

Decision of the National Commission sitting in restricted formation

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

Deliberation no. 2FR/2021 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 September 28, 2018, the Commission

Data Protection Authority sitting in plenary session (hereafter:

“Plenary Formation”) had decided to open an investigation with Company A on the basis of  
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 conducted by the CNPD  
was intended to verify compliance with the provisions of the regulations relating to the protection  
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 August 1, 2018, in particular by setting up systems for  
video surveillance and geolocation installed by Company A.

3. On November 20, 2018, CNPD officials visited  
on the premises of Company A. The decision of the National Commission for the Protection  
data sitting in restricted formation on the outcome of the investigation (hereinafter:  
“Restricted Training”) will be limited to processing controlled by CNPD agents  
and carried out by said company.

4. Company A is a limited liability company entered in the register of the  
Commerce et des Sociétés de Luxembourg under number [...] and having its registered office  
at number [...], L - [...] (hereinafter "the controlled"). The controlled [aims to deposit  
goods.]<sup>1</sup>

5. During the aforementioned visit of November 20, 2018 by CNPD agents to  
the controlled premises, it was confirmed to CNPD officials that the controlled uses

1 According to article 2 of its coordinated statutes of [...].

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a video surveillance system and that he installed a geolocation device in [...]

company vehicles.<sup>2</sup>

6. By letter dated November 23, 2018, the controller replied to the report drawn up by CNPD officials.

7. At the end of his investigation, the head of investigation notified the person inspected on 30 August 2019 a statement of objections detailing the shortcomings he considered constituted in this case, and more specifically a non-compliance with the prescribed requirements:

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by article 13 of the GDPR (right to information) with regard to information of all persons concerned with regard to the video surveillance system and concerning the information of employees about the geolocation system;

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by article 5.1.c) of the GDPR (principle of minimization of data) with regard to concerns the video surveillance system;

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by article 5.1.e) of the GDPR (principle of limitation of storage) with regard to concerns the geolocation system;

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by article 32.1 of the GDPR (security of processing) with regard to the system control computer.

8. On October 2, 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 January 29, 2021. In this letter, the head of investigation proposed to the

Restricted training to adopt five corrective measures and to inflict on the controlee a administrative fine of 6,600 euros.

10. By letter dated February 11, 2021, the auditee produced written observations on the additional letter to the statement of objections.

2 See minutes relating to the on-site inspection carried out on November 20, 2018 at of Company A (hereinafter: "the minutes").

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11. The President of the Restricted Formation informed the controller by letter of 29 April 2021 that his case would be registered for the Restricted Panel session of July 7 2021 and that he could attend this session. The controller did not respond to this invitation.

12. During the Restricted Training session of July 7, 2021, the head of investigation presented its oral observations in support of its written observations and responded to the questions asked by the Restricted Panel. The controller was not present during the session.

## II. Place

### II. 1. As to the reasons for the decision

#### II.1.1. As for the CCTV system

##### 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>3</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>3</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>4</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>5</sup>

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 security of the site, as well as

as the protection of property. For example, an incident, in this case a burglary

which occurred on October 2, 2018, was reported to officers.<sup>6</sup>

19. During the said visit, the CNPD agents observed that the fields of vision of the cameras documented by the photos [...] include parts of land surrounding areas that are not part of the property of the controlled.<sup>7</sup>

20. The head of investigation was of the opinion that even if the aforementioned purposes “may find one or more bases of lawfulness under article 6, the surveillance of land surrounding areas is, however, to be considered disproportionate. [...] ” (communication grievances, Ad. A.2.).

21. The auditee for his part explained in his letter of October 2, 2019 that in dated September 23, 2019 the following corrective action has been implemented:

“Reorientation of surveillance cameras where parts of neighboring land

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

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

6 See finding 9.5 of the minutes.

7 See findings 9.9 and 9.10 of the minutes.

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</a></p></div><div data-bbox=)

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fell into the field of vision of these and masking of all areas of parties of surrounding land [...] entering the field of vision of the cameras of

video surveillance. (See photos provided in Annex 5). “The said explanations were reiterated by the controller in his letter of February 11, 2021.

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 their field of vision.<sup>8</sup>

23. She nevertheless admits that depending on the configuration of the premises, it is sometimes impossible to install a camera that would not include in its field of vision a part of the public thoroughfare, surroundings, entrances, accesses and interiors of other buildings. In such a case, it considers that the data controller should put in place masking or blurring techniques to limit the field of view to its property.<sup>9</sup>

24. The Restricted Panel notes that the controller attached to his letter of 2 October 2019 photos showing that he reoriented or masked the fields of vision cameras aimed at neighboring land.<sup>10</sup> However, this modification only took place only after the on-site visit by CNPD officials.

25. In view of the foregoing, it therefore agrees with the finding<sup>11</sup> of the head of investigation that the non-compliance with article 5.1.c) of the GDPR was acquired on the day of the visit CNPD agents on site.

