

Decision of the National Commission sitting in restricted formation

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

Deliberation No. 16FR/2021 of May 12, 2021

The National Commission for Data Protection sitting in restricted formation

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

Lemmer, commissioners;

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

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

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

95/46/EC;

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

data protection and the general data protection regime, in particular

its article 41;

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

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

article 10 point 2;

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

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

in particular its article 9;

Considering the following:

I. Facts and procedure

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

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

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Plenary”) had decided to open an investigation with the company “Company A” on the basis of article 37 of the law of 1 August 2018 on the organization of the National Commission for data protection and the general data protection regime (hereafter after “Law of August 1, 2018”) and to designate Mr. Christophe Buschmann as head of investigation.

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

3. On March 22, 2019, CNPD agents carried out a visit to the premises of the company “Company A”. 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”.

4. “Company A” is a [...] registered in the Trade and Companies Register of Luxembourg under number [...] and having its registered office at [...] (hereinafter “the controlled”). The controlled develops and produces [...].¹

5. During the aforementioned visit of March 22, 2019 by CNPD agents to the controlled premises, it was confirmed to CNPD officials that the controlled uses a video surveillance system consisting of fourteen cameras, twelve of which were in working order of operation, but that it has not installed a geolocation device in its vehicles.²

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

2 See Minutes no. [...] relating to the on-site fact-finding mission carried out on March 22, 2019 to
of Company A.

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6. By letter dated April 25, 2019, the controller responded to the report drawn up by
CNPD officers. Since it was not possible for the CNPD agents to
carry out an on-site verification of the oldest recordings due to a
problem on the server,³ the auditee attached to said mail, among other things, a capture
screenshot of the surveillance video recording configurator confirming the
image retention up to 7 days.⁴

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"), as well as a
non-compliance with the requirements of article 5.1.c) of the GDPR.

8. On September 11, 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 four different corrective measures, as well as to inflict
to the controlled an administrative fine of 1,000 EUR.

10. By letter dated September 7, 2020, the controller produced written observations

on the supplementary letter to the statement of objections.

11. The president of the Restricted Formation informed the controller by letter of 16 October 2020 that his case would be registered for the session of the Restricted Panel on 4 December 2020. The controller confirmed his presence at the said meeting dated October 19 2020.

3 See finding 8 of minutes no. [...] relating to the on-site fact-finding mission carried out on March 22 2019 with Company A.

4 See appendix 4 of the letter of April 25, 2019.

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12. During the Restricted Training session of December 4, 2020, the leader of investigation and control presented their oral observations in support of their written observations and answered the questions posed by the Restricted Panel. the controlled had the last word.

II. Place

II. 1. As to the reasons for the decision

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

1. On the principles

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.⁵

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 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.⁶

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

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

under: [---

Decision of the National Commission sitting in restricted formation on the outcome of survey no. \[...\] conducted with “Company A”.](https://cnpd.public.lu/fr/dossiers-the CNPD, available</p></div><div data-bbox=)

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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.⁷

2. In this case

18. During the on-site visit, it was explained to CNPD officials that the purposes of setting up the video surveillance system are the protection of property, securing access to private and risky places, as well as the safety of users

and accident prevention.⁸

19. During the said visit, the CNPD agents noted that the field of vision of a camera "allows the monitoring of an access road to buildings belonging to the public domain".⁹

20. The head of investigation was of the opinion that the aforementioned purposes "can find a or more bases of lawfulness under article 6, surveillance of the public highway and surrounding land is, however, to be considered disproportionate. Indeed, in view of the aforementioned purposes for which video surveillance is carried out, it is not necessary to include parts of the public road or neighboring land in the fields of view of the cameras listed under point I hereof. »
(statement of objections, Ad. A.3.).

21. The auditee for his part explained in his reply letter to the statement of objections of 10 September 2019 that the field of view of the camera in dispute was reoriented in order to exclude the public road in the background and he annexed a photo of the modified field of vision.¹⁰ However, as the controlled did not present of mitigating elements on this subject in its response of April 25, 2019 to the minutes drawn up by CNPD officials, such as a reorientation of the field of vision of the

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

8 See finding 6 of minutes no [...] relating to the on-site fact-finding mission carried out on 22 March 2019 with Company A.

9 See finding 7 of minutes no [...] relating to the on-site fact-finding mission carried out on 22 March 2019 with Company A.

10 See appendix 3 of the response letter to the statement of objections of 10 September 2019.

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disputed camera or blurring of the public highway and surrounding land, the chief of investigation concluded that the non-compliance with Article 5.1.c) of the GDPR was established on the day of the site visit.

