

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

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

Deliberation No. 1FR/2022 of February 2, 2022

The National Commission for Data Protection sitting in restricted formation

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

Lemmer, commissioners;

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

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

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

95/46/EC;

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

data protection and the general data protection regime, in particular

its article 41;

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

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

article 10 point 2;

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

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

in particular its article 9;

Considering the following:

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I. Facts and procedure

1. During its deliberation session of 22 November 2018, the Commission

National Data Protection Authority had decided to open an investigation with the Company A on the basis of article 37 of the law of August 1, 2018 on the organization of the National Commission for Data Protection and the General Data Protection Regime data protection (hereinafter: "Law of 1 August 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 Company A, in particular by means of a geolocation device and a video surveillance device.

3. Company A is a limited liability company entered in the Register of Commerce et des Sociétés de Luxembourg under number [...], with registered office at L- [...], [...] (hereinafter: the "controlled"). The controlled [aims to operate a business passenger transport].<sup>1</sup>

4. On December 7, 2018, CNPD officials visited the operating site of the controlled at [...].<sup>2</sup> The decision of the National Commission for the data protection sitting in restricted formation on the outcome of the investigation (hereafter: "Restricted Training") will be limited to the following processing controlled by the agents of the CNPD: on the one hand, with regard to video surveillance, the processing carried out by the controlled relating to its aforementioned operating site and its agencies, and other part of the processing relating to the vehicles belonging to its fleet by means of a device of geolocation.

<sup>1</sup> Cf. Coordinated statutes of [...], Article [...].

2 See Minutes relating to the on-site inspection carried out on December 7, 2018

with Company A (hereinafter: "Report on the on-site inspection").

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5. During the aforementioned visit, the CNPD agents noted that the control

uses a video surveillance system as well as a geolocation device<sup>3</sup>. They

among other things found that:

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the images from the cameras that are part of the video surveillance system are

transmitted to a monitor located in the lodge of the building

administrative at the [...] <sup>4</sup> operating site;

-

all the cameras that are part of the video surveillance system are of the type

"fixed"<sup>5</sup>;

-

geolocation boxes installed in vehicles are of the "..."<sup>6</sup> type.

They do not come with an on-board camera<sup>7</sup>;

-

the tracking device software is hosted online by the provider

of services "...", which as well as the company "...", which ensures the distribution

products to the latter, is "to be considered as subcontractors within the meaning of

Article 4, point 8 of the GDPR. »<sup>8</sup> .

6. The controller reacted to the report drawn up by the CNPD agents by

letter of February 11, 2019.

7. At the end of his investigation, the head of investigation notified the person inspected on February 5, 2020 a statement of objections on which the control formulated its observations by letter dated February 28, 2020.

8. On November 5, 2020, the head of investigation notified the person controlled of a "letter supplementary to our letter of February 5, 2020 and new statement of objections" (hereinafter: the "Statement of Objections of 5 November 2020") which canceled and replaced the statement of objections of February 5, 2020. Therein he detailed the shortcomings he considered constituted in this case, and more specifically:

3 See Minutes of the on-site inspection, page 2, point 6.

4 See Minutes of the on-site inspection, page 2, point 6.

5 See Minutes of the on-site inspection, page 3, point 8, finding 4.

6 See Minutes of the on-site inspection, page 4, point 9, finding 2.

7 See Minutes of the on-site inspection, page 4, point 9, finding 10.

8 See Minutes relating to the on-site inspection, page 4, point 9, finding 1.

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- as regards video surveillance: non-compliance with the requirements prescribed by

Article 13 of the GDPR (right to information) with regard to persons

concerned, i.e. employees and third parties, i.e.

customers, passengers, suppliers, service providers and visitors (hereafter

after: "third parties"), and non-compliance with the requirements

prescribed by Article 5.1.c) of the GDPR (data minimization principle);

and

- as regards geolocation: non-compliance with the requirements prescribed by

Article 13 of the GDPR (right to information) with regard to persons

concerned, i.e. employees and third parties, and a non-

compliance with the requirements prescribed by article 5.1.e) of the GDPR (principle of limitation of storage).

9. The Head of Investigation proposed to the Restricted Panel to adopt four measures

different corrective measures, as well as to impose on the person controlled an administrative fine of one

amount of ten thousand (10,000) euros. In view of the arguments put forward by the controller

in his aforementioned letter of February 28, 2020<sup>9</sup>, he no longer retained in the communication of the

grievances of November 5, 2020 non-compliance with the requirements prescribed by article 10 of the

GDPR (processing of personal data relating to convictions

criminal offenses and offences) that it had retained in the initial statement of objections of the

February 5, 2020<sup>10</sup>.

10. By email of December 7, 2020, the controller sent the CNPD a letter

in which it took a position with regard to the new statement of objections of the

November 5, 2020.

11. The president of the Restricted Formation informed the controller by mail of the

April 29, 2021 that his case would be registered for the session of the Restricted Panel of

9 The controller explained in particular that the recording of data related to excesses of

speed is necessary to comply with a legal obligation to which it is subject.

10 Cf. Statement of objections of 5 November 2020, page 2: “[...], I confirm to you that I have included

to this investigation file [...] [the] arguments [of the controlled] dated February 28, 2020 in response

to the statement of objections. In the light of your answer and following the analysis of the documents

attached, I consider that there is reason to no longer uphold the grievance relating to the recording of excesses

speeding committed by drivers using the geolocation device”.

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June 30, 2021. The controller confirmed his presence at the said session by email from June 28, 2021.

12. During this session, the head of investigation and the controller presented their oral submissions in support of their written submissions and responded to questions posed by the Restricted Panel. The president asked the controller to send certain additional information concerning the processing covered by the investigation of the CNPD to the Restricted Panel after the hearing. The controller spoke last.

13. By email dated July 21, 2021, the auditee provided information complementary to Restricted Training.

## II. Place

II. 1. As to the reasons for the decision

II. 1.1. About the CCTV system

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

1. On the principles

14. According to Article 12.1 of the GDPR, the “controller shall take appropriate measures to provide any information referred to in Articles 13 and 14 as well as to carry out any communication under Articles 15 to 22 and Article 34 in which relates to the processing to the data subject in a concise, transparent, understandable easily accessible, in clear and simple terms [...]. The information is provided in writing or by other means including, when it is appropriate, electronically. When the data subject so requests, the information may be provided orally, provided that the identity of the person concerned is demonstrated by other means. »

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15. Article 13 of the GDPR provides the following:

“1. Where personal data relating to a data subject is

collected from this person, the data controller provides him, at the time

where the data in question is obtained, all of the following information:

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

representative of the controller;

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

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

the legal basis for the processing;

d) where the processing is based on Article 6(1)(f), the legitimate interests

sued by the controller or by a third party;

e) the recipients or categories of recipients of the personal data,

if they exist; and

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

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

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

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

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

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

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

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

obtained, the following additional information which is necessary to guarantee

fair and transparent treatment:

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

4. Paragraphs 1, 2 and 3 do not apply where and to the extent that the person concerned already has this information. »

16. 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>11</sup> These obligations have been explained by the Article 29 Working Party in its guidelines on the

<sup>11</sup> See in particular Articles 5.1.a) and 12 of the GDPR, see also recital (39) of the GDPR.

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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”).

17. 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>12</sup>

2. In this case

18. With regard to the information of third parties, CNPD agents noted during the on-site visit that the presence of the video surveillance system “is not reported to the third parties concerned (customers, suppliers and service providers, visitors)”<sup>13</sup>.

