

Decision of the National Commission sitting in restricted formation

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

Deliberation No. 24FR/2021 of June 29, 2021

The National Commission for Data Protection sitting in restricted formation

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

Lemmer, commissioners;

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

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

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

95/46/EC;

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

data protection and the general data protection regime, in particular

its article 41;

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

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

article 10 point 2;

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

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

in particular its article 9;

Considering the following:

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I. Facts and procedure

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

for data protection sitting in plenary session (hereafter: “Formation Plenary”) had decided to open an investigation with the ABC1 group on the basis of the article 37 of the law of 1 August 2018 on the organization of the National Commission for the data protection and the general data protection regime (hereinafter: “Law of August 1, 2018”) and to appoint Mr. Christophe Buschmann as Chief of investigation.

2. According to the decision of the Plenary Formation, the investigation carried out by the National Commission for Data Protection (hereinafter: “CNPD”) had as its purpose of verifying compliance with the provisions of Regulation (EU) 2016/679 of the Parliament European Parliament and of the Council of 27 April 2016 relating to the protection of natural persons with regard to the processing of personal data and the free movement of such data, and repealing Directive 95/46/EC (hereinafter: “GDPR”) and the law of 1 August 2018, in particular through the installation of video surveillance systems and geolocation if necessary installed by the two companies of the ABC group.

3. On March 18, 2019, CNPD agents carried out a visit to the premises of the ABC group. Given that the minutes relating to the said fact-finding mission on the spot only mentions, among the two companies of the ABC group, as responsible of the controlled processing Company A,<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 processing controlled by CNPD agents and carried out by Company A.

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

2 See in particular the minutes [...] relating to the on-site fact-finding mission carried out on 18 March 2019 with the ABC group.

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4. Company A is a [...] registered in the Trade and Companies Register of Luxembourg under number [...], with registered office at L-[...] (hereinafter "the controlled"). the controlled [is active in the production of bread and fresh pastries]. »3

5. During the aforementioned visit of March 18, 2019 by CNPD agents to the controlled premises, it was confirmed to CNPD officials that the controlled uses a video surveillance system around its buildings and within its building, but that it does not use any geolocation device.4

6. To his response letter of April 18, 2019 to the report drawn up by the agents of the CNPD, the controller has attached photos of information posters present at the level of each entry and exit, a copy of the register of processing activities and letters from its suppliers [...] and [...].

7. At the end of his investigation, the head of investigation notified the person inspected on 28 August 2019 a statement of objections detailing the shortcomings he considered constituted in this case, and more specifically a non-compliance with the requirements prescribed by article 13 of the GDPR with regard to employees and customers, suppliers, service providers and visitors (hereinafter: "third parties") and a non-compliance with the requirements of article 5.1.c) of the GDPR.

8. On November 21, 2019, the auditee produced written observations on the statement of objections.

9. A supplementary letter to the statement of objections was sent to the checked on August 3, 2020. In this letter, the head of investigation proposed to the Restricted Formation to adopt two different corrective measures, as well as to inflict

to the control an administrative fine of 17,000 euros.

10. By letter dated August 12, 2020, the auditee produced written observations on the additional letter to the statement of objections.

3 [...].

4 See minutes relating to the on-site fact-finding mission carried out on March 18, 2019 to the ABC group.

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11. The president of the Restricted Formation informed the controller by mail of 5 January 2021 that his case would be registered for the session of the Restricted Panel on 11 February 2021. The controller confirmed his presence at the said meeting dated January 11 2021.

12. During the Restricted Training session of February 11, 2021, the leader of investigation and control presented their oral observations in support of their written observations and answered the questions posed by the Restricted Panel. The chairperson asked the controller to send information to the Restricted Training information on the breakdown of people working at each site, including the production site, within a week. The controller spoke last.

II. Place

II. 1. As to the reasons for the decision

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

1. On the principles

13. 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)”.

14. 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>5</sup>

15. Article 5.1.b) of the GDPR provides that personal data must be

be “collected for specific, explicit and legitimate purposes, and not be

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

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

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further processed in a manner incompatible with those purposes; [...] (limitation of purposes)”.

16. Before installing a video surveillance system, the person in charge of the

processing must precisely define the purpose(s) it wishes to achieve by

using such a system, and will not then be able to use the personal data

personal information collected for other purposes.<sup>6</sup>

17. 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>7</sup>

2. In this case

18. It was explained to CNPD officials that the purposes of setting up the

video surveillance system are the protection of property, the securing of access to

private places, user safety and accident prevention.<sup>8</sup>

2.1. Regarding the field of vision of the camera filming the public highway

19. During the on-site investigation, the CNPD agents noted that the field of vision of a camera called by the controlled "[...]" and in the report drawn up by CNPD agents "[...]" allows surveillance of part of the public highway adjoining the controlled sales store.

20. The head of investigation considered that "in view of the aforementioned purposes for which operated the video surveillance, it is not necessary to encompass parts of the track public or neighboring land within the fields of view of the listed cameras under point I hereof. (statement of objections, Ad. A.3.). He was thus of the opinion that the non-compliance with article 5.1.c) of the GDPR was established on the day of the on-site visit

6 See Guidelines for  
themes/videosurveillance/necessite-proportionnalite.html.

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

8 See finding 5 of the minutes relating to the on-site fact-finding mission carried out on March 18, 2019 with the ABC Group.

under: [https://cnpd.public.lu/fr/dossiers-](https://cnpd.public.lu/fr/dossiers-the CNPD, available)  
the CNPD, available

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and that the documentation submitted to the CNPD by letter of April 18, 2019 did not contain  
no evidence against this non-compliance.

21. In its letter of reply to the statement of objections of 21 November  
2019, the controlled on his side explained that adjustments to the fields of vision of

active CCTV cameras were made and he attached screenshots

said mail.

22. The Restricted Committee would like to point out that the cameras intended to monitor a place of access (entrance and exit, threshold, porch, door, awning, hall, etc.) must have a field of vision limited to the area strictly necessary to view people getting ready to get there. Those who film exterior accesses must not mark the entire width of a sidewalk along, where applicable, the building or public roads adjacent. Similarly, outdoor cameras installed near or around a building must be configured so as not to capture the public thoroughfare or the surroundings, entrances, accesses and interiors of other neighboring buildings possibly entering into their field of vision.<sup>9</sup>

23. The Restricted Panel nevertheless admits that depending on the configuration of the places, it is sometimes impossible to install a camera that does not include in its field of vision part of the public road, surroundings, entrances, accesses and interiors of other buildings. In such a case, she considers that the data controller should put in place masking or blurring techniques in order to limit the field of vision to his property.<sup>10</sup>

24. The Restricted Committee finds that the letter from the audit dated 21 November 2019 contains a photo showing that the field of view of the camera named "[...]" has been masked so that it no longer targets public roads.

25. In view of the foregoing, the Restricted Panel nevertheless agrees with the observation of the head of investigation<sup>11</sup> according to which the non-compliance with Article 5.1.c) of the GDPR with

<sup>9</sup> See CNPD Guidelines (Point 4.1.), available at: <https://cnpd.public.lu/fr/dossiers-themes/videosurveillance/necessite-proportionnalite.html>.

<sup>10</sup> See CNPD Guidelines (Point 4.1.), available at: <https://cnpd.public.lu/fr/dossiers-themes/videosurveillance/necessite-proportionnalite.html>.

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concerns the aforementioned camera was acquired on the day of the on-site visit by the agents of the CNPD.

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

26. During the on-site investigation, the CNPD agents noted that the field of

vision of ten cameras allowed permanent monitoring of workstations

of employees employed in the [production] zones "[...]", "[...]", "[...]", "[...]" and "

[...]"<sup>12</sup>

27. Furthermore, the head of the investigation considered that permanent monitoring of

employees on their workstations is "to be considered disproportionate. In effect,

such permanent monitoring can create significant psychological pressure

for employees who feel and know they are being observed, especially since the measures of

monitoring persist over time. The fact that the employees concerned do not have

of a means of evading this monitoring from time to time is also to

likely to aggravate this pressure. Such permanent monitoring is considered

as disproportionate to the aim pursued and constitutes an excessive interference with the

private sphere of employees occupied at their workstations. In this case, the rights and

fundamental freedoms of employees must prevail over the interests pursued by

the employer. Thus, he held that the non-compliance with Article 5.1.c) of the GDPR was

acquired on the day of the on-site visit and that the documentation submitted to the CNPD by the

letter of April 18, 2019 did not contain any evidence against this non-compliance, nor

no explanation as to the possible need for such surveillance measures



(statement of objections, Ad. A.4.).

28. La Formation Restreinte would like to remind you that employees have the right not to be subject to continuous and permanent supervision in the workplace. To reach the purposes pursued, it may seem necessary for a data controller installing a CCTV system in the workplace. On the other hand, respecting the principle of proportionality, the controller must use the means of most protective of the employee's private sphere and, for example, limit the

12 See findings 6, 7, 9, 10, 11 and 14 of the minutes relating to the on-site fact-finding mission carried out on March 18, 2019 from the ABC group. These are the cameras called: "[...]", "[...]", "[...]", "[...] », « [...] », « [...] », « [...] », « [...] », « [...] ».

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fields of vision of the cameras to the only surface necessary to reach the purpose(s) pursued.

29. The Restricted Panel notes that in its letter of November 21, 2019, the person inspected indicated that he had made adjustments to his CCTV cameras and there are screenshots attached.

30. In view of the foregoing, the Restricted Panel nevertheless agrees with the observation of the head of investigation<sup>13</sup> according to which the non-compliance with Article 5.1.c) of the GDPR concerning the ten cameras which allowed the permanent surveillance of the workstations of the employees employed there was acquired on the day of the site visit.

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

1. On the principles

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

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

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

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

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

32. Article 13 of the GDPR provides the following:

“1. When personal data relating to a person

concerned are collected from this person, the data controller

provides, at the time the data in question is obtained, all the information

following:

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

representative of the controller;

13 Statement of Objections, Ad. A.4.

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

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

the legal basis for the processing;

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

sued by the controller or by a third party;

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

if they exist; and

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

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

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

Commission or, in the case of transfers referred to in Article 46 or 47, or Article 49, paragraph 1, second subparagraph, the reference to the appropriate or suitable safeguards and the means of obtaining a copy or where they have been made available;

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

- a) the retention period of the personal data or, where this is not possible, the criteria used to determine this duration;
- b) the existence of the right to request from the controller access to the data to personal character, the rectification or erasure of these, or a limitation of the processing relating to the data subject, or the right to oppose the processing and right to data portability;
- c) where the processing is based on point (a) of Article 6(1) or on Article 9, paragraph 2(a), the existence of the right to withdraw consent at any time,

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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 insofar as the data subject already has this information. »

33. 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>14</sup> These obligations have been explained by the Article 29 Working Party in its guidelines on the transparency within the meaning of Regulation (EU) 2016/679, the revised version of which has been adopted April 11, 2018 (hereinafter: “WP 260 rev.01”).

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

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34. 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>15</sup>

2. In this case

35. With regard to the information of third parties, as well as employees

as for the video surveillance system, the head of investigation noted that the documentation

submitted to the CNPD by letter dated April 18, 2019 did not contain sufficient evidence

to counter non-compliance with the requirements of Article 13 of the GDPR. He estimated

that the affixing, after the on-site visit, of posters comprising a pictogram of a

camera with the words "for your safety this site is under surveillance" is not

such as to fulfill the conditions laid down by said article and that therefore non-compliance with

article 13 of the GDPR was acquired on the day of the on-site visit (see communication of grievances, Ad. A.1. and A.2.).

36. In his aforementioned letter of April 18, 2019, the inspector indicated that the

persons concerned (employees and third parties) are informed of the presence of a

video surveillance through posters present at each entrance and exit

and he attached photos of said posters.

37. By letter dated 21 November 2019, the inspector sent the head of investigation a

personal data protection charter which has been posted on its website, a

information notice on data protection for its employees which has been

presented and approved at the meeting of [...] and which is circulated for signature to

its employees, as well as a photo of a new signage pictogram on its sites.

38. 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

<sup>15</sup> See EDPS Endorsement Decision 1/2018 of 25 May 2018, available

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

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under :

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that the data controller must take concrete measures to provide the  
information in question to the person concerned or to actively direct the person  
concerned to the location of said information (for example by means of a link  
direct, a QR code, etc.). (WP260 rev. 01, paragraph 33).

39. The Restricted Committee notes that during the on-site visit by the agents of the  
CNPD, third parties and employees were not informed of the presence of the  
CCTV system. In its letter of April 18, 2019, the auditee indicated that  
henceforth the persons concerned would be informed by a pictogram of a  
camera with the words “for your safety this site is under surveillance”. Otherwise,  
by letter dated November 21, 2019, the controller sent a data protection charter  
personal data, an information notice on data protection for its  
employees, as well as a photo of a new signaling pictogram on its  
Site (s).

40. The Restricted Committee considers in this context that a multi-pronged approach  
levels to communicate transparency information to people  
concerned can be used in an offline or non-digital context, i.e.  
in a real environment such as personal data  
collected by means of a video surveillance system. The first level of information  
should generally include the most essential information, namely the  
details of the purpose of the processing, the identity of the controller and the existence of  
rights of the data subjects, as well as the information having the greatest impact  
on the processing or any processing that may surprise data subjects.<sup>16</sup>

The second level of information, i.e. all the information required at the  
under Article 13 of the GDPR, could be provided or made available by other means,  
such as a copy of the privacy policy emailed to  
employees or a link on the website to an information notice with regard to  
non-salaried third parties.<sup>17</sup>

<sup>16</sup> See WP 260 rev.01 and EDPS Guidelines 3/2019 on the processing of personal data  
by video devices, version 2.0, adopted on January 29, 2020.

<sup>17</sup> See WP260 rev. 01 (item 38).

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41. The Restricted Committee notes, however, that the pictogram which has been placed  
place after the site visit and the pictogram sent by mail on November 21, 2019  
did not even contain the required elements of the first level of information whatsoever  
for employees or non-employee third parties.

42. With regard to the personal data protection charter  
available to third parties [...] and sent by post dated November 21, 2019, the  
Restricted Training considers that it did not contain all the required elements  
by article 13.1 and 2 of the GDPR, especially since at the time of the on-site visit by the  
CNPD agents, third parties could not yet access the said  
charter.

43. With regard to the information notice on data protection for its  
employees, the Restricted Training considers that the said note did not contain  
all the elements required by article 13.1 and 2 of the GDPR, especially since at the  
the time of the on-site visit by CNPD agents, the employees were not yet

in possession of the said note.

44. In view of the foregoing, the Restricted Panel concludes that at the time of the on-site visit by CNPD agents, article 13 of the GDPR was not respected by the control.

## II. 2. On corrective measures and fines

### 1. Principles

45. 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;

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- (c) order the controller or processor to comply with requests submitted by the data subject with a view to exercising their rights under this these regulations;
- d) order the controller or the processor to put the operations of processing in accordance with the provisions of this Regulation, where applicable, of specific manner and within a specified time;
- (e) order the controller to communicate to the data subject a personal data breach;
- f) impose a temporary or permanent restriction, including prohibition, of processing;
- g) order the rectification or erasure of personal data or the



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

(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. »

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

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47. Article 83 of the GDPR provides that each supervisory authority shall ensure that the administrative fines imposed are, in each case, effective, proportionate and deterrents, before specifying the elements that must be taken into account to decide whether an administrative fine should be imposed and to decide on the amount of this fine :

“(a) the nature, gravity and duration of the breach, taking into account the nature, scope or the purpose of the processing concerned, as well as the number of data subjects

affected and the level of damage they suffered;

b) whether the breach was committed willfully or negligently;

c) any action taken by the controller or processor to mitigate the

damage suffered by the persons concerned;

d) the degree of responsibility of the controller or processor, account

given the technical and organizational measures they have implemented pursuant to

sections 25 and 32;

e) any relevant breach previously committed by the controller or

the subcontractor ;

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

and to mitigate any negative effects;

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

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

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

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

ordered against the controller or processor concerned for the

same purpose, compliance with these measures;

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(j) the application of codes of conduct approved pursuant to Article 40 or

certification mechanisms approved under Article 42; and

k) any other aggravating or mitigating circumstance applicable to the circumstances of

the species, such as the financial advantages obtained or the losses avoided, directly or

indirectly, as a result of the breach".

48. 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.

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

2. In this case

2.1. Regarding the imposition of an administrative fine

50. In its supplementary letter to the statement of objections of 3 August 2020, the head of investigation proposed to the Restricted Panel to impose a fine administrative audit for an amount of 17,000 euros.

51. In his response to said additional letter of August 12, 2020, the audited challenged the aforementioned letter from the head of investigation following the corrective changes made to comply with the rules of the GDPR.

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

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As to the nature and seriousness of the breach (Article 83.2.a) of the GDPR), the Restricted Panel notes that with regard to the breach of Article 5.1.c) of the GDPR, it constitutes a breach of the fundamental principles of the GDPR (and data protection law in general), namely the principle of minimization of data dedicated to Chapter II "Principles" of the GDPR.

As regards the breach of the obligation to inform the persons concerned in accordance with article 13 of the GDPR, the Restricted Training recalls that information and transparency relating to the processing of personal data are essential obligations incumbent on those responsible for processing so that individuals are fully aware of the use that will be made of their personal data, once collected. A breach of Article 13 of the GDPR thus constitutes an infringement of the rights of the persons concerned. This right to information has also been reinforced in terms of the GDPR, which demonstrates their particular importance. To note that at the time of the site visit by the CNPD agents, no pictogram signage, nor any poster or information notice could be shown to CNPD officials.

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As for the duration criterion (article 83.2.a) of the GDPR), the Restricted Training notes that these shortcomings have persisted over time, at least since the May 25, 2018 and until the day of the on-site visit. The Restricted Formation reminds here that two years separated the entry into force of the GDPR from its entry into application to enable data controllers to comply with the obligations incumbent on them. Moreover, an obligation to respect the principle of minimization, as well as a comparable information obligation already existed pursuant to Articles 4.1. b), 10.2 and 26 of the repealed law of 2

August 2002 on the protection of individuals with regard to the processing of personal data. Guidance on principles and obligations provided for in the said law was available from the CNPD, in particular through mandatory prior authorization for video surveillance.

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As for the number of data subjects (Article 83.2.a) of the GDPR), the Formation Restreinte notes that these are [...] employees working on the site of the controlled which were under permanent surveillance by ten different cameras without possibility of opting out,<sup>18</sup> as well as all third parties, i.e. customers, suppliers, service providers and visitors visiting said site.

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

In this case, the Restricted Committee is of the opinion that the facts and breaches observed do not reflect a deliberate intention to violate the GDPR on the part of of the controlled.

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As for the degree of cooperation established with the supervisory authority (Article 83.2.f) of the

GDPR), the Restricted Training takes into account the assertion of the head of investigation that the co-operation of the auditee throughout the investigation was good, as well as than its desire to comply with the law as soon as possible.

53. 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.

54. The Restricted Committee also notes that while several measures have been implemented place by the auditee in order to remedy in whole or in part certain shortcomings, these were only adopted following the inspection by CNPD officials on 18 March 2019 (see also point 48 of this decision).

18 As indicated by email from the audit dated February 11, 2021.

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55. Consequently, the Restricted Committee considers that the imposition of a fine administrative is justified with regard to the criteria laid down by article 83.2 of the GDPR for breach of Articles 5.1.c) and 13 of the GDPR.

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

57. In view of the relevant criteria of Article 83.2 of the GDPR mentioned above, the

Restricted Formation considers that the pronouncement of a fine of 12,500 euros appears both effective, proportionate and dissuasive, in accordance with the requirements of Article 83.1 of the GDPR.

## 2.2. About taking corrective action

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

a) Order the controller to put in place the measures information intended for persons concerned by video surveillance, in accordance with the provisions of Article 13, paragraphs (1) and (2) of the GDPR in indicating in particular the identity of the data controller, the purposes of the processing and its legal basis, the categories of data processed, the interests legitimate interests pursued by the control, the recipients, the retention period of the data as well as the indication of the rights of the person and the manner of exercise ;

b) Order the controller to only process data relevant, adequate and limited to what is necessary in relation to the purposes of protection of property, securing access to private places, security of users as well as the prevention of accidents and, in particular, adapting the system

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video so as not to film employees at their workstations, for example by

removing or reorienting the cameras referred to as "[...] " "[...] " "[...] " "[...] " "[...]" "[...] " "[...] " "[...] " "[...], [...], [...] and [...]" .

With regard to the implementation of information measures intended for persons non-employee third parties concerned by video surveillance, in accordance with the provisions of Article 13.1 and 2 of the GDPR, the controller has posted on its website new pictograms [...] allowing said people to access a Privacy Policy. A photo of such a pictogram and the aforementioned charter were attached to the letter from the audit dated 21 November 2019.



With regard to the implementation of information measures intended for employees affected by video surveillance, in accordance with the provisions of Article 19 As detailed in its reply letter to the statement of objections of 21 November 2019.

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13.1 and 2 of the GDPR, the controller indicated in his letter of November 21, 2019 an information notice on data protection for its employees was presented and approved at the meeting [...] and which is circulated for signature with its employees. Annex 2 of the said letter concerns the aforementioned note.

The Restricted Committee considers that the information notice on the protection of data intended for auditing employees does not contain all the information required by Article 13 of the GDPR, in particular the legal basis accurate for CCTV, recipients or categories of recipients of images from the video surveillance system, the existence of the right to restriction of processing, as well as the right not only to seize, but to lodge a complaint with the CNPD.

In consideration of the compliance measures taken by the control in case and point 49 of this decision, the Restricted Panel considers as soon as it is necessary to pronounce the corrective measure proposed by the head investigation under a).

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As for the obligation to only process data that is relevant, adequate and limited to what is necessary with regard to the purposes of protecting property and securing access and, in particular, adapting the video device so as not to

not film employees at their workstations and public roads, the controller has explained in its reply letter to the Statement of Objections of 21 November 2019 having made adjustments to its cameras active video surveillance. As employees were present on the captures screenshots attached to said letter, a related question was asked during the Restricted Training hearing of February 11, 2021. The controller specified that all cameras henceforth aim only at corridors, passages, freezers or raw material depots and that no employee is in the field of vision permanently. In consideration of the implementation measures in compliance taken by the audited herein and point 49 of this decision, the Restricted Panel therefore considers that there is no need to pronounce the corrective measure proposed by the head of investigation under b).

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

- to retain the breaches of Articles 5.1.c) and 13 of the GDPR;
- impose an administrative fine on Company A in the amount of twelve thousand five hundred euros (12,500 euros), with regard to breaches of the articles 5.1.c) and 13 of the GDPR;
- issue against Company A an injunction to bring the processing with the provisions of Article 13 of the GDPR, within two months following notification of the decision of the Restricted Committee, the supporting documents in compliance, to be sent to the Restricted Training, at the latest, within this period;

and especially :

1. inform non-employee third parties in a clear and complete manner,  
  
in accordance with the provisions of Article 13 of the GDPR, in particular by providing  
  
third parties information relating to the precise legal basis for the  
  
video surveillance, to recipients or categories of recipients of images from the  
  
video surveillance system, the retention period of images from the system  
  
video surveillance, as well as the right to lodge a complaint with the CNPD.
2. individually inform employees in a clear and complete manner, in accordance with the  
  
provisions of Article 13 of the GDPR, in particular by providing employees with a  
  
information on the precise legal basis for the video surveillance, the recipients  
  
or categories of recipients of images from the video surveillance system,  
  
the existence of the right to restriction of processing, as well as the right to introduce a  
  
complaint to the CNPD.

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Thus decided in Belvaux on June 29, 2021.

For the National Data Protection Commission sitting in formation  
  
restraint

Tine A. Larsen

Thierry Lallemand

Marc Lemmer

President

Commissioner

Commissioner

## Indication of remedies

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

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