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.¹¹

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 set up masking or blurring techniques in order to limit the field of vision to his property.¹²

24. The Restricted Panel finds that the controlled person had authorization prerequisite n° [...] of the CNPD in terms of video surveillance. One of the conditions for granting of said authorization was already that "outdoor cameras must be configured so as not to capture the public road, nor the surroundings, entrances, accesses and interiors of other buildings falling within their field of vision, if any. »

25. The Restricted Committee also notes that annex 3 of the letter from the controller

of September 10, 2019 contains a photo demonstrating that the field of view of the camera in dispute was reoriented in order to exclude the public thoroughfare in the background. During the hearing of December 4, 2020, the control specified that the said camera was filming a road belonging

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

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

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to the controlled, but that in fact, a minimal part of the public road was in its field of vision. He explained that from then on the disputed camera was replaced and the field hidden dispute.

26. In view of the foregoing, the Restricted Panel concurs with the finding¹³ of Chief of investigation according to which the non-compliance with Article 5.1.c) of the GDPR was acquired on the day the on-site visit by CNPD agents.

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

1. On the principles

27. 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 [...]. »

28. 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;

13 Statement of Objections, Ad. A.3.

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- 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 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;
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- (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. »

29. The communication to data subjects of information relating to the processing of their data is an essential element in the context of compliance with general transparency obligations within the meaning of the GDPR.¹⁴ These obligations have been explained by the Article 29 Working Party in its guidelines on the transparency within the meaning of Regulation (EU) 2016/679, the revised version of which has been adopted April 11, 2018 (hereinafter: "WP 260 rev.01").

30. 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

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

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and reapproved the documents adopted by the said Group between May 25, 2016 and May 25 2018, such as the aforementioned guidelines on transparency¹⁵.

2. In this case

31. With regard to informing third parties about the system of video surveillance, the CNPD agents noted during their visit to the site that they are only informed by a "Monitoring by cameras" panel, as well as by a pictogram representing a video camera and an old CNPD vignette displayed at the company's main entrance. Furthermore, the head of the investigation considered that

even if the controller attached to his letter of April 25, 2019 a new poster of information, the latter was not such as to fulfill the conditions of Article 13 of the GDPR and that therefore the non-compliance with article 13 of the GDPR was acquired on the day of the on-site visit with regard to third parties (statement of objections, Ad.A.1).

32. With regard to informing employees about the system of video surveillance, the head of the investigation found that they were informed, to a certain extent measurement by a "Monitoring by cameras" panel, as well as by a pictogram representing a video camera and an old CNPD sticker at the entrance principal of the company, as well as by an information note sent by e-mail and/or letter to all employees. Nevertheless, he considers that this information was not not complete and that therefore the non-compliance with article 13 of the GDPR was acquired at the day of the on-site visit as far as the employees are concerned (statement of grievances, Ad.A.2).

33. By letter dated April 25, 2019, the controller specified that the installation of the cameras supervision dated back more than 15 years and that the staff delegation had been informed at the time, but that he had not kept the meeting records due to the duration of the "legal" archiving of 10 years. In addition, he specified that a notice information had been sent by email to the administrative and technical staff and by

15 See EDPS Endorsement Decision 1/2018 of 25 May 2018, available https://edpb.europa.eu/sites/edpb/files/files/news/endorsement_of_wp29_documents_en_0.pdf.

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postal letter to the operating staff dated [...] 2018 and that an acknowledgment of receipt had been requested from each member of staff.¹⁶ With regard to the third parties, the control specified having modified, after the on-site visit of the agents of the CNPD, the display located next to the surveillance cameras.¹⁷

34. By letter dated September 10, 2019, the auditee replied to the communication grievances from the head of investigation, stating that the old CNPD vignettes were withdrawn and that a new bilingual poster has been affixed to each camera of video surveillance and at every possible entrance to the site.¹⁸ He further explained in the said letter that the information notice sent to employees had been completed and that it was going to be redistributed to all staff with a request for the surrender of an accused receiving and reading.¹⁹

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

36. The Restricted Committee notes that during the on-site visit by the agents of the CNPD, third parties were informed of the presence of the video surveillance by a “Surveillance by cameras” panel, as well as by a pictogram representing a video camera and an old CNPD vignette located at the main entrance of the company.

37. The Restricted Committee notes, however, that the panel, the pictogram and the old CNPD sticker did not contain the information required within the meaning of

¹⁶ See appendix 1 of the audit letter of 25 April 2019.

17 See appendix 2 of the audit letter of 25 April 2019.

18 See appendix 1 to the audit letter of 10 September 2019.

19 See appendix 2 of the audit letter of 10 September 2019.

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GDPR Article 13 and no other information notice was available (e.g. on the website), during the visit to the site, to third parties.

38. With regard to the employees, the Restricted Training noted that during the visit on site by CNPD agents, they were informed of the presence of the video surveillance by the panel, the pictogram and the old CNPD sticker as mentioned above, as well as by an information notice sent by email or post dated [...] 2018.

39. The Restricted Committee considers that a layered approach to Communicating transparency information to data subjects can be used in an offline or non-digital context, i.e. in an environment real, such as personal data collected by means of a CCTV system. The first level of information should general include the most essential information, namely details of the purpose of the processing, the identity of the controller and the existence of the rights of persons concerned, as well as the information having the greatest impact on the processing or any processing likely to surprise data subjects.²⁰ The second level of information, i.e. all of the information required under Article 13 of the GDPR, could be provided or made available by other means, such as for example a copy of the privacy policy sent by e-mail to employees

or a link on the website to an information notice with regard to the

non-salaried third parties.²¹

The Restricted Panel notes, however, that the panel, the pictogram and the old CNPD sticker in place during the on-site visit did not contain the required elements of the first level of information whether for employees or non-employee third parties and that the information notice sent to employees²² does not did not contain all of the elements required by articles 13.1 and 2 of the GDPR.

²⁰ See WP 260 rev.01 and EDPS Guidelines 3/2019 on the processing of personal data by video devices, version 2.0, adopted on January 29, 2020.

²¹ See WP260 rev. 01 (item 38).

²² See appendix 2 of the audit letter of 25 April 2019.

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40. 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

41. 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 these regulations;
- d) order the controller or the processor to put the operations of processing in accordance with the provisions of this Regulation, where applicable, of specific manner and within a specified time;
- (e) order the controller to communicate to the data subject a personal data breach;
- f) impose a temporary or permanent restriction, including prohibition, of processing;
- g) order the rectification or erasure of personal data or the limitation of processing pursuant to Articles 16, 17 and 18 and the notification of these measures to the recipients to whom the personal data have been disclosed pursuant to Article 17, paragraph 2, and Article 19;

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- (h) withdraw a certification or order the certification body to withdraw a certification issued pursuant to Articles 42 and 43, or order the body to certification not to issue certification if the requirements applicable to the certification are not or no longer satisfied;
- (i) impose an administrative penalty under section 83, in addition to or in addition to instead of the measures referred to in this paragraph, depending on the characteristics specific to each case;
- j) order the suspension of data flows addressed to a recipient located in a third country or an international organisation. »

42. 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.

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

- “(a) the nature, gravity and duration of the breach, taking into account the nature, scope or the purpose of the processing concerned, as well as the number of data subjects affected and the level of damage they suffered;
- b) whether the breach was committed willfully or negligently;
- c) any action taken by the controller or processor to mitigate the damage suffered by the persons concerned;

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- d) the degree of responsibility of the controller or processor, account given the technical and organizational measures they have implemented 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 purpose, compliance with these measures;

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

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

44. 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.

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

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shortcomings noted by the head of investigation in the statement of objections, are taken taken into account by the Restricted Training in the context of any corrective measures to pronounce.

2. In this case

2.1. Regarding the imposition of an administrative fine

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

2020, the head of investigation proposed to the Restricted Panel to impose a fine

administrative control relating to the amount of 1,000 euros.

47. In his response to said additional letter of September 7, 2020, the

controlled maintained in particular that he thought he had fulfilled all the conditions to avoid

a fine and that he had made every effort to ensure that the violation of the GDPR ceased as soon as possible

quickly as possible. The controller thus asked in the said letter whether the proposal as to

the imposition of a fine by the head of investigation could be reconsidered.

48. 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

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

personnel are essential obligations incumbent on those responsible for

processing so that individuals are fully aware of the use that

will be made of their personal data, once collected. A

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breach of Article 13 of the GDPR thus constitutes an infringement of the rights of the persons concerned. This right to information has also been reinforced in terms of the GDPR, which demonstrates their particular importance.

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As for the duration criterion (article 83.2.a) of the GDPR), the Restricted Training notes that these shortcomings have persisted over time, at least since the May 25, 2018 and until the day of the on-site visit. The Restricted Formation reminds here that two years separated the entry into force of the GDPR from its entry into application to enable data controllers to comply with the obligations incumbent on them, even if an obligation to respect the principle data 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.

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As for the number of data subjects (Article 83.2.a) of the GDPR), the Restricted Training finds that these are all employees working on the site of the controlled, as well as all third parties, i.e. customers, suppliers, service providers and visitors to this site.

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

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 the controlled.

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

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49. 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.

50. 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 22 March 2019 (see also point 44 of this decision).

51. 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.

52. 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.

53. With regard to the relevant criteria of Article 83.2 of the GDPR mentioned above, the Restricted Formation considers that the pronouncement of a fine of 1,000 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

54. The adoption of the following corrective measures was proposed by Chief investigation to the Restricted Training in its additional letter to the communication grievances:

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"a) Order the controller to complete the information measures

intended for people

third parties affected by

video surveillance,

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

providing in particular the contact details of the controller, the

recipients as well as the retention period of the video surveillance images;

b) Order the controller to complete the information measures

intended for employees affected by

video surveillance,

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

providing in particular the contact details of the controller, the recipients as well as the retention period of the video surveillance images;

c) Order the controller to process only relevant data, adequate and limited to what is necessary with regard to the purposes of protection property and securing access and, in particular, adapting the video system so as not to film the public road, for example by removing or reorienting the camera called "[...]";

d) Order the data controller to remove or cause to be removal of cameras that are out of working order. »

55. As for the corrective measures proposed by the head of investigation and by reference to point 45 of this decision, the Restricted Formation takes into account the steps taken by the control, following the visit of the CNPD agents, in order to comply with the provisions of Articles 5.1.c) and 13 of the GDPR, as detailed in his letters of April 25, 2019, September 10, 2019 and September 7, 2020. More in particular, it takes note of the following facts:

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With regard to the implementation of information measures intended for persons affected by video surveillance, in accordance with the provisions of Article 13.1 and 2 of the GDPR, the controller maintains in his reply letter to the statement of objections of September 10, 2019 having drawn up and posted of each video surveillance camera and at each possible entrance to its site a new bilingual poster, which refers for more information on the rights of

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data subjects on the website[...] under "[...]". Furthermore, he explained in said letter that the information notice has been completed and that it will be redistributed to all staff with a request for an acknowledgment of reception and reading.

With regard to the information of third parties, the Restricted Training considers that the aforementioned bilingual poster, combined with the section "[...]" on the site [...], do not contain all the information required by article 13 of the GDPR. Thus, the contact details of the controller, which are to be considered as first-level information (see point 39 of this decision) are not shown on the poster. Furthermore, any recipients or categories of recipients of personal data collected through CCTV system must be mentioned. In consideration of compliance measures taken by the audited in this case and point 45 of this decision, the Restricted Panel therefore considers that there is reason to pronounce the corrective measure proposed by the head of investigation under a).

With regard to employee information, Restricted Training considers that the aforementioned bilingual poster, combined with the information notice appearing at appendix 2 of the inspection letter of September 10, 2019, contains all the information required in accordance with Article 13 of the GDPR. The control had indicated in said letter that this notice will be redistributed to the entire personal, with request for delivery of an acknowledgment of receipt and reading. In consideration of the compliance measures taken by the audited in this case and point 45 of this decision, the Restricted Committee therefore considers that there is no need to pronounce the corrective measure proposed by the chief investigation under b).

As for the obligation to only process data that is relevant, adequate and limited to what is necessary with regard to the purposes of protecting property and securing access and, in particular, adapting the device of video surveillance so as not to film the public highway, the control has annexed in its controlled from September 10, 2019 a photo showing that the field of vision of the disputed camera was reoriented in order to exclude the public road behind plan. During the hearing of December 4, 2020, the controlled presented the same photo

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to the Restricted Panel by confirming that the disputed field of vision has been mask. In view of the compliance measures taken by the controlled in this case and point 45 of this decision, the Restricted Panel therefore considers that there is no reason to pronounce the corrective measure proposed by the head of investigation under c).

As for the removal of cameras that are out of order, the controlled confirmed during said hearing of December 4, 2020 that the two out-of-service cameras have been removed and replaced and are currently targeting only the internal perimeter of the factory. In consideration of the measures of compliance taken by the audited in this case and point 45 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 d).

In view of the foregoing developments, the National Commission sitting

in restricted formation and deliberating unanimously decides:

- impose an administrative fine on Company A in the amount of

one thousand euros (1,000 euros), with regard to the violation of 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 :

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 contact details of the controller and, where applicable,

to the recipients or the categories of recipients of the personal data.

Thus decided in Belvaux on May 12, 2021.

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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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survey no. [...] conducted with “Company A”.

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