8 See CNPD Guidelines (Point 4.1.), available at: <https://cnpd.public.lue/dossiersthematiques/>

See

Lines

[videosurveillance/necessity-proportionality.html](https://cnpd.public.lu/fr/dossiersthematiques/videosurveillance/necessite-proportionnalite.html).

9

available

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

10 See appendix 3 of the audit letter of October 2, 2019.

11 Statement of Objections, Ad. Ad.2.

guidelines

CNPD

(Point

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

1. On the principles

26. 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 [...]. »

27. 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,

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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;
- (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.

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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. »

28. 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>12</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”).

29. 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>13</sup>

2. In this case

30. With regard to the information of customers, suppliers, service providers services and visitors (hereinafter: “third parties”) and employees with regard to the video surveillance system, the CNPD agents noted during their visit to site that they are informed by signs affixed at the level of the entrance gate near from the guard post, as well as in the parking lot for visitors and staff. These panels contained a poster of a camera, the statement “Establishment under

video surveillance” and the old CNPD sticker was pasted on it. Furthermore, the

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

<sup>13</sup> See EDPS Endorsement Decision 1/2018 of 25 May 2018, available

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head of investigation considered that the "documentation submitted to the CNPD by the letter of 23

November 2018 does not contain sufficient evidence to counter a non-

compliance with the requirements of article 13 of the GDPR. (Statement of Objections, Ad.A.1.).

31. For the above reasons, the head of investigation considered that the conditions of article 13 of the RGD have not been respected and that it is necessary to retain against the checked for non-compliance with the requirements of Article 13 of the GDPR with regard to third parties and employees (statement of objections, Ad.A.1).

32. By letter dated October 2, 2019, the auditee responded to the communication from the grievances from the head of investigation stating that the warning signs have been updated and that on simple request an information notice will be distributed to the public and to visitors.<sup>14</sup> Concerning new employees, it is specified that when signing the employment contract, they are informed about the site's video surveillance system.<sup>15</sup>

33. 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).

34. She also believes 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 collected by means of a system of  
video surveillance. The first level of information (warning sign, note  
information, etc.) should generally include the most important information  
essential, namely the details of the purpose of the processing, the identity of the person responsible for the  
processing, the existence of the rights of data subjects, the information with the most

14 See Appendices 1 and 2 of the audit letter of October 2, 2019.

15 See Appendix 2 of the audit letter of October 2, 2019.

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strong impact on the treatment or any treatment likely to surprise the  
data subjects, as well as a reference to the more detailed information of the  
second level (e.g. via QR code or website address)<sup>16</sup>. the  
second level of information, i.e. all of the information required under  
of 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>.

## 2.1. Information from third parties

35. 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 panels containing a poster of a camera, the mention  
"Establishment under video surveillance" and the old CNPD sticker was stuck

above. The said road signs were affixed at the level of the entrance gate at the guard post and in the parking lot for visitors and staff and all people working on the controlled site would be required to enter and exit through this entrance to the site.<sup>18</sup>

36. She would first like to point out that since the old vignettes were issued by the CNPD under the former authorization regime of the amended law of 2 August 2002 on the protection of individuals with regard to the processing of personal data staff which was repealed by the law of August 1, 2018, they have become obsolete and since the entry into force of the GDPR, other rules in this area are applicable.

Furthermore, the aforementioned panels, in place at the time of the investigation, do not contain either information from the first level of information, nor from the second level of information (see point 35 of this Decision) and therefore do not comply with the conditions of Article 13 GDPR.

16 Cf. WP260 rev 01 (point 38) and EDPS Guidelines 3/2019 on the processing of personal data by video devices, version 2.0, adopted on January 29, 2020 (points 114. and 117.).

17 See WP260 rev. 01 (Item 38.)

18 See finding 9.1 of the minutes.

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37. The Restricted Panel then notes that in its letter of 23 November 2018, the controller has attached a CD-Rom containing a whole series of different documents, such as a form called "personal information" submitted after hiring a new employee, an information notice on data processing of a personal nature in the context of recruitment or even a form for

administrators. However, no document concerns the information of third parties on the processing of personal data carried out by the system of video surveillance.

Thus, the Restricted Panel concurs with the observation of the head of investigation that the documentation submitted to the CNPD by the aforementioned letter "does not contain sufficient evidence allowing to counter a non-compliance with article 13 of the GDPR. (communication of grievances, Ad.A.1.).

38. In its response to the statement of objections of 2 October 2019, the audited clarified that the warning signs have been updated and that on simple request an information leaflet will be distributed to the public and visitors.<sup>19</sup>

The Restricted Panel considers that the panels contain the information of the first level of information and that the second level of information, i.e. the note information available on request from the guardhouse, contains all the information required under Article 13 of the GDPR, subject to a modification of a formal nature: the term "in charge of data protection" must be replaced by the term "data protection officer". Like the coordinates said control delegate were communicated to the CNPD on [...], the Training Restricted assumes that it is indeed only a formal error.