19. In the Statement of Objections of 5 November 2020, the Head of Investigation

noted that in view of the requirements of Article 13 of the GDPR, the information of "persons concerned (employees and third parties)" was incomplete<sup>14</sup>, and that the non-compliance in article 13 of the GDPR was acquired on the day of the on-site visit. In particular, he retained that no evidence as to the information of third parties was presented and that the documentation attached to the letter from the audit dated February 11, 2019 did not contain any evidence against this non-conformity. Therefore, the lead investigator was of the opinion that the controller has breached its obligation under Article 13 of the GDPR to towards third parties in relation to video surveillance.<sup>16</sup>

20. The controller indicated in his letter of February 28, 2020 that a "series of signs and pictograms informing employees, deliverers and visitors of the existence of a video surveillance will be installed on our sites concerned as soon as possible" and that "visitors/deliverers are informed of this by means of an information sheet, available from our reception-reception [...]". He attached to his letter copies of the information letter intended for third parties in French and German. By mail from

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

[https://edpb.europa.eu/sites/edpb/files/files/news/endorsement\\_of\\_wp29\\_documents\\_en\\_0.pdf](https://edpb.europa.eu/sites/edpb/files/files/news/endorsement_of_wp29_documents_en_0.pdf).

13 See Minutes of the on-site inspection, page 2, point 8, finding 2.

14 See Statement of Objections of 5 November 2020, page 4, Ad.B.1), point 17.

15 See Statement of Objections of 5 November 2020, page 4, Ad.B.1), point 18.

16 See Statement of Objections of 5 November 2020, page 5, Ad.B.1), point 23.

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December 7, 2020 he informed that he "installed traffic signs-on-site video surveillance.

21. With regard to informing employees, CNPD officials have during the site visit noted that the presence of the video surveillance system “is not reported to company employees.

22. In the Statement of Objections of 5 November 2020, the Head of Investigation noted that in view of the requirements of Article 13 of the GDPR, the information of "persons concerned (employees and third parties)" was incomplete<sup>18</sup> and that the non-compliance with article 13 of the GDPR was acquired on the day of the site visit. In particular, he held that the observation of the control that the employees would have been informed of the presence of the system video surveillance orally, without presentation of supporting evidence, was not nature to irritate the last observation<sup>19</sup>. Therefore, the lead investigator was of the opinion that the controlled has breached its obligation under Article 13 of the GDPR with regard to the employees in relation to video surveillance.<sup>20</sup>

23. The controller indicated in his letter of February 11, 2019 that "employees were not officially informed about the CCTV system, only by oral route" and only after the compliance process in which the control is carried out would be engaged "all employees will be informed of the exact location of the security cameras video surveillance in an internal regulation". Furthermore, in his letter of February 28, 2020 he mentioned his intention to inform employees by means of signs information and pictograms displayed on site, as well as by an information letter which would initially be appended to their next payslips, and by the suite published on the "intranet" site of the controlled. Copies of the information letter intended to employees in French and German are attached to his letter. By mail of December 7, 2020, he informed that he "installed road signs- video surveillance on site", and that he "started to introduce all the elements missing concerning the topics of video surveillance and [...] in our regulations internally for our employees.

17 See Minutes of the on-site inspection, page 2, point 8, finding 1.

18 See Statement of Objections of 5 November 2020, page 4, Ad.B.1), point 17.

19 See Statement of Objections of 5 November 2020, page 4, Ad.B.1), point 18.

20 See Statement of Objections of 5 November 2020, page 5, Ad.B.1), point 23.

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24. 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.). »<sup>21</sup>

25. Furthermore, it would like to point out that Article 12 of the GDPR does not de facto exclude that the information provided for in Articles 13 and 14 of the GDPR can be provided orally by the controller to the data subject. However, the group of Labor Article 29 insists that in this case, the data controller should ensure “to keep a written record, and ensure that he is able to prove it (for the purposes of compliance with the accountability requirement), of: i) the request for information by oral, ii) the method by which the identity of the data subject was verified (if applicable, see point 20 above), and (iii) the fact that the information was transmitted to the person concerned. »<sup>22</sup>

26. Next, the Restricted Committee would like to point out that there is in the GDPR a “inherent conflict between, on the one hand, the requirement to communicate to data subjects

the complete information that is required under the GDPR and, on the other hand, the requirement of the do it concisely, transparent, understandable and easily reachable”<sup>23</sup>. Prioritize the information to be provided to the persons concerned and determine what levels of detail and methods are appropriate for communication information is not always obvious.

27. It is for this reason that a multi-level approach to communicating transparency information to data subjects can be used in a offline or non-digital context, i.e. in a real environment such as for example personal data processed by means of a device of geolocation. The first level of information should generally include the most important information, namely details of the purpose of the processing, the identity

21 See WP 260 rev.01, point 33.

22 WP 260 rev.01, point 21.

23 See WP 260 rev.01, point 34.

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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 those concerned. The second level of information i.e. the other information required under Article 13 of the GDPR, could be provided later and by other means, such as a copy

of the privacy policy sent by e-mail<sup>24</sup>.

## 2.1 Information of third parties

28. The Restricted Committee notes that during the on-site visit by the agents of the CNPD, these people were not informed of the presence of the security system.

video surveillance.

29. After the on-site visit, the controller prepared an information letter relating to the CCTV system for use by third parties, copies of which he submitted in the different language versions available at the CNPD by mail from February 28, 2020, specifying that said letter would be available at its reception-reception. The Formation Restreinte notes, however, that the new information letter intended for third parties does not contain all the elements required by article 13.1 and 2 of the GDPR.

30. It also notes that the documentation submitted by the audit does not contains or evidence that the aforementioned information mail is available at the reception-reception of the site of operation of the controlled in [...], nor proof attesting that third parties have been informed by the installation of pictograms and signs signaling relating to video surveillance, as mentioned in the letters of the checked on February 28, 2020 and December 7, 2020.

31. In addition, the Restricted Committee notes that the control in its letter of December 7, 2020 in response to the statement of objections of November 5, 2020 a indicated the following: "with regard to the lack of information of the persons concerned, we are fully aware that the items listed (apart from

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<sup>24</sup> See WP 260 rev.01, point 38 as well as EDPS Guidelines 3/2019 on the processing of personal data by video devices whose version 2.0 was adopted on January 29, 2020, point 110 et seq.

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the identity and contact details of the data controller for point 17. who, in our

eyes, seem obvious to us in case someone arrives at our business site)

in your Statement of Objections under points 17.[25] and [...] were only at the time of

your visit not to the availability of our employees / customers / suppliers / visitors /

service providers. Moreover, the forgetting, in the past, on our part to inform the same

people on the existence of video surveillance on site by setting up a written

or traffic signs is not to be disputed. ".

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

of investigation and concludes that at the time of the on-site visit by CNPD agents, the controlled

has breached its obligation to inform under Article 13 of the GDPR with regard to

relates to third parties.

## 2.2 Informing employees

33. The Restricted Panel first notes that the controlled party did not submit any

documentation that contains evidence that employees have been validly

informed, prior to the site visit, orally or otherwise in accordance with

GDPR Article 13.

34. After the on-site visit, the controller prepared an information letter intended for

employees, of which he submitted copies of the different language versions to the CNPD by

letter of February 28, 2020, specifying that this letter would first be sent to the

employees as an appendix to their pay slips, and that it would then be published on its website

"intranet". The Restricted Committee notes, however, that this new letter

information does not contain all the elements required by article 13.1 and 2 of the

GDPR.

