More specifically, it takes note of the following facts:

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With regard to the implementation of information measures intended for persons third parties by video surveillance in accordance with the provisions of article 13.1 and 2 of the GDPR, the control sent by letter of September 9, 2020

- o a new “A6 size poster” which would have been “affixed to all issues (entries / exits) (...) in April 2019”,

oh

the statement that he has decided to follow a “two-tier approach (...) as of March 2020” to communicate information on the CCTV system, and

- o a new chapter of its “privacy policy” available on his website.

The Restricted Panel observes that the first level of information (i.e. the new “A6 size poster”) and the second level of information (i.e. the new chapter of its “privacy policy”) now contain all the information required by article 13.1. and 2. of the GDPR and are accessible to third parties.

In consideration of the compliance measures taken by the control in

case, the Restricted Panel therefore considers that there is no need to pronounce the corrective measure proposed by the head of investigation in this regard as set out in point 67 (a) with regard to third parties.

With regard more specifically to audited employees, Training

Restricted considers that

control employees must be

informed

individually regarding the specific elements of Article 13 of the GDPR. By

against, the Restricted Committee finds that the note "Commitment to respect

information security for the staff of public institution A", which has

been sent to current employees, and the "welcome booklet", which will be sent to

new entrants, do not contain all the information required by the article

13 GDPR. The two aforementioned documents do not mention the existence of the right

to ask the data controller to rectify the personal data

personal data, nor the right to restriction of processing relating to the data subject,

or the right to data portability. Consequently, the Restricted Formation

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considers that the information provided to employees under Articles 13.1. and 2. of GDPR is incomplete.

In consideration of the compliance measures taken by the control in

case, 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 67 (b) as regards the individual information of employees.

As for the obligation to only process data that is relevant, adequate and limited to what is necessary with regard to the purposes of protecting the property of the company, securing access, security of personnel, customers and visitors including the prevention of accidents, the control has annexed to his letters from November 7, 2019 and September 9, 2020 photos showing adjustments of the fields of view of all the disputed cameras. Restricted Training considers that the fields of vision

- cameras [...], and

- of the camera [...]

are now compliant with the principle of data minimization according to Article 5.1.c) of the GDPR in order to no longer permanently monitor areas of work of employees.

With regard to the field of view of the camera [...], the Restricted Formation considers that the adjustment of the field of vision does not make it possible to prevent the permanent monitoring of employees in the "[...]". Furthermore, in view of the purpose of securing access, it considers that a reorientation of the said camera would be more appropriate to target only "the entrance [...]"<sup>36</sup>. The Restricted Committee therefore considers that it is necessary to pronounce the measure correction proposed by the head of investigation in this regard as set out in point 67 under (c) in order to refer to "the entry [...]".

Regarding the field of view of the camera [...], the person being checked asserted that the reorientation and masking of the field of view of said camera would not only temporary. A related question was asked during the hearing of the

36 Cf. As suggested by the auditee himself in his letter of September 9, 2020.

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Restricted training on February 5, 2021. The controller confirmed that the masking

is not definitive and that it is possible to unmask the field of vision at any

moment but only for future recordings and not for the

past. In his letter of November 7, 2019, he indicated that "a new

installation of this camera is envisaged in order to film more distinctly the

access [...] ". Indeed, the Restricted Committee considers that there are means

much less intrusive alternatives to achieve the purpose invoked by the

controlled (i.e. in this case the securing of access, more precisely the

surveillance of the "front door [...]"<sup>37</sup>), such as the installation of a

camera outside [...]" which only aims at access [...]. The act of masking

virtually any surface filmed by a camera is not a measurement

suitable alternative to ensure that the field of view of a camera is limited

on the surface strictly necessary to visualize people entering or leaving

[...] (see point 52. of this decision). The Restricted Committee considers as soon as

when it is necessary to pronounce the corrective measure proposed by the head of investigation

in this respect as set out in point 67 (c) in order to refer only to the door

of entry [...] and in order to make this adjustment permanent.

Regarding the field of view of the camera [...], the person being checked asserted that

masking the field of view of said camera would also be that

temporary. A related question was asked during the hearing of the Panel

Restricted on February 5, 2021. The control confirmed that the masking is not

definitive and that it is possible to unmask the field of vision at any time but

only for future recordings and not for the past. In his

letter of November 7, 2019, he indicated that “a new establishment of this camera is planned to film the exterior access door [...]”. In view of the purpose of securing access and considering the right of [customers] not to be filmed during their presence in the “[...]” [...], the Restricted Formation considers that the adjustment of the field of vision of the camera [...] does not allow to prevent disproportionate surveillance [...]. Customers] can escape this surveillance only by taking a seat on a chair and the rest of the corridor is still in the field of view of said camera, while there are much less intrusive alternative means of achieving the purpose invoked by

37 See letter from the audit dated September 9, 2020.

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the controlled (i.e. in this case the securing of access, more precisely the surveillance of “the exterior access door [...]”<sup>38</sup>), such as the installation of a camera outside the “[...]” which only aims at access to the “[...]”. The fact of masking practically all of the surface filmed by a camera is not a suitable alternative measure to ensure that the field of vision of a camera is limited to the area strictly necessary to view the persons entering or leaving the “[...]” (see point 52. of this decision). The Restricted Committee therefore considers that it is necessary to pronounce the measure correction proposed by the head of investigation in this regard as set out in point 67 under c) in order to refer only to “the exterior access door [...]” and in order to make this permanent adjustment.

With regard to the field of view of the camera [...], the Restricted Formation

considers that with regard to the desired purpose, the adjustment of the field of vision of the said camera does not make it possible to prevent the disproportionate surveillance of customers [...], especially since it does not identify any access door in the field of view of said camera. Indeed, the Restricted Committee considers that there are much less intrusive alternative means of achieving the purpose invoked by the controlled, such as the installation of a camera outside the building which aims only at access [...]. The Restricted Committee therefore considers that there is reason to pronounce the corrective measure proposed by the head of investigation in this regard. regard as set out in point 67 (c) in order to refer only to access [...].

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 13 of the GDPR;
- to pronounce against the public institution A an administrative fine of one amount of six thousand seven hundred euros (6,700 euros), with regard to the violation of articles 5.1.c) and 13 GDPR.

38 Letter from the audit dated November 7, 2019.

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- to pronounce against the public institution A an injunction to enforce compliance of the processing with the obligations resulting from article 5.1.c) of the GDPR, in a period of two months following notification of the decision of the Restricted Panel, and especially :

□

with regard to the breach of the principle of minimization of personal data

staff (art 5.1.c of the GDPR):

-

remove or move the camera [...] in order to film only the access  
in the "[...]" and not the work area of the employees in the "[...]";

-

remove or move the camera [...] (for example: installation of a  
camera outside "[...]" to target only the front door  
"[...]" and not the work area of the employees and [...];

-

remove or move the camera [...] (for example: installation of a  
camera outside the "[...]" in order to target only "the door  
exterior access [...];

- remove or move the camera [...] (for example: installation of a  
camera outside the building) in order to target only the access towards  
[...].

- to pronounce against the public institution A an injunction to enforce  
compliance of the processing with the obligations resulting from Article 13 of the GDPR, in a  
two months following the notification of the decision of the Restricted Panel, and in  
particular :

□

with regard to the breach of the obligation to inform the persons concerned of the  
processing of their personal data (Article 13 GDPR):

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inform employees (current and future) individually  
concerning the specific elements of Article 13 of the GDPR by adapting,  
for example, the note "Commitment to respect the security of

information for the staff of public establishment A” and the “booklet

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d’accueil” in order to add the two chapters “Video surveillance” and

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“Your Data Protection Rights” of the “Privacy Policy”

confidentiality” of the controlled and sending the said note to all

control employees.

Thus decided in Belvaux on December 1, 2021.

For the National Data Protection Commission sitting in formation

restraint

Tine A. Larsen Thierry Lallemand Marc Lemmer

President

Commissioner

Commissioner

Indication of remedies

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

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

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

lawyers.

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