39. By letter dated February 11, 2021, the controller confirmed that he had displayed updated signs put in place after the on-site inspection "on the fence [...] of the site at video-monitored locations" and that the above-mentioned information note is available "free consultation for visitors to the guardhouse. »

<sup>19</sup> See Appendices 1 and 2 of the audit letter of October 2, 2019.

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40. The Restricted Committee nevertheless notes that all the documentation of the first and second level of information was put in place only after the on-site visit CNPD officers.

41. In view of the foregoing, she therefore endorses the opinion of the head of investigation and concludes that at the time of the on-site visit by CNPD officials, Article 13 of the GDPR was not complied with by the control in terms of video surveillance with regard to the third persons.

## 2.2. Employee information

42. With regard to informing employees about the system of video surveillance, the Restricted Panel notes that at the time of the on-site visit by the CNPD officers, they were informed of the video surveillance by the same panels signals than third parties (see points 36 and 37 of this decision).

43. Furthermore, it notes that the controller informed the CNPD agents that the implementation of the video surveillance system would have been discussed at the Joint Committee company and that information relating thereto would have been displayed on a panel information.<sup>20</sup> However, the Restricted Panel has no proof of the posting of such information, on the one hand, and it wishes to specify that the mere information of the Joint works committee does not ensure that the employees of the control had been informed individually regarding the specific elements of Article 13 of the GDPR.

44. The Restricted Panel then notes that in its letter of 23 November 2018, the controller has attached a CD-Rom containing a whole series of different documents, including in particular an information notice on the processing of personal data staff in recruitment. However, that note concerns only the candidates and not the current employees of the auditee and it does not include the processing carried out by the system



video surveillance. Thus, it agrees with the observation of the head of the investigation that the documentation submitted to the CNPD by the aforementioned letter "does not contain evidence sufficient to counter non-compliance with Article 13 of the GDPR. »

(statement of objections, Ad.A.1.)

20 See finding 9.2 of the minutes.

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45. In its response to the statement of objections of 2 October 2019, the audited clarified that the warning signs have been updated and that the information notice, available at the guardhouse for third parties, is attached to the contract hiring of new controlled employees.

Concerning precisely the said panels, as well as the information note, the Training Restreinte would like to refer to its conclusions in point 39 of this decision. By elsewhere, whereas the information of the first level of information is therefore at available to control personnel, it notes that the second level of information, that is to say the aforementioned information note which contains all the information required under Article 13 of the GDPR, is only annexed to employment contracts new employees of the controlled, but not current employees.

46. In his letter of February 11, 2021, the controller did, however, specify that a "Information notice on video surveillance has been drawn up. The staff concerned by the video surveillance is informed. », therefore also including employees current of the controlled. The inspector also specified that a general information notice concerning the protection of personal data has been sent to all employees together with the pay slip of February 2021.

47. The Restricted Committee nevertheless notes that all the documentation of the first and second level of information was put in place only after the on-site visit CNPD officers.

48. In view of the foregoing, she thus endorses the opinion of the head of investigation<sup>21</sup> and concludes that at the time of the on-site visit by CNPD officials, Article 13 of the GDPR was not complied with by the control in terms of video surveillance as far as employees are concerned.

#### II.1.2. As for the geolocation system

##### A. On the breach linked to the principle of limitation of storage

<sup>21</sup> Statement of Objections, Ad.A.1.

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#### 1. On the principles

49. 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 [...]".

50. 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

51. During the on-site visit, it was explained to CNPD officials that the purposes of geolocation are as follows: “the geographical location of vehicles, the provision of responses to customer complaints, provision of evidence of services, invoicing of services, optimal management of the fleet, health and safety of users, monitoring of working time and monitoring of transported goods as well as as the protection of company property (...). »<sup>22</sup>

52. With regard to the retention period of data from the device of geolocation, it appears from the observations of the CNPD agents that the most old data dated from April 10, 2018 (date of installation of the device), i.e. that the data retention period was seven months and 10 days.<sup>23</sup>

53. According to the head of the investigation, the said data retention period exceeded that which was necessary for the achievement of the aforementioned purposes and for which the geolocation device had been put in place. For this reason, he was of the opinion

<sup>22</sup> See finding 8.9 of the minutes.

<sup>23</sup> See finding 8.12 of the minutes.

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that a non-compliance with the requirements of article 5.1.e) of the GDPR was to be retained (see statement of objections, Ad.A.4).

54. By letter dated October 2, 2019, the controller proposed the corrective action following: “Retention of geolocation data for a maximum period two months. “In his letter of February 11, 2021, the controller confirmed that the duration storage of geolocation data has been limited to a maximum period of

two months.

55. The Restricted Committee recalls that it is the responsibility of the controller to determine, according to each specific purpose, a retention period appropriate and necessary to achieve that purpose. Thus, as the system of geolocation set up by the control has several purposes, the durations of conservation are to be individualized for each specific purpose.

56. With regard to the geolocation of employee vehicles, the Training Restricted considers that personal data obtained by the geolocