

Decision of the National Commission sitting in restricted formation

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

Deliberation No. 14FR/2021 of May 12, 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:

I. Facts and procedure

1. During its deliberation session of February 14, 2019, the National Commission

for data protection sitting in plenary session (hereafter: "Formation

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Plenary”) had decided to open an investigation with the AB1 group on the basis of article 37 of the law of 1 August 2018 on the organization of the National Commission for the data protection and the general data protection regime (hereinafter “Law of August 1, 2018”) and to appoint Mr. Christophe Buschmann as Chief of investigation.

2. According to the decision of the Plenary Formation, the investigation carried out by the National Commission for Data Protection (hereinafter: “CNPD”) had as its purpose of verifying compliance with the provisions of the regulations relating to the protection of natural persons with regard to the processing of personal data and to the free movement of such data, and repealing Directive 95/46/EC (hereinafter “GDPR”) and the law of August 1, 2018, in particular by setting up systems for video surveillance and geolocation, if applicable, installed by the two companies of the AB group.

3. On March 6, 2019, CNPD agents carried out a visit to the premises of the AB group. Since Minutes no. [...] relating to the said mission of the on-site investigation only mentions, among the two companies of the AB group, as controller controlled the [...] “Company A”,² the decision of the Commission national body for data protection sitting in restricted formation on the outcome of the investigation (hereinafter: “Restricted Training”) will be limited to processing controlled by the agents of the CNPD and carried out by [...] “Company A”.

4. “Company A” is a [...] registered in the Trade and Companies Register of Luxembourg under number [...], with registered office at L- [...] (hereinafter “the controlled”). the controlled is a supplier of equipment and services [...].³

1 And more specifically with companies Company A, registered in the Trade and Companies Register of Luxembourg under number [...], with registered office at L- [...], and Company B, registered in the commercial register

and Luxembourg Companies under number [...], with registered office at L- [...].

2 See in particular Minutes no. [...] relating to the on-site fact-finding mission carried out on March 6 2019 with the company Company A.

3 According to the information provided on its own website: [...] .

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5. During the aforementioned visit of March 6, 2019 by CNPD agents to the
controlled premises, it was confirmed to CNPD officials that the controlled uses a
CCTV system consisting of twenty cameras, seventeen of which were in working order
operation, but that it has not installed a geolocation device in its
vehicles.⁴

6. In his response letter of April 23, 2019 to the minutes drawn up by the
CNPD agents, the controller specified that the company "Company C" has access to the images
captured by video surveillance cameras in its function as a subcontractor in order to provide
security services, on the one hand, and that the images are transferred to "Company D"
established in [third country X], of the other part. The controlled added that he is part, just like the
company [...], of a general agreement between the entities of the AB group which includes a
on the transfer of personal data, as well as contractual clauses
types and that [third country X] has been recognized by the European Commission as
ensuring an adequate level of protection in accordance with Article 45 of the GDPR.

7. In a letter dated September 19, 2019, the controller clarified that together with
company [...] "Company D", they assume the function of joint managers of the
processing in relation to the CCTV system and that it acts as
representative of the company [...]. Thus, as mentioned above, the decision of the Panel

Restricted will only target the controlled.

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

August 2019 a statement of objections detailing the shortcomings he considered

constituted in this case, and more specifically a non-compliance with the requirements prescribed

by article 13 of the GDPR with regard to employees and customers, suppliers,

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

compliance with the requirements of Article 5.1.c) of the GDPR, as well as non-compliance with the

prescribed by Article 5.1.e) of the GDPR.

4 See Minutes no. [...] relating to the on-site fact-finding mission carried out on March 6, 2019 to

of Company A.

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9. On September 19, 2019, the auditee produced written observations on the

statement of objections.

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

checked on August 17, 2020. In this letter, the head of investigation offered the

Restricted Formation to adopt three different corrective measures, as well as to inflict

to the controlled an administrative fine of 2,600 EUR.

11. By letter dated September 16, 2020, the controller produced written observations

on the supplementary letter to the statement of objections.

12. The president of the Restricted Formation informed the controller by mail of 9

October 2020 that his case would be registered for the session of the Restricted Panel on 17

November 2020. The controller confirmed his presence at the said meeting dated October 16

2020.

13. During the Restricted Training session of November 17, 2020, the leader of investigation and control presented their oral observations in support of their written observations and answered the questions posed by the Restricted Panel. the controlled had the last word.