25 Cf. Elements listed in point 17. in the statement of objections of 5 November 2020, page 4, Ad.B.1) (video surveillance): "The controlled omits in particular to provide the elements following: - the identity and contact details of the controller; - the purposes of the processing for whom the personal data are intended and the legal basis for the processing ; - the legitimate interests pursued by the controller; - the recipients or the categories of recipients of personal data; - the length of the conversation ; - the existence of the right to request from the controller access to personal data personal information, rectification or erasure thereof, or limitation of processing relating to the concerned person ; and - the right to lodge a complaint with a supervisory authority. »

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35. It also notes that the documentation submitted by the audit does not does not contain any evidence that employees have been informed of the system of video surveillance by means of specific provisions in its internal regulations, such as that mentioned in the letters of the control of February 11, 2019 and December 7, 2020, nor proof attesting to the installation of pictograms and relative signage at video surveillance, as mentioned in letters from the control of February 28, 2020 and December 7, 2020. The controlled also did not provide proof certifying that employees have been informed by information letter attached to their files salary or published on the "intranet" site, as mentioned in the letter from the controller of February 28, 2020.



36. In addition, the auditee recognized the lack of information of the persons concerned at the time of the on-site visit by CNPD officials (see point 31 of the this decision).

37. In view of the foregoing, the Restricted Panel concurs with the opinion of Chief of investigation and concludes that at the time of the on-site visit by CNPD agents, the controlled has breached its obligation to inform under Article 13 of the GDPR with regard to relates to employees.

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

##### 1. On the principles

38. 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)”.

39. 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>26</sup>

26 See CNPD guidelines on video surveillance, point 4., available at:

<https://cnpd.public.lu/fr/dossiers-thematiques/videosurveillance/necessite-proportionnalite.html>.

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40. 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)”.

41. 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 data collected for other purposes.<sup>27</sup>

42. 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>28</sup>

2. In this case

43. During the on-site visit, it was explained to CNPD officials that “the purposes of the implementation of video surveillance are the protection of the property of the company, the securing of access as well as the safety of users and the prevention accidents”<sup>29</sup>.

44. They also found that

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the field of vision of camera number 2 called “...” allowed the surveillance of part of a neighboring lot<sup>30</sup>;

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the fields of vision of the cameras installed inside the branches [...]

(...)<sup>31</sup>, [...] (...) <sup>32</sup>, and [...] (...) <sup>33</sup> allowed the permanent monitoring of workstations of the employees who were employed there.

<sup>27</sup> See CNPD guidelines on video surveillance, point 2., available at:

<https://cnpd.public.lu/fr/dossiers-thematiques/videosurveillance/finalite.html>

<sup>28</sup> See CNPD guidelines on video surveillance, point 4., available at:

<https://cnpd.public.lu/fr/dossiers-thematiques/videosurveillance/necessite-proportionnalite.html>.

<sup>29</sup> Cf. Minutes relating to the on-site inspection, page 3, point 8, finding 10.

<sup>30</sup> Cf. Minutes relating to the on-site inspection, page 3, point 8, finding 15.

31 Cf. Minutes relating to the on-site inspection, page 3, point 8, finding 11.

32 Cf. Minutes relating to the on-site inspection, page 3, point 8, finding 12.

33 Cf. Minutes relating to the on-site inspection, page 3, point 8, finding 13.

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2.1 As for the camera whose field of vision extends to neighboring land

45. The head of investigation

retained in

the statement of objections of the

November 5, 2020 that the surveillance of neighboring land was disproportionate in view of  
of the purposes for which video surveillance was carried out. He felt he was not  
necessary to include neighboring land in the field of vision of the camera by  
question<sup>34</sup>.

46. He found that a non-compliance with Article 5.1.c) of the GDPR had been established  
day of the site visit. He considered in particular that the mail from the control of the  
February 11, 2019 contained no evidence against this non-compliance, and that  
the control had also not presented any mitigating elements, such as a reorientation  
of the camera's field of view, or a blurring of surrounding terrain<sup>35</sup>.

47. The controller for his part indicated in his letter of February 28, 2020 that the  
field of view of the camera concerned would be reduced to private land within a period  
one month.

48. Contrary to these remarks, he explained in his letter of December 7, 2020,  
that he was of the opinion that the video surveillance of part of the neighboring land [...] was not  
to be considered disproportionate.

49. By letter of July 21, 2021 he finally informed that the software currently used would not make it possible to mask part of the field of vision of the camera, and that the camera located at the back of the depot [...] “will be relocated in such a way as to no longer see the buildings on the village side, or the neighboring field”.

50. The Restricted Committee would like to point out that the cameras intended to monitor a place of access where the surroundings of a building or site must have a field of vision limited to the area strictly necessary to view people getting ready to access it. Cameras installed near or around a building must be configured so as not to capture the public road, nor the surroundings, entrances, access and interiors of other neighboring buildings possibly falling within their scope of vision. Depending on the configuration of the premises, it is sometimes impossible to install a

34 See Statement of Objections of 5 November 2020, page 6, Ad.B.2), point 27.

35 See Statement of Objections of 5 November 2020, page 6, Ad.B.2), point 28.

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camera that does not include part of the public road in its field of vision, surroundings, entrances, accesses and interiors of other buildings. In such a case, the CNPD considers that the data controller must put in place techniques for masking or blurring in order to limit the field of vision to its property.<sup>36</sup>

51. She noted that at the time of the site visit the field of vision of the camera in dispute extended to the neighboring lands so that the control did not respect the principle of proportionality.

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

the on-site visit by CNPD agents.

2.2 As for the cameras permanently monitoring the workstations of employees in the agencies [...] of control

53. The head of investigation accepted in the statement of objections of 5 November 2020 that “the permanent monitoring of employees at their workstations, [...] is also to be considered disproportionate. Indeed, such monitoring permanent can create significant psychological pressure for employees who feel and know they are being watched, especially since the surveillance measures continue in time. The fact that the employees concerned do not have a means of withdrawing from this supervision from time to time is also likely to aggravate this pressure. Such permanent surveillance is considered disproportionate to the purpose sought and constitutes an excessive interference with the private sphere of employees busy at their jobs. In this case, the fundamental rights and freedoms of employees must prevail over the interests pursued by the employer.

54. He found that non-compliance with Article 5.1.c) of the GDPR had been established day of the site visit. He considered that the letter of the control of February 11, 2019 does not contained no evidence against non-compliance, and that the auditee had not provided

36 See CNPD guidelines on video surveillance, point 4., available at:

<https://cnpd.public.lu/fr/dossiers-thematiques/videosurveillance/necessite-proportionnalite.html>.

37 See Statement of Objections of 5 November 2020, page 6, Ad.B.2), point 30.

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no explanation as to the possible need for monitoring, nor presented mitigating elements<sup>38</sup>.

55. The controller indicated in his letter of February 28, 2020 that the cameras disputed would have been disconnected from the video surveillance system and would be uninstalled within one month. Contrary to the above, he indicated in his letter of December 7, 2020, that these cameras would have been disconnected and would be used more.

56. 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. However, to respect 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.

57. In this case, it notes that at the time of the on-site visit, the cameras litigious allowed the permanent monitoring of the workstations of the employees so that the controlled did not respect the principle of proportionality.

58. In view of the foregoing, the Restricted Panel concurs with the opinion of Chief investigation and concludes that non-compliance with Article 5.1.c) of the GDPR was established on the day of the on-site visit by CNPD agents.

38 See Statement of Objections of 5 November 2020, page 6, Ad.B.2), point 31.

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II. 1.2. As for the geolocation device

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

1. On the principles

59. With regard to the principles to be observed with regard to the obligation to inform data subjects in accordance with Article 13 of the GDPR, the Restricted Training refers to points 14 to 17 of this decision.

2. In this case

60. During the on-site visit, CNPD officials noted that “persons concerned by the geolocation are employees of the company and customers (third parties) having rented a vehicle from the controller”<sup>39</sup>.

61. With regard to the information of third parties, CNPD officials found that the presence of the geolocation device “is not reported to inside rented vehicles”<sup>40</sup>, but “that third parties are informed [...] by the signing of the rental contract which includes a specific stipulation relating to this point (...). By their signature, the lessees of the vehicles also mark their consent to this surveillance measure”.

62. In the Statement of Objections of 5 November 2020, the Head of Investigation noted that the specific stipulation contained in the vehicle rental contract to inform third parties of the presence of the geolocation device did not meet the requirements of Article 13 of the GDPR. He considered that no evidence additional information regarding more complete information for third parties had not been presented, and that the documentation submitted by letter of the control of February 11, 2019 did not contain any evidence either.<sup>42</sup> Thus, he held that in view of the requirements of Article 13 of the GDPR, the information provided by the controlled party to signal the presence of the geolocation was incomplete<sup>43</sup>. He was of the opinion that the auditee failed in his duty

<sup>39</sup> See Minutes of the on-site inspection, page 4, point 9, finding 4.

<sup>40</sup> Cf. Minutes relating to the on-site inspection, page 4, point 9, finding 5.

<sup>41</sup> Cf. Minutes relating to the on-site inspection, page 4, point 9, finding 6.

42 See Statement of Objections of 5 November 2020, page 5, Ad.B.1), point 21.

43 See Statement of Objections of 5 November 2020, page 5, Ad.B.1), point 22.

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information arising from Article 13 of the GDPR with regard to persons

third parties<sup>44</sup>.

63. The controller informed by letter dated February 28, 2020 that “customers [...] will be

informed [of the geolocation] by a document, annexed to the rental contract of

provision of a service vehicle”. He attached copies of the information letter in

question in French and German. Moreover, he mentioned in his letter

of December 7, 2020 its intention to review the “lease agreements in order to inform more

precisely our customers on the presence of a geolocation in our vehicles of

lease ”.

64. With regard to the information of employees, CNPD officials noted

during the on-site visit that the presence of the geolocation device “is not reported

inside the vehicles to company employees”<sup>45</sup>, and that “no evidence that the

employees have been duly informed of the installation of the geolocation device in

vehicles were provided”<sup>46</sup>.

65. In the Statement of Objections of 5 November 2020, the Head of Investigation

noted that the note dated April 29, 2014 which was distributed to the drivers for the

inform of the presence of the geolocation device, and which has been communicated to the

CNPD by letter of the control of February 11, 2019, did not meet the requirements of

article 13 of the GDPR<sup>47</sup>. Thus, he retained that in view of the requirements of Article 13 of the GDPR,

the information provided by the controlled party to signal the presence of the



geolocation was incomplete<sup>48</sup>. He was of the opinion that the auditee failed in his duty  
information arising from Article 13 of the GDPR with regard to employees<sup>49</sup>.

66. The controller informed in his letter of February 11, 2019 that during  
the installation of the geolocation device a "note to drivers was distributed  
in the boxes of these. ", and that" since then, the explanation of the system as well as  
data collected is part of the job interview procedure which is done  
orally". He attached copies of the aforementioned note in French and German

44 See Statement of Objections of 5 November 2020, page 5, Ad.B.1), point 23.

45 See Minutes of the on-site inspection, page 4, point 9, finding 7.

46 See Minutes of the on-site inspection, page 4, point 9, finding 8.

47 See Statement of Objections of 5 November 2020, page 5, Ad.B.1), point 20.

48 See Statement of Objections of 5 November 2020, page 5, Ad.B.1), point 22.

49 See Statement of Objections of 5 November 2020, page 5, Ad.B.1), point 23.

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to his mail. He also indicated that after the compliance process in  
which he would have committed "the drivers will see the information of the  
geolocation in their contract".

67. In addition, he specified in his letter of February 28, 2020 that the employees  
would be informed by letter attached to their next payslips, and that this  
mail would then be published on the "intranet" site of the controlled. Copies of mail  
information intended for employees in French and German have been appended to  
his mail.

68. By letter dated December 7, 2020, control informed the CNPD of the following:

“Following your visit, from a written point of view, we have started to introduce all the missing elements concerning the themes of [...] and geolocation in our internal regulations for our employees”.

69. The Restricted Panel would first like to refer to its clarifications set out in points 24 and 25 of this Decision relating to the obligation imposed on the controller of the processing to “provide” all the obligations mentioned in article 13 as well as in the oral communication of information.

70. Next, she would also like to recall the multi-level approach to communicate the required information to the persons concerned as described in points 26 and 27 of this decision.

## 2.1 Information of third parties

71. The Restricted Committee notes first of all that during the on-site visit, these people were informed of the geolocation by a specific stipulation in the vehicle rental agreement, which was documented by a photo taken by the officers of the CNPD during the on-site visit, and which states the following: “n. The tenant declares be informed that the vehicle rented is generally equipped with a system of geolocation. This system makes it possible to record the speeds and routes traveled (location) and is used to record operational vehicle data. All the data recorded will be treated strictly confidentially. By its signature, the tenant explicitly agrees to his data being

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registered and that he cannot exercise any rights of appeal relating thereto. ". She notices that the controller had the aforementioned contractual stipulation signed separately.

72. She then notes that after the on-site visit the controller prepared a letter information intended for third parties which should be annexed to the contracts of vehicle rental and of which he submitted copies of the different language versions to the CNPD by letter dated February 28, 2020.

73. It notes, however, that neither the specific stipulation in the contracts of rental, nor the new information letter, do not contain all the elements required by article 13.1 and 2 of the GDPR.

74. It also notes that the documentation submitted by the auditee does not contain proof that the aforementioned information letter is systematically attached to the rental contract, or proof that the audited has reviewed its rental contracts in order to inform the people third parties more precisely on the presence of a geolocation in its rental vehicles, as mentioned in the letter from the checked on December 7, 2020.

75. Furthermore, the Restricted Committee notes that the check in its letter of the December 7, 2020 in response to the statement of objections of November 5, 2020 a indicated the following: "with regard to the lack of information of the persons concerned, we are fully aware that the elements listed [...] in your statement of objections under points [...] and 22.[50] weren't at the time of your visit not at the availability of our employees / customers / suppliers / visitors / service providers Services. [...]. ".

76. In view of the foregoing, the Restricted Panel agrees with the opinion of Chief of investigation and concludes that at the time of the on-site visit by CNPD agents, the controlled 50 Cf. Elements listed in the statement of objections of 5 November 2020, page 5, Ad.B.1), point 22. (geolocation): “The controller omits in particular to provide the following elements: - the purposes of the processing for which the personal data are intended as well as the basis legal basis for the processing; - the legitimate interests pursued by the controller; - them recipients or categories of recipients of personal data; - the duration of conservation ; - the existence of the right to ask the data controller for access to the data of a personal nature, the rectification or erasure thereof, or a limitation of the processing relating to the data subject; and - the right to lodge a complaint with an authority of control. »

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has breached its obligation to inform under Article 13 of the GDPR with regard to relates to third parties.

## 2.2 Informing employees

77. The Restricted Committee notes that at the time of the on-site visit, the drivers were informed by the note sent to them when the device was installed. geolocation, and that after the site visit the controller prepared an information letter intended for employees, of which he has submitted copies of the different language versions to the CNPD by letter dated February 28, 2020, specifying that this letter would first be sent to employees as an appendix to their pay slips, and that it would then be published on its website “intranet”.

78. It considers, however, that neither the note sent to the drivers during

the installation of the geolocation device, nor the information mail, and from which it received copies, do not contain all the elements required by article 13.1 and 2 of the GDPR.

79. It also notes that no documentation submitted by the auditee contains proof attesting that the employees were duly informed, before the visit on site, orally in accordance with article 13 of the GDPR or proof attesting that a specific provision was added to their employment contracts after the site visit site, as mentioned in the letter from the auditee of February 11, 2019. The auditee did not no longer provided proof attesting that the employees were informed by mail information appended to their pay slips or published on the “intranet” site, such as mentioned in the letter of the control of February 28, 2020, or by means of provision specific in its internal regulations, as mentioned in the letter from the control of the December 7, 2020.

80. In addition, the auditee recognized the lack of information of the persons concerned at the time of the on-site visit by CNPD officials (see point 75 of the this decision).

81. In view of the foregoing, the Restricted Panel agrees with the opinion of Chief of investigation and concludes that at the time of the on-site visit by CNPD agents, the controlled has breached its obligation to inform under Article 13 of the GDPR with regard to relates to employees.

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

1. On the principles

82. 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 [...] (retention limitation)".

83. 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 [...]. "

2. In this case

84. During the on-site visit, it was explained to CNPD officials that "the purposes of the implementation of the geolocation device is the geographical location vehicles, protection of company assets, optimal fleet management, optimization of the work process, health and safety of users, prevention accidents, the provision of responses to customer complaints, the provision of proof of services, invoicing of services as well as the evaluation of employee performance.

85. CNPD officials also noted that "the data collected and recorded by the geolocation device are the position of the vehicle, the route, the date and time of the start and end of the journey, the distance covered, recording of stops and breaks (vehicle status), driving time, instantaneous speed, average speed, speeding violations committed by drivers

51 See Minutes of the on-site inspection, page 5, point 9, finding 13.

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as well as information on driver driving (sudden turns and braking, accelerations, etc.)”<sup>52</sup>.

86. It is apparent from the statement of objections that “during the on-site visit, it was noted that the retention period of the geo-positioning data noted has been 2 (two) years 11 (eleven) months and 7 (seven) days”<sup>53</sup>. According to the head of the investigation, the said duration conservation “exceeds that which is necessary for the achievement of the purposes for which the geolocation device has been set up”. Furthermore, he found that “in its letter of February 11, 2019, the company claims that “the data details” are kept for 3 months on the user platform [...] and for 3 years for this concerning statistical data and register data. The company remains however failing to explain exactly what is referred to by the “details of data and “registry data”. The same is true for data.

statistics”.<sup>54</sup> Thus, “for lack of additional details” the head of the investigation was of the opinion that the controller has breached its obligation under Article 5.1.e) of the GDPR<sup>55</sup>

87. For his part, the person inspected successively provided a certain amount of information to the CNPD:

88. By letter dated February 11, 2019, he confirmed that “the retention period of the data collected from [...] are:

- ☐ 3 months on user platform for data details
- ☐ 3 years (current year + 2 previous years) for data from statistics as well as for register data”.

He attached to this letter a brochure entitled “[...]” as well as a copy of his register

processing activities.

89. By letter dated February 28, 2020, he informed that he cannot configure himself the retention period of the data in the geolocation device being given

that it is a standard set up by the supplier. However, it would be in exchange

52 See Minutes of the on-site inspection, page 5, point 9, finding 14.

53 See Statement of Objections of 5 November 2020, page 7, Ad.B.3), point 34.

54 See Statement of Objections of 5 November 2020, page 7, Ad.B.3), point 35.

55 See Statement of Objections of 5 November 2020, page 7, Ad.B.3), point 36.

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regularly with the supplier in order to find a solution that would allow configuration of the length of the conversation.

90. By letter dated December 7, 2020, he specified that "the details of the data are intended for example the kilometers or journeys traveled (on a specific race) or the different benchmarks of our service vehicles while the statistical data or of the register refer rather to the points of departure or arrival of our service vehicles or even all the kilometers traveled (over a year for example) of our service vehicles in order to make correct "VAT" declarations to the foreign responsible institutions. »

91. By letter dated July 21, 2021, he provided additional information on the "telemetric system data retention": he appended a table in format Excel "explaining data type retention in our telemetry system"; he specified that it was possible "in theory, [to] detect for ten years which driver drove which service vehicle, this for billing reasons (the on-board letter



which contains this information constituting an annex to the invoice)”; and he indicated that he would not intend to “perceive the driving history of a driver for a equal duration of three years” even if the processing device allows it, “except request of the police or legal authorities”.

92. The Restricted Committee recalls that it is the responsibility of the controller to determine, according to each specific purpose, a retention period for the personal data appropriate and necessary to achieve this purpose.

93. With regard to the geolocation of service vehicles used by the employees, it is of the opinion that the following retention periods meet the principle the limitation of storage under the following conditions:

-  
personal data obtained by geolocation may  
principle only be kept for a maximum period of two  
month ;

-  
whether the geo-tracking device is installed for time verification purposes  
work (when this is the only possible means), the personal data  
staff obtained by geolocation that allow to check the time

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of work may nevertheless be kept for a maximum period  
three years in accordance with the limitation period set out in article 2277 paragraph  
1st of the Civil Code in matters of action for payment of remuneration of  
employees. In the public sector, this data may be kept for

a maximum duration of five years;

-

whether the personal data obtained by geolocation are

used by the controller for the purposes of proof for the

invoicing of services performed for its customers,

the data

necessary for such invoicing may be kept for a period of

1 year, provided that it is not possible to provide proof of the

benefits by other means;

- in the event of an incident, the data may however be kept beyond the

aforementioned deadlines, in the context of the transmission of data to

competent judicial authorities and competent law enforcement authorities

to ascertain or prosecute criminal offences.

The data obtained by geolocation can also be kept beyond

of the aforementioned durations, if these have previously been made anonymous, that is

that is to say that it is no longer possible to make a link – direct or indirect – between this data and

a specified employee.<sup>56</sup>

With regard to the geolocation of rental vehicles used by persons

third parties, it considers that the aforementioned retention periods apply

mutatis mutandis.

94. The Restricted Panel first notes

point

employees,

<sup>56</sup> See CNPD guidelines on the geolocation of vehicles made available to

of the

under :

<https://cnpd.public.lu/fr/dossiers-thematiques/geolocalisation-vehicules/necessite->

proportionality.html. This opinion corresponds to that expressed by the CNPD in application of the law repealed from August 2, 2002 relating to the protection of individuals with regard to the processing of data of a personal nature, in the publication “La surveillance sur le lieu de travail” of the CNPD and of the Chamber of Employees, published in October 2014, cf. item 7.5.3.5.

#### 4.4 Duration

conservation

available

limited,

of

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- that it is indicated in the brochure entitled "[...]" which was attached to the letter of the audit of February 11, 2019, that, unless specific regulations to the contrary in a country, the default controlled subcontractor saves all the data for a period of 90 days and data from the logbook, of the dashboard as well as the reporting data (“[...]”) for the year in course plus the subsequent two years<sup>57</sup>; and

- that the auditee specified in his statement of February 28, 2020 that he cannot configure the retention period of data in the device themselves geolocation since it is a standard implemented by the vendor.

95. It notes that, in principle, the standard storage periods of the device of geolocation exceed those necessary for the achievement of the purposes pursued by

controlled, and declared to CNPD officials during the on-site visit (see point 84 of the this decision).

96. Next, the Restricted Committee observes that it appears from the copy of the register of processing activities that the controller attached to his letter of February 11, 2019, and more particularly of the “register card [...]” relating to the processing referred to as “management of the tachograph” that

-

the “main purpose” of the processing carried out is to “Manage and control the drivers' tachographs”;

-

the following personal data are concerned: “Driver:

Surname, First name, Driver's license number, Period of validity of the driver's license

Drive, Driving Time Data” and “Users: Name,

First Name and Email”;

-

these data are kept for “3 years according to the law, 90 days for

Live data for tachograph data, duration of the contract for the

driver”, “3 years from their collection for data relating to the

57 [...].

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working time” and “2 years minimum from their collection for driving data.

97. It notes that the processing purpose indicated on the register sheet in

question, namely "manage and control the drivers' tachographs", does not correspond not for the purposes that the control declared to the CNPD agents during the visit to site (see point 84 of this decision). Moreover, it considers that the information contained in the "register card [...]" are not precise enough to demonstrate that the retention periods indicated are necessary for the achievement of the desired purpose. It should also be mentioned that the "register card [...]" relating to "fleet management" was not included in the copy of the register of activities which has been communicated to the CNPD.

98. Finally, the Restricted Panel notes the table in Excel format attached to the letter of the control of July 21, 2021 which lists the data recorded by the geolocation device and their respective retention periods.

The list includes sixteen "Type[s] of data", namely: "Positions, Tracks, Data [...], Contact Changes, Order States, Work State Changes, Codes of faults, Acceleration (horizontal), Tachograph data, Device monitoring tracking, Archived reports, KPIs, Vehicle statistics, Vehicle statistics driver, working time statistics and logbook".

The retention periods for this data range from 40 days to three years. Some types of data are marked "non-anonymized". These last are kept for "2 calendar years + current year", namely the "Statistics of the driver, working time statistics and board book" or "three years", i.e. "Archived Reports".

99. It considers, however, that the information contained in the letter from the of 21 July 2021 as well as the new table appended thereto are not sufficiently precise to demonstrate that the stated retention periods are necessary for the achievement of the purposes pursued by the control, and declared to the CNPD officials during the on-site visit (see point 84 of this decision).

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100. Accordingly, the Restricted Panel finds that no documentation submitted  
by the controlled party does not contain proof attesting that "the period of storage of the data  
of geo-positioning (...) of 2 (two) years 11 (eleven) months and 7 (seven) days" which was  
noted during the on-site visit by CNPD officials<sup>58</sup>, did not exceed that  
necessary in order to achieve the purposes pursued by the control, and declared to the agents  
of the CNPD during the on-site visit (see point 84 of this decision).

101. On the basis of all of these elements, the Restricted Formation joins  
the opinion of the head of investigation and concludes that the control failed in its obligation arising from  
Article 5.1.e) of the GDPR.

## II. 2. On corrective measures and fines

### 1. On the principles

102. 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;

58 See Statement of Objections of 5 November 2020, page 7, Ad.B.3), point 34.

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

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

(h) withdraw a certification or order the certification body to withdraw a certification issued pursuant to Articles 42 and 43, or order the body to certification not to issue certification if the requirements applicable to the certification are not or no longer satisfied;

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

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

103. 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.

104. Article 83 of the GDPR provides that each supervisory authority shall ensure that

administrative fines

imposed are, in each case, effective,

proportionate and dissuasive, before specifying the elements that must be taken into

account in deciding whether to impose an administrative fine and in deciding 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 under the

sections 25 and 32;

e) any relevant breach previously committed by the controller or

the subcontractor ;

f) the degree of cooperation established with the supervisory authority with a view to remedying the breach

and to mitigate any negative effects;

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

h) the manner in which the supervisory authority became aware of the breach, in particular whether,

and to what extent the controller or processor notified the breach;

(i) where measures referred to in Article 58(2) have previously been



ordered against the controller or processor concerned for the

same object, 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 violation. »

105. 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.

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

107. In the Statement of Objections, the Head of Investigation proposes to the Panel Restricted to impose an administrative fine to the control of an amount of ten thousand (10,000) euros.<sup>59</sup>

108. In his letter of December 7, 2020 addressed to the head of investigation, the controlled said the following: "In general, after fully analyzing your statement of objections, we are a bit disappointed that you are going to propose to the National Commission sitting in restricted formation to condemn us to a fine of such a significant amount in a rather delicate situation for our group companies ([...]), taking into consideration, as mentioned in your letter of November 5, 2020, our good collaboration throughout your investigation with respect stringent deadlines imposed and the fact [...]. »

109. 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 includes the elements provided for in Article 83.2 of the GDPR:

- 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 5.1.e) of the GDPR, they constitute breaches of the fundamental principles of the GDPR (and data protection law in general), namely the principles of data minimization and the limitation of conservation set out in Chapter II "Principles" of the GDPR.

As regards the breach of the obligation to inform the persons concerned in accordance with article 13 of the GDPR, the Restricted Training recalls that information and transparency relating to the processing of personal data personnel are essential obligations incumbent on those responsible for treatment so that people are fully aware of the use what will be done with their personal data, once these

59 See Statement of Objections, page 10, Ad.C., point 41.

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collected. A breach of Article 13 of the GDPR thus constitutes a infringement of the rights of data subjects. This right to information has has been strengthened under the GDPR, which demonstrates its importance quite particular.

It should be noted that at the time of the on-site visit by CNPD agents, neither the employees, nor third parties were informed of the video surveillance and/or geolocation in accordance with Article 13 of the GDPR.

- As for the duration criterion (article 83.2.a) of the GDPR), the Restricted Training notes that these shortcomings have lasted over time, at least since May 25, 2018 and until the day of the site visit. She recalls here that two years separated the entry into force of the GDPR from its entry into force for enable data controllers to comply with the obligations that are incumbent on them. Moreover, an obligation to respect the principles of minimization and limitation of storage, as well as an obligation comparable information already existed pursuant to Articles 4.1.b) and d), 10.2 and 26 of the repealed law of August 2, 2002 on the protection of individuals with regard to the processing of personal data. Of the guidance relating to the principles and obligations provided for in the said law was available from the CNPD, in particular through authorizations mandatory prerequisites for video surveillance and geolocation and guidance available on its website.

- As for the number of data subjects (Article 83.2.a) of the GDPR), the Restricted Training notes that for video surveillance, it is all employees working on the controlled site's operating site at [...] respectively

in the agencies [...], as well as all third parties, i.e. the customers, suppliers, service providers and visitors to these premises.

With regard to the geolocation devices installed in the controlled vehicles are concerned all employees and third parties using vehicles. It should be noted that during the on-site visit the agents of the

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CNPD found that approximately [...] vehicles ([...]) were equipped with the device of geolocation<sup>60</sup>.

- As to whether the breaches were committed deliberately or not (by negligence) (Article 83.2.b) of the GDPR), the Restricted Training recalls that "not deliberately" means that there was no intention to commit the breach, although the controller or processor failed to comply with the duty of care incumbent upon it under the legislation.

In the present case, it is of the opinion that the facts and breaches found do not do not reflect a deliberate intention to violate the GDPR on the part of the control.

- As to the degree of cooperation established with the supervisory authority (Article 83.2.f) of the GDPR), the Restricted Training takes into account the assertion of the head of investigation according to which the cooperation of the controlled throughout the investigation was good, as well as its willingness to comply with GDPR requirements as soon as possible.<sup>61</sup>

- As for the measures taken by the controlled party to mitigate the damage suffered by the persons concerned (article 83.2.c), the Restricted Training takes into account of the measures taken by the auditee and refers to Chapter II.2. Section 2.2. of this decision for the related explanations.

110. 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.

111. It also notes that while several measures have been put in place by the control in order to remedy in whole or in part certain shortcomings, these have only been adopted only following the control of CNPD agents on December 7, 2018 (see also point 105 of this decision).

60 See Minutes relating to the on-site inspection, page 4, point 9, finding 3.

61 See Statement of Objections of 5 November 2020, page 10, Ad.C., point 40.c.

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112. Moreover, unlike the head of investigation<sup>62</sup>, she does not take into account the camera installed at the level of the entrance gate to the site of [...] given that this point does not is not the subject of this decision.

113. 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), 5.1.e) and 13 of the GDPR.

114. With regard to the amount of the administrative fine, she recalled that the paragraph 3 of Article 83 of the GDPR provides that in the event of multiple infringements, such as this is the case here, the total amount of the fine may not exceed the amount set for

the most serious violation. To the extent that a breach of Articles 5 and 13 of the GDPR is accused of the controller, the maximum amount of the fine that can be withheld is €20 million or 4% of worldwide annual revenue, whichever is greater being retained.

115. With regard to the relevant criteria of Article 83.2 of the GDPR mentioned above, the Restricted Committee considers that the pronouncement of a fine of four thousand nine hundred (4,900) euros appears both effective, proportionate and dissuasive, in accordance with the requirements of Article 83.1 of the GDPR.

## 2.2 Regarding the taking of corrective measures

116. In the statement of objections of 5 November 2020 the head of investigation proposes to the Restricted Formation to adopt the following corrective measures:

" has. Order the controller to complete the information measures intended for persons concerned by video surveillance, in accordance with the provisions of Article 13, paragraphs (1) and (2) of the GDPR by providing in particular the identity of the controller, the purposes of the processing and its legal basis, [...], the legitimate interests pursued by the controller, the recipients, the retention period of the data as well as the indication of the rights of the person and how to exercise them;

62 See Statement of Objections of 5 November 2020, page 5 et seq., Ad.B.2), point 24 et seq.

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b. Order the controller to complete the information measures intended for persons concerned by geolocation, in accordance with the provisions of Article 13, paragraphs (1) and (2) of the GDPR by providing

in particular the identity of the controller, the purposes of the processing and its legal basis, [...], the legitimate interests pursued by the controller, the recipients, the retention period of the data as well as the indication of the rights of the person and how to exercise them;

vs. Order the controller to process only relevant data,

adequate and limited to what is necessary with regard to the purposes and, in particular:

i. to carry out or have carried out the removal or the reorientation of the camera

installed at the level of the entrance gate to the [...] site comprising in its scope

vision of parts of the public highway;

ii. to carry out or have carried out the removal or the reorientation of the camera

number 2 called "[...]" (installed at the company's headquarters) allowing the

surveillance of part of a neighboring land;

iii. to carry out or have carried out the removal or the reorientation of the cameras

installed inside the branches [...] allow permanent surveillance

of the workstations of the employees who are occupied there.

d. Order the data controller to limit the retention of data to a

duration not exceeding that necessary with regard to the purposes for which the data

are collected and processed. »<sup>63</sup>

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

reference to point 106 of this decision, the Restricted Training takes into account

the steps taken by the controller, following the on-site visit by CNPD agents,

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

detailed in his letters of February 11, 2019, February 28, 2020, December 7, 2020 and

July 21, 2021. More specifically, it takes note of the following facts:

63 See Statement of Objections of 5 November 2020, pages 8 to 9, Ad.C., point 38.

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1. As regards the implementation of information measures intended for persons

third parties concerned by the video surveillance, in accordance with the provisions of

Article 13.1 and 2 of the GDPR, the controller maintained that following the on-site visit, he

would have installed pictograms and signs relating to the

video surveillance

(cf.

letters from

checked on February 28, 2020 and

December 7, 2020). However, the Restricted Formation does not have the

documentation that would demonstrate that this measure has been put in place.

The auditee also maintained that a fact sheet would now be

available at its reception. He provided the CNPD with copies of the new

information letter in French and German (see letter from the controller

of February 28, 2020). However, the Restricted Formation does not have the

documentation that would demonstrate that this information letter is

available at the reception-reception of the controlled operating site at [...].

The Restricted Committee also notes that the information letter intended for

third parties does not contain all the information required by article 13

of the GDPR.

Thus, this letter does not make it easy to identify the controller.

(article 13.1.a) of the GDPR), the legitimate interests pursued (Art.13.1.d) of the GDPR)

are not mentioned and the purposes of the processing (article 13.1.c) of the GDPR), the

(categories of) recipients of personal data (Article 13.1 e) of the



GDPR) as well as the rights of data subjects (Article 13.2.b) of the GDPR)

are not specified in detail.

Furthermore, it is noted that the information provided by the controller does not fulfill neither the conditions required for the first level of information, nor those for the second level of information (see points 26 and 27 of this decision).

2. Regarding the implementation of information measures for employees

affected by video surveillance, in accordance with the provisions of article 13.1

and 2 of the GDPR, the controller argued that following the site visit he would have installed pictograms and signs relating to video surveillance

(see letters from the audit of February 28, 2020 and December 7, 2020) and that specific provisions should be included in its internal regulations (cf.

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letters from the control of February 11, 2019 and December 7, 2020). Training

Restreinte, however, does not have the documentation that would allow it to demonstrate that these measures have been put in place.

The controller also maintained that the employees would be informed of the video surveillance by an information letter which would be communicated with their payslips and which would also be published on its "intranet" site. He provided copies of the letter in question in French and German (see letter of the audit of February 28, 2020). However, the Restricted Formation does not have documentation that would demonstrate that this information letter was been communicated to employees.

The Restricted Training also notes that the mail sent to employees

does not contain all the information required by Article 13 of the GDPR.

Thus, the identity and contact details of the controller (Article 13.1.a) of the GDPR) as well as the legitimate interests pursued (Art.13.1.d) of the GDPR) are not mentioned, and the contact details of the data protection officer (Art.13.1.b) of the GDPR), the purposes of the processing (Article 13.1.c) of the GDPR), the (categories of) recipients of personal data (Article 13.1 e) of the GDPR), as well as the rights of data subjects (Article 13.2.b) of the GDPR) are not specified in detail.

Furthermore, it is noted that the information provided by the controller does not fulfill neither the conditions required for the first level of information, nor those for the second level of information (see points 26 and 27 of this decision).

In conclusion, considering the insufficient compliance measures taken by the auditee in this case and point 106 of this decision, the Restricted Panel therefore considers that it is necessary to pronounce the measure correction proposed by the head of the investigation in this regard<sup>64</sup> and repeated in point 116 of this Decision under (a), as regards the information of employees and third parties regarding the video surveillance system.

<sup>64</sup> See Statement of Objections of 5 November 2020, page 8, Ad.C., point 38.a.

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In addition, during the on-site visit, the auditee was identified as responsible for the treatment<sup>65</sup>, which was not disputed by the person inspected, neither during the investigation nor during the Restricted Training session of June 30, 2021. Nevertheless, the information mail intended for third parties as well as mail

information intended for employees, indicate two employees as responsible of the treatment. However, in this case it turns out that the controller is indeed the controlled party, i.e. Company A and not employees, so that the Restricted Training is of the opinion that the control should adapt the documents information in this regard.

3. As to the obligation to only process data that is relevant, adequate and limited to what is necessary with regard to the purposes sought, namely the protection of company assets, securing access, as well as security of users and the prevention of accidents with regard to video surveillance implemented by the auditee (see point 43 of this decision), the latter has indicated in his letter of February 28, 2020 that the fields of vision of the cameras allowing surveillance of neighboring land should be reduced.

However, it appears from his letters of December 7, 2020 and July 21, 2021 that the controlled only intends to relocate the camera located at the rear of the depot of [...] in order to limit his field of vision and no longer film the surrounding land.

For the Restricted Formation, it is camera number 2 called [...]” by report to which the head of investigation held that it is "installed at the headquarters of the society”<sup>66</sup>. She notes that with regard to this camera that she does not however have no documentation that would demonstrate that the field of vision of this camera has been reduced.

The corrective measures do not take into account the camera installed at the level of the entrance gate to the site of [...] given that this point is not the subject of the this decision.

With regard to cameras allowing the permanent monitoring of workstations of the employees in the agencies [...] of the control, the latter has

<sup>65</sup> See Minutes of the on-site inspection, page 1, point 1.

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indicated in his letter of February 28, 2020 that the disputed cameras would have  
been disconnected from the CCTV system and would be uninstalled  
within one month. However, the Restricted Formation does not have  
confirmed information that these cameras have been removed. In effect,  
in his letter of December 7, 2020, the controller indicated that the cameras  
would have been disconnected and would no longer be used. However, this uncertainty  
does not guarantee satisfactory protection for employees. The  
Formation Restreinte considers, moreover, as it noted in point 57 of  
this Decision, that the fields of view of these cameras are  
disproportionate.

In view of the insufficient compliance measures taken by the  
controlled in this case and point 106 of this decision, the Restricted Panel  
therefore considers that the corrective measure proposed by  
the head of investigation in this regard<sup>67</sup> and taken up in point 116 of this Decision under  
c) in items ii. and iii.

4. As regards the implementation of information measures intended for persons  
third parties concerned by geolocation, in accordance with the provisions of  
Article 13.1 and 2 of the GDPR, the controller argued that following the on-site visit the  
third parties would be informed by a document annexed to the contract of  
vehicle rental. He provided copies of the information letter in question in  
French and German languages (see letter from the control of February 28, 2020). The

However, Formation Restreinte does not have the documentation that would allow to demonstrate that this information letter is systematically attached to the vehicle rental contracts.

The Restricted Committee notes that the information letter intended for third parties does not contain all the information required by article 13 of the GDPR.

Thus, this letter does not make it easy to identify the controller.

(article 13.1.a) of the GDPR), the basis of lawfulness (article 13.1 c) of the GDPR) is not mentioned and the purposes of the processing (Article 13.1.c) of the GDPR), the (categories

67 See Statement of Objections of 5 November 2020, Ad.C., point 38.c.

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de) recipients of personal data (Article 13.1 e) GDPR)

as well as the rights of data subjects (Article 13.2b) of the GDPR) are not not specified in detail.

Furthermore, it is noted that the information provided by the controller does not fulfill neither the conditions required for the first level of information, nor those for the second level of information (see points 26 and 27 of this decision).

The auditee further maintained that third parties should be informed geolocation in its rental vehicles through rental contracts

location reviewed and clarified (see letter from the inspection of December 7, 2020). The Formation Restreinte, however, does not have the documentation that would demonstrate that this measure has been put in place.

5. Regarding the implementation of information measures for employees

affected by geolocation, in accordance with the provisions of article 13.1

and 2 of the GDPR, the controller maintained that following the on-site visit, the employees would be informed of the geolocation by an information letter which would be communicated with their payslips and which would also be published on its website “intranet”. He provided copies of the letter in question in French and German (see letter from the control of February 28, 2020). Restricted Training does not however, does not have the documentation that would demonstrate that this information letter was sent to employees.

The Restricted Training finds that the mail intended for employees does not contain not all the information required by Article 13 of the GDPR.

Thus, this letter does not make it easy to identify the controller.

(article 13.1.a) of the GDPR), the basis of lawfulness (article 13.1 c) of the GDPR) is not mentioned and the purposes of the processing (Article 13.1.c) of the GDPR), the (categories de) recipients of personal data (Article 13.1 e) GDPR) as well as the rights of data subjects (Article 13.2b) of the GDPR) are not not specified in detail.

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Furthermore, it is noted that the information provided by the controller does not fulfill neither the conditions required for the first level of information, nor those for the second level of information (see points 26 and 27 of this decision).

The controller also maintained that the employees would be informed of the geolocation by means of “their[s] contract[s]” (cf. letter from the control of the February 11, 2019) and by means of its internal regulations (see letter from the control of the

December 7, 2020). However, the Restricted Formation does not have the documentation that would demonstrate that these measures have been implemented square.

In conclusion, considering the insufficient compliance measures taken by the auditee in this case and point 106 of this decision, the Restricted Panel considers that there is reason to pronounce the corrective measure proposed by the head of investigation in this regard<sup>68</sup> and repeated in point 116 of this decision under b), as regards the information of employees and persons third parties as to the geolocation device.

In addition, during the on-site visit, the auditee was identified as responsible for the treatment<sup>69</sup>, which was not disputed by the person inspected, neither during the investigation nor during the Restricted Training session of June 30, 2021. Nevertheless, the information mail intended for third parties as well as mail information intended for employees, indicate an employee as responsible for the treatment. However, in this case it turns out that the data controller is indeed the controlled, i.e. Company A and not an employee, so that the Formation Restricted is of the opinion that the audited should adapt the information documents in this sense.

6. As for the obligation to limit the retention period of the data to a period not exceeding that necessary with regard to the purposes for which the data are collected and processed, the Restricted Training finds that the documentation submitted by the controller does not contain any evidence that would demonstrate that the latter has adapted the retention period of the geolocation data

<sup>68</sup> See Statement of Objections of 5 November 2020, page 8, Ad.C., point 38.b.

<sup>69</sup> See Minutes of the on-site inspection, page 1, point 1.

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after the on-site visit by CNPD officials. Indeed, the controller informed that he

cannot itself set the retention period for data in the

geolocation device. The Restricted Panel considers, however, that the

retention periods for data from the geolocation device must be

be adapted according to the different purposes pursued.

In view of the insufficient compliance measures taken by the

reviewed in this case and point 106 of this decision, the Panel

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

the head of investigation in this regard<sup>70</sup> and taken up in point 116 of this decision under

d).

In view of the foregoing developments, the National Commission sitting

in restricted formation and deliberating unanimously decides:

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

- to impose against Company A an administrative fine of one

amount of four thousand nine hundred (4,900) euros, with regard to the breaches

constituted in Articles 5.1.c), 5.1.e) and 13 of the GDPR;

- issue against Company A an injunction to enforce

compliance of processing with the provisions resulting from Article 5.1.c) of the

GDPR, within 4 (four) months of notification of the decision

Restricted Training, and in particular

o proceed with the removal or reorientation of camera number 2

called "[...]" (installed at the company's headquarters) allowing the



surveillance of part of a neighboring land;

o proceed with the removal of the cameras installed inside the agencies

[...] allowing the permanent monitoring of the workstations of the

employees employed there;

70 See Statement of Objections of 5 November 2020, page 9, Ad.C., point 38.d.

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- issue against Company A an injunction to enforce

compliance of processing with the provisions resulting from Article 5.1.e) of the

GDPR, within 4 (four) months of notification of the decision

Restricted Training, and in particular limit the retention of data

of a personal nature for a period not exceeding that necessary with regard to

the purposes for which the data is collected and processed;

- issue against Company A an injunction to enforce

compliance of processing with the provisions resulting from Article 13 of the

GDPR, within 4 (four) months of notification of the decision

Restricted Training, and in particular

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inform third parties in a clear and precise manner about the system of

video surveillance by providing them with information relating to the identity of the

controller, the legitimate interests pursued by the controller,

the purposes of the processing, the (categories of) recipients of the data to

personal nature and the rights of data subjects;

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individually inform employees in a clear and precise manner about the video surveillance system by providing them with information relating to the identity and contact details of the controller, the contact details of the data protection officer, the purposes of the processing, the legitimate interests pursued by the controlled, to (categories of) recipients personal data and the rights of data subjects;

o specify the real controller in the information mail intended for third parties as well as the information mail intended for employees ;

oh

inform third parties clearly and precisely about the device geolocation by providing them with information relating to the identity of the controller, the purposes of the processing, the basis of lawfulness on which the geolocation is based, to (categories of) recipients of the personal data and the rights of data subjects;

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individually inform employees in a clear and precise manner on the geolocation by providing them with information relating to the identity of the controller, the purposes of the processing, the basis of lawfulness on which the geolocation is based, to (categories of) recipients of the personal data and the rights of data subjects;

o specify the real controller in the information mail

intended for third parties as well as the information mail intended for employees.

Thus decided in Belvaux on February 2, 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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