

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

of survey no.[...] conducted with Company A

Deliberation no. 5FR/2022 of February 16, 2022

The National Commission for Data Protection sitting in restricted formation

composed of Ms. Tine A. Larsen, President, and Messrs. Thierry Lallemand and Marc

Lemmer, commissioners;

Having regard to Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016

on the protection of individuals with regard to the processing of personal data

personal character and on the free movement of such data, and repealing Directive

95/46/EC;

Considering the law of August 1, 2018 on the organization of the National Commission for the

data protection and the general data protection regime, in particular

its article 41;

Having regard to the internal regulations of the National Commission for the Protection of

data adopted by decision no. 3AD/2020 dated January 22, 2020, in particular its

article 10 point 2;

Having regard to the regulations of the National Commission for Data Protection relating to the

inquiry procedure adopted by decision No. 4AD/2020 dated January 22, 2020,

in particular its article 9;

Considering the following:

1. By deliberation No. [...] of February 14, 2019, the National Commission for

data protection had decided to open an investigation with the C1 Group on the basis of

of article 37 of the law of 1 August 2018 on the organization of the National Commission

1 And more specifically with companies Company A, registered in the Trade and

Luxembourg companies under number B [...], with registered office at L-[...], [...]; and Company B,

registered in the Luxembourg Trade and Companies Register under number B [...], with

registered office at L-[...], [...].

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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 said decision, the investigation carried out by the National Commission for Data Protection (hereinafter: "CNPD") was intended to control the application and compliance with Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of data personal data and on the free movement of such data, and repealing Directive 95/46/EC (hereinafter: "GDPR") and the law of August 1, 2018, by verifying the compliance of the monitoring measures implemented by Group C, in particular by means of a geolocation device and a video surveillance device.

3. On March 15, 2019 and April 2, 2019, CNPD agents carried out a visit to the premises of Group C. Given that the minutes relating to the said on-site fact-finding mission only mentions, among the two Group C companies, as controller of the controlled processing Company A2, the decision of the Commission national authority for data protection sitting in restricted formation on the outcome of the investigation (hereinafter: "Restricted Training") will be limited to processing controlled by the CNPD agents and carried out by

- Company A, head office, at the time located at L-[...], [...] (hereinafter: "head office social ") ;

- Company A, supermarket "[...]", located at L-[...], [...] (hereinafter: "supermarket

HAS ") ;

- Company A, supermarket [...], located at L- [...], [...] (hereinafter: "supermarket B");

and

- Company A, supermarket [...], located at L- [...], [...] (hereinafter: "supermarket C")<sup>3</sup>.

<sup>2</sup> See Minutes no. [...] relating to the fact-finding mission carried out on March 15, 2019 and April 2, 2019 with Company A (hereinafter: "Minutes relating to the fact-finding mission").

<sup>3</sup> See Minutes of the fact-finding mission, point 2.

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4. Company A is a public limited company registered in the Trade and Luxembourg companies under number B [...], with registered office at L- [...], [...] <sup>4</sup> the controlled [is active in retail trade in non-specialized stores, predominantly eating].

By email of March 21, 2019, the controller had sent the CNPD "a list of [...] integrated stores [...] in Luxembourg whose activities fall under the responsibility of Company A".

5. During the aforementioned visits, CNPD officials were told that the controlled does not use a geolocation system in its vehicles, but uses video surveillance systems at its head office as well as in each of the [...] supermarkets [...] in the Grand Duchy of Luxembourg. The controller also indicated that its data protection officer would be installed [...] <sup>5</sup>.

6. In a letter dated May 28, 2019, the controller informed the head of investigation of this that "the company incorporated under Luxembourg law, Company A and [...] Company D (together "[...])"

act as joint controllers of the images collected by the

surveillance cameras in the stores and at the head office of [...] in Luxembourg. »

7. Following the departure of Mr. Christophe Buschmann, the National Commission

for data protection sitting in plenary session decided during its meeting

of deliberation of September 3, 2021 that Mr. Alain Herrmann will occupy from the

September 3, 2021 the function of chief of investigation for the investigation in question.

8. The CNPD informed the control of the replacement of the head of investigation by mail

of November 2, 2021 in which it also asked the controller to provide

additional information and documents “in order to obtain a precise vision of the roles

and respective responsibilities of Company A and Company D with respect to the

processing carried out by means of a video surveillance system installed in the

controlled establishments located in the Grand Duchy of Luxembourg”.

4 On March 15, 2019 and April 2, 2019, the days of on-site visits by CNPD agents, the head office

of the company was located at L-[...] [...].

5 See Minutes of the fact-finding mission, point 6.a.

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9. By letter dated December 2, 2021, the inspector produced information and

additional documents.

10. By email of January 28, 2022, the head of investigation sent the investigation file

to the Restricted Training, explaining among other things that

□ "the examination of the file indicates that Company A has not set up a system

geolocation of vehicles, but that a video surveillance system is

actually implemented;

□

the examination of the file indicates that the [...] Company D, located [...] at [...], at [...], would be to be considered responsible for the treatment in whole or in part for what concerns all aspects of video surveillance processing which are the subject of investigation ;

□

the aforementioned deliberation [...] explicitly refers to:

o to the provisions of the Luxembourg law of August 1, 2018 and to the power of investigation by each supervisory authority on its national territory; and  
o to Group C companies established in the territory of the Grand Duchy of Luxembourg only;

The continuation of this investigative file would involve:

□

the control of the application and compliance with the GDPR by [...] Company D, which is not not initially provided for within the scope of the aforementioned deliberation [...] and does not fall not within the territorial jurisdiction of the CNPD under Articles 55, paragraph 1 and 57, paragraph 1 of the GDPR; and so

□ intervention by the supervisory authority [...], either under Article 56, paragraphs 2 and 3 of the GDPR (object of the investigation concerns only a establishment in the Grand Duchy of Luxembourg or significantly affects data subjects in the Grand Duchy of Luxembourg only), or under of Article 61 of the GDPR (mutual assistance), or under Article 62 of the GDPR (joint operation), which is not included in the scope of the deliberation [...] aforesaid. »

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11. For these reasons, the Head of Investigation proposed to the Restricted Panel, in its communication of January 28, 2022, the closing of the file "without prejudice the possibility of opening an investigation procedure relating to the same processing operations applied to a different scope in the future".

12. The Restricted Committee examined the case during its session on February 16, 2022, in accordance with Article 10.2.a) of the internal rules of the CNPD.

13. With regard to geolocation, she noted that during the on-site visit to headquarters social control told CNPD agents that he "does not have his own fleet of vehicles and therefore does not use a geolocation device"<sup>6</sup>.

14. As for the video surveillance, she notes that during the said visit the controlled person confirmed that it "has installed a CCTV system at its head office as well as in all its supermarkets in the Grand Duchy of Luxembourg"<sup>7</sup>, and that the agents of the CNPD checked the systems installed at the head office and in [...] of these supermarkets<sup>8</sup>.

15. During the on-site visit to supermarket C on April 2, 2019<sup>9</sup> the officers of the CNPD were informed that "all decisions regarding video surveillance emanating from the group's [...] headquarters located at [...], and more specifically from the security, [...] (determination of the retention period, modification of the passwords pass, determination of installed cameras. In addition, manipulation of files recording of images is only possible at the group's head office in [...], especially in the event of a police investigation). Finally, the security service of the localized group in [...] views the images captured by the cameras installed in all the group establishments and intervenes in the event of a problem, in particular with the field

view of the cameras. [...]”<sup>10</sup>.

6 See Minutes of the fact-finding mission, finding 1.

7 See Minutes of the fact-finding mission, finding 2.

8 See Minutes of the fact-finding mission, point 6.

9 See Minutes of the fact-finding mission, point 6.d. and 9.

10 See Minutes of the fact-finding mission, point 37.

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16. Subsequently, the auditee indicated in his letters of May 28, 2019 and  
2 December 2021 that he would act as joint controller together with

[...] Company D with regard to video surveillance.

In particular, he provided with his letter of December 2, 2021 a description of the  
respective obligations of the two companies, indicating among other things that it is the [...] Company  
D who “takes the initial decision on the implementation of a video surveillance system  
and which determines the necessary technical and organizational measures concerning  
the use of CCTV cameras”, that it is also involved “in  
the implementation of the video surveillance system” and in charge “of the process of  
monitoring of requests to exercise rights under the GDPR”.

17. The Restricted Panel wishes to recall that under the terms of Article 4.7 of the GDPR  
the controller is “the natural or legal person, the public authority,  
the department or other body which, alone or jointly with others, determines the  
purposes and means of processing; [...]”.

18. In view of the foregoing, she notes that she agrees with the conclusion of head  
of investigation according to which [...] Company D would be the data controller “in all

or in part” with respect to the CCTV under investigation.

19. Given that the supervisory authority [of another Member State], a priori competent for the aforementioned company [...], was not called into intervention by the head investigation in accordance with Articles 60 to 65 of the GDPR, the Restricted Panel considers that it is necessary to close the file in accordance with article 10.2.a) of the rules of order inside the CNPD.

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

20. - to close without further action the investigation opened by deliberation No. [...] of the 14 February 2019 from the National Commission for Data Protection to the Company A registered with the Trade and Companies Register of Luxembourg under the number B [...], with registered office at L-[...], [...].

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Thus decided in Belvaux on February 16, 2022.

For the National Data Protection Commission sitting in formation  
restraint

Tine A. Larsen Thierry Lallemand

Marc Lemmer

President

Commissioner

Commissioner

Indication of remedies

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



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

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

lawyers.

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