II. Place

II. 1. As to the reasons for the decision

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

1. On the principles

14. In accordance with Article 5.1.c) of the GDPR, personal data must be “adequate, relevant and limited to what is necessary in view of the purposes for which they are processed (data minimization)”.

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15. The principle of data minimization in video surveillance implies that only what appears strictly necessary to achieve the purpose(s) pursued and that the processing operations must not be disproportionate.⁵

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

17. Before installing a video surveillance system, the person in charge of the processing must precisely define the purpose(s) it wishes to achieve by using such a system, and will not then be able to use the personal data

personal information collected for other purposes.⁶

18. The necessity and proportionality of video surveillance is analyzed on a case-by-case basis. case and, in particular, with regard to criteria such as the nature of the place to be placed under video surveillance, its location, configuration or attendance.⁷

2. In this case

19. It was explained to CNPD officials that the purposes of setting up the video surveillance system are the protection of the property of the AB group.⁸ In its letter of April 23, 2019, the controller mentioned a second purpose in relation to the observation mentioned above, and more specifically to secure access to its premises.

20. During the on-site investigation, the CNPD agents noted that the field of vision of a camera includes a part of the canteen allowing the surveillance of employees during their free time.

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

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

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

8 See finding 3 of minutes no. [...] relating to the on-site fact-finding mission carried out on March 6 2019 with Company A.

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21. The head of the investigation was of the opinion that “surveillance of employees seated at consumption tables or in the cafeteria is to be considered disproportionate since the persons present there will be permanently subject to the CCTV as they choose these places as meeting places for have a good time around a meal, to communicate, have fun or relax. However, employees who stay in this type of place for a period of time more or less long, must be able to legitimately expect not to be filmed during these times private. The use of cameras in these spaces is likely to film the behavior of the people concerned and can create discomfort or even pressure psychological for the latter who feel observed throughout their presence in these spaces. Such permanent surveillance constitutes an attack on the sphere privacy of the persons concerned. (statement of objections, Ad. A.3.)

22. The controlled for his part explained that the purpose of the disputed camera was not not to film employees, but to monitor equipment allowing employees to put money on their badges. However, as the CNPD agents would have expressed during their on-site visit of doubts as to the conformity of the camera in question, the controlled would have decided to uninstall it the next day.⁹ However, as the camera dispute was indeed in place on the day of the site visit by CNPD agents, the lead investigator concluded that the non-compliance with GDPR Article 5.1(c) was nonetheless acquired on the day of the site visit.

23. La Formation Restreinte would like to remind you 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. For example, a data controller can install a video surveillance system above a cash counter of his store in invoking the purpose of protecting property against acts of theft. However, the principle

9 See response to the audit report of April 23, 2019.

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of proportionality implies that these cameras can film the checkout itself and front of the counter, but do not target employees behind the cash counter.

24. When it comes to places reserved for employees in the workplace for a private use, such as in this case the canteen where employees can meet around of a meal, surveillance cameras are in principle considered as disproportionate to the aims sought. The same goes for places such as, for example, changing rooms, toilets, smoking areas, rest, the kitchenette or any other place reserved for employees for private use. In In these cases, the fundamental rights and freedoms of employees must prevail over the interests lawsuits pursued by the employer.

25. In his letter of September 19, 2019, the auditee reiterated the comments contained in his letter of April 23, 2019, specifying that the sole purpose of the camera contentious was to film the equipment for security purposes and not the employees during their lunch break. The controller added that the disputed camera would have been authorized by the CNPD.

26. The Restricted Panel finds that the controlled person indeed had a prior authorization n° [...] from the CNPD in terms of video surveillance. Nevertheless, in

with regard, among other things, to video surveillance inside the "cafeteria" area, the CNPD considered that the latter "is disproportionate and excessive in relation to the purposes of guaranteeing the safety of employees or to protect property.

The National Commission considers that employees can expect to take their breaks, meals and drinks without being exposed to discomfort or even harm from a camera surveillance. Thus, video surveillance inside these areas is likely to infringe privacy. » In the operative part of said authorisation, the CNPD had thus expressly prohibited video surveillance inside the zone. "cafeteria".

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27. The Restricted Panel notes that Appendix 5 of the letter from the audit dated 23 April 2019 contains a photo showing that the camera installed in the canteen was uninstalled.¹⁰

28. The Restricted Panel further notes that during the hearing of 17 November 2020, the controller explained that he had changed the layout of the "coffee corner" to forgetting to adapt the field of vision of the camera so that the latter was not filming plus equipment allowing employees to put money on their badges.

29. In view of the foregoing, the Restricted Panel concurs with the finding of Chief of investigation¹¹ 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, especially since the CNPD had already prohibited to film the interior of the canteen in its authorization n° [...].

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

1. On the principles

30. In accordance with Article 5.1.e) of the GDPR, personal data must be kept "in a form which permits the identification of the persons concerned for a period not exceeding that necessary with regard to the purposes for which they are processed [...]".

31. According to recital (39) of the GDPR "personal data should be adequate, relevant and limited to what is necessary for the purposes for which they are processed. This requires, in particular, ensuring that the duration of retention of data is kept to a strict minimum. Character data personal should only be processed if the purpose of the processing cannot be reasonably achieved by other means. In order to ensure that the data is not not kept longer than necessary, time limits should be set by the controller for erasure or for periodic review [...]. »

10 Appendix 5 of the audit letter of April 23, 2019.

11 Statement of Objections, Ad. A.3.

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2. In this case

32. During the on-site investigation, it was explained to CNPD officials that the purpose of the implementation of the video surveillance system was the protection of the assets of the AB group. In his letter of April 23, 2019, the controller mentioned a second purpose of securing access to its premises.

33. With regard to the retention period of the images recorded by the CCTV cameras, it appears from the findings of CNPD agents that the oldest data dated from December 14, 2018, i.e. the duration of

data retention was two months and three weeks.¹²

34. According to the head of the investigation, the said retention period for the data of video surveillance of two months and three weeks exceeded that which was necessary for the achievement of the aforementioned purposes and for which the video surveillance device had been set up. For this reason, the chief investigator was of the opinion that a non-compliance with the requirements of article 5.1.e) of the GDPR was acquired on the day of the visit to site (see statement of objections, Ad.A.4). Therefore, he proposed to the Formation Restricted from directing the auditee to implement a retention period policy storage of personal data in accordance with article 5 of the GDPR, in particular by not keeping the images of the video stream for a period exceeding one week.¹³

35. By letter dated April 23, 2019, the controller specified that his security team used two different monitoring systems with different retention periods different: once less than a month and once two months and 3 weeks. To conform, the duration of the last system would therefore have been modified and the duration of conservation of the two systems henceforth fixed at 30 days.

36. During the hearing of the Restricted Panel of November 17, 2020, the controlled reiterated his comments contained in his letter of September 16, 2020, insisting that a retention period of images from the video surveillance cameras of a

¹² See finding 9 of minutes no. [...] relating to the on-site fact-finding mission carried out on March 6 2019 with Company A.

¹³ See supplementary letter to the statement of objections.

week would not be sufficient, but that a shelf life of 30 days would be absolutely necessary. The controller explained for example that, as he received each week of deliveries of various components that require coordination and cooperation of several teams on its site of a very large dimension, but also with third parties such as [...], incidents were often detected only after several days or even weeks. Furthermore, the controller explained that often he was informed of thefts of certain materials, such as [...], by whistleblowers, which would usually happen more than a week after the incident.

37. The Restricted Committee recalls that it is the responsibility of the controller to determine, according to each specific purpose, a retention period appropriate and necessary to achieve that purpose. As mentioned above, the controlled considers that a 30-day retention period is necessary in order to achieve the purposes pursued, i.e. protecting the assets of the AB group and securing access to its premises.

38. The Restricted Committee considers that the personal data obtained by the video surveillance system can in principle only be retained for a maximum period of eight days under the principle aforementioned of Article 5.1.e) of the GDPR. The controller can exceptionally, for duly justified reasons, keep the images for a duration of 30 days. A shelf life longer than 30 days is generally considered to be disproportionate.

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

40. While Restricted Training may understand the need for controlled

keep images from video surveillance for 30 days, like the CNPD

had authorized it in 2010, it nonetheless noted that during the on-site visit

by CNPD agents, the duration was two months and three weeks, which exceeded

largely the duration necessary to achieve the aims pursued.

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41. Based on all of these elements, the Restricted Panel concludes that at

the time of the on-site visit by CNPD officials, Article 5.1.e) of the GDPR was not

not respected by the controller.

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

1. On the principles

42. According to paragraph 1 of Article 12 of the GDPR, the “controller

take appropriate measures to provide any information referred to in Articles 13 and 14

as well as to carry out any communication under Articles 15 to 22 and Article

34 with regard to the treatment to the data subject in a concise manner,

transparent, understandable easily accessible, in clear and simple terms [...]. »

43. 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

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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 provides to the data subject, at the time the personal data is obtained, the following additional information which is necessary to guarantee fair and transparent treatment:

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

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

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

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

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

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

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

4. Paragraphs 1, 2 and 3 do not apply where and insofar as the data subject already has this information. »

44. 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.¹⁴ 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").

45. 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.¹⁵

2. In this case

46. With regard to the information of third parties about the system of video surveillance, the head of the investigation found that the sticker with the words "VIDEO

¹⁴ See in particular Articles 5.1, a) and 12 of the GDPR, see also recital (39) of the GDPR.

¹⁵ 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.

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"SURVEILLANCE IN USE ON THESE PREMISES" did not contain the required elements by Article 13.1 and 2 of the GDPR (see statement of objections, page 2, Ad.A.1.). He has by moreover estimated that even if the controlled explained in his letter of April 23, 2019 that the current stickers will be updated during the month of May 2019, non-compliance with article 13 of the GDPR was acquired at the latest on the day of the on-site visit.

47. With regard to informing employees about the system of

video surveillance, the head of the investigation found that neither the sticker with the mention "VIDEO SURVEILLANCE IN USE ON THESE PREMISES", nor the document entitled "Company A welcome package" did not contain the elements required by article 13.1 and 2 of the GDPR (see statement of objections, page 1, facts found 2 and page 3 Ad.A.2.). He has moreover considered that even if the control informed the CNPD that the delegation of the staff has been informed of the presence of the video surveillance device, the simple information from the staff delegation did not ensure that the employees of the company had been briefed individually regarding the precise elements of Article 13. 1 and 2 of the GDPR. Finally, the head of the investigation considered that even if the control explained in his letter of April 23, 2019 that the current stickers would be updated during the month of May 2019 and that detailed brochures intended to inform employees about the CCTV system would be being drafted, non-compliance with Article 13 of the GDPR was acquired no later than the day of the on-site visit (see communication of grievances, [...]).

48. By letter dated April 23, 2019, the inspector indicated that the employees and third parties had been informed of the presence of the information system by the stickers¹⁶ located on the main entrances, but that these stickers would be updated during the month of May 2019. With regard to employees, the audit has clarified that they were informed by a reference to video surveillance in the "employees welcome package" and that the staff delegation had been informed, but that detailed brochures intended to inform employees about the system of CCTV were being drafted.

¹⁶ One sticker reads "VIDEO SURVEILLANCE IN USE ON THESE PREMISES" and the other is the old CNPD authorization sticker.

49. By letter dated September 19, 2019, the inspector sent the head of investigation a photo of the display of the new sticker¹⁷, as well as a copy of the information note on video surveillance that any person concerned could henceforth request from receive upon receipt of the control or by sending an email to the address indicated on the sticker.¹⁸ With regard specifically to employees, the auditee added that when of the on-site visit, the latter had already been informed by a specific reference to video surveillance in the privacy policy of the AB¹⁹ group and that thereafter, an information note on video surveillance had been made available to them on panels on the sites of the AB group, that it had been annexed to the new contracts of work and inserted on the Luxembourg intranet of the group.

50. The Restricted Committee would first like to point out that Article 13 of the GDPR refers to the obligation imposed on the data controller to “provide” all the information mentioned therein. The word "provide" is crucial here and it "means that the data controller must take concrete measures to provide the information in question to the person concerned or to actively direct the person concerned to the location of said information (for example by means of a link direct, a QR code, etc.). (WP260 rev. 01, paragraph 33).

51. 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 video surveillance by two different stickers, one bearing the words "VIDEO SURVEILLANCE IN USE ON THESE PREMISES" and the other being the old thumbnail authorization from the CNPD.

52. The Restricted Panel notes, however, that the aforementioned stickers do not did not contain the information required within the meaning of Article 13 of the GDPR and that no

no other information notice was available, during the on-site visit, to third parties.

53. With regard to the employees, the Restricted Committee notes that during the visit on site by CNPD agents, the latter were informed of the presence of the

17 See appendix 1 of the letter of September 19, 2019.

18 See appendix 2 of the letter of September 19, 2019.

19 See appendix 3 of the letter of September 19, 2019.

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video surveillance system by the two aforementioned stickers, by a reference to the video surveillance in the "employees welcome package" and by a reference specific to video surveillance in the privacy policy of the AB group, from a hand, and that the staff delegation had been informed of the presence of the video surveillance.

54. Nevertheless, the Restricted Committee considers first of all that the simple information from the staff delegation does not ensure that the employees of the company have been individually informed about the specific elements of Article 13 of the GDPR.

Second, she believes that a layered approach to communicating transparency information to data subjects may be used in a offline or non-digital context, i.e. in a real environment such as for example personal data collected by means of a system of video surveillance. The first level of information should generally include the most essential information, namely details of the purpose of the processing, the identity of the controller and the existence of the rights of data subjects, as well as that the information having the greatest impact on the processing or any processing

likely to surprise the persons concerned.²⁰ The second level of information,

i.e. all the information required under Article 13 of the GDPR,

may 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 for third parties

non-employees.²¹ The Restricted Committee notes, however, that the stickers in place

during the on-site visit did not contain the required elements of the first level

information whether for employees or non-employee third parties and that the

“employees welcome package”²² and the AB group privacy policy²³ do not

did not contain all the elements required by articles 13.1 and 2 of the GDPR.

²⁰ See WP 260 rev.01 and EDPS Guidelines 3/2019 on the processing of personal data

by video devices, version 2.0, adopted on January 29, 2020.

²¹ See WP260 rev. 01 (item 38).

²² Said package only states the following: “Please take note that for security reasons our campus is

monitored by video surveillance. »

²³ This policy does not relate specifically to video surveillance, but is a policy of

general confidentiality which does not contain the elements required by article 13.1 and 2 of the GDPR.

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55. In view of the foregoing, the Restricted Panel concludes that at the time of the

on-site visit by CNPD agents, article 13 of the GDPR was not respected by the

control.

II. 2. On corrective measures and fines

1. Principles

56. 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. »

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

58. 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;

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d) the degree of responsibility of the controller or processor, account given the technical and organizational measures they have implemented pursuant to

sections 25 and 32;

e) any relevant breach previously committed by the controller or

the subcontractor ;

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

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

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

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

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

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

59. 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.

60. Nevertheless, the steps taken by the control to put itself in compliance with the GDPR during the investigation process or to remedy the

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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

61. In its supplementary letter to the statement of objections of 3 August 2020, the head of investigation proposed to the Restricted Panel to impose a fine administrative control for an amount of 2,600 euros.

62. In his response to said additional letter of September 16, 2020, the controlled argued in particular that the proposed fine from the head of the investigation did not take not sufficiently taking into account the mitigating elements of the case, i.e. its diligence to implement compliance measures, as well as the recent nature of the legal requirements applicable at the time of the CNPD's investigation. For the reasons detailed in the said letter, the controller considered that the fine proposal of the head inquiry should be dismissed.

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

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

As regards the breach of the obligation to inform the persons concerned in accordance with article 13 of the GDPR, the Restricted Training recalls that information and transparency relating to the processing of personal data

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personnel are essential obligations incumbent on those responsible for processing so that individuals are fully aware of the use that will be made of their personal data, once collected. A breach of Article 13 of the GDPR thus constitutes an infringement of the rights of the persons concerned. This right to information has also been reinforced in terms of the GDPR, which demonstrates their particular importance.

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As for the duration criterion (article 83.2.a) of the GDPR), the Restricted Training notes that these shortcomings have persisted over time, at least since the May 25, 2018 and until the day of the on-site visit. The Restricted Formation reminds here that two years separated the entry into force of the GDPR from its entry into application to enable data controllers to comply with the obligations incumbent on them, even if the obligations to respect the principles of conservation minimization and limitation, as well as a comparable information obligation already existed pursuant to Articles 4.1. a), b) and d), 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.

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With regard to the retention period of the data, the Restricted Training

would like to point out that already in its authorization n° [...], the CNPD had imposed as a condition that the personal data could not be retained for more than one month.

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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, i.e. customers, suppliers, service providers and visitors to this site.

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

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In this case, the Restricted Committee is of the opinion that the facts and breaches 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.

As for any aggravating or mitigating circumstances relating to the determination of the fine in the circumstances of the case (article 83.2.k) of the GDPR), the controlled person asserts as a mitigating circumstance in his letter of September 15, 2020 the fact that the CCTV system has been authorized by former deliberation No. [...] of the CNPD and that the system in place has not been changed accordingly, including the manner of informing the data subjects. Nevertheless, considering that the information measures put in place during the site visit by CNPD agents did not even respect the requirements of articles 10.2 and 26 of the repealed law of August 2, 2002 relating to the protection of individuals with regard to the processing of personal data staff, law in force at the time of the authorization of the CNPD, the Training Restreinte cannot consider this argument as a mitigating circumstance.

64. 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.

65. 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 6 March 2019 (see also point 59 of this decision).

66. 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), e) and 13 of the GDPR.

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67. With regard to the amount of the administrative fine, the Restricted Panel recalls that paragraph 3 of Article 83 of the GDPR provides that in the event of breaches multiple, as is the case here, the total amount of the fine cannot exceed the amount fixed for the most serious violation. To the extent that a breach of articles 5 and 13 of the RGPD is reproached to the controlled, the maximum amount of the fine that can be withheld amounts to 20 million euros or 4% of the annual turnover worldwide, whichever is higher.

68. In view of the relevant criteria of Article 83.2 of the GDPR mentioned above, the Restricted Formation considers that the pronouncement of a fine of 2,600 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

69. 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 person in charge of the supplement treatment measures

information intended for persons concerned by video surveillance, in accordance with the provisions of Article 13, paragraphs (1) and (2) of the GDPR in informing in particular the identity of the person in charge of the treatment, if necessary, 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 control, the recipients, the retention period of the data

thus the rights of the person concerned and the manner of exercising them, and the right

lodge a complaint with a supervisory authority.

b) Order the controller to only process data

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

protection of property and securing access and, in particular, adapting the

video device so as not to film the employees who are in the canteen, for

example by deleting the camera named " [...] ".

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c) Order the data controller to implement a policy of

retention period of personal data in accordance with the

provisions of e) of Article 5 of the GDPR, not exceeding the duration necessary for the

purposes for which they are collected, and in particular by not keeping

the images of the video stream for a duration exceeding one week. »

70. In his response letter of September 15, 2020 to the additional letter

to the statement of objections, the auditee was of the opinion that, as his system of

video surveillance is now compliant with GDPR requirements, no measures

correction would be necessary.

71. As for the corrective measures proposed by the head of investigation and by

reference to point 60 of this decision, the Restricted Formation takes into account

the steps taken by the control, following the visit of the CNPD agents, in order to

comply with the provisions of Articles 5.1.c), e) and 13 of the GDPR, as detailed

in his letters of April 23, 2019, September 18, 2019 and September 15, 2020. More

in particular, it takes note of the following facts, which have been confirmed by the audited during the Restricted Training session of November 17, 2020:

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With regard to the implementation of information measures intended for persons affected by video surveillance, in accordance with the provisions of Article 13.1 and 2 of the GDPR, the controller has developed and displayed on its premises new stickers, it makes available, on oral request at reception or in writing by e-mail, to the persons concerned an information note on video surveillance and Finally, it provides employees with an information note on the CCTV on panels at AB Group sites. The said note is by elsewhere annexed to the new employment contracts and inserted on the intranet Luxembourgers of the group. Appendix 1 of the letter of September 18, 2019 from checked contains a photo of the new sticker, while appendix 2 contains a copy of the new information notice.

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As for the implementation of a retention period policy for data to be personal character in accordance with the provisions of Article 5.1.e) of the GDPR, the controlled, adapted after the site visit by CNPD agents the duration of

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retention of data from the video surveillance system for 2 months and 3 weeks to 30 days. Appendix 4 of the letter of April 23, 2019 from the audit contains a photo showing that the CCTV system settings have been modified in the sense that the retention period has been limited to 30 days.

As for the obligation to only process data that is relevant, adequate and limited to what is necessary with regard to the purposes of protecting property and securing access and, in particular, adapting the device of video surveillance so as not to film the employees who are in the canteen, the controller uninstalled the disputed camera from the canteen the day after the visit to site of the CNPD agents. Annex 5 of the letter of April 23, 2019 from the control contains two photos showing that said camera has been uninstalled.

72. In consideration of the compliance measures taken by the control in case and point 60 of this decision, the Restricted Panel considers that there is no there is no need to pronounce corrective measures with regard to the controlled person.

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

- to pronounce against the company "Company A" an administrative fine of one amount of two thousand six hundred euros (2,600 euros), with regard to the violation of articles 5.1.c), e) and 13 of the GDPR.

Thus decided in Belvaux on May 12, 2021.

For the National Data Protection Commission sitting in formation
restraint

Tine A. Larsen

Thierry Lallemand

Marc Lemmer

President

Commissioner

Commissioner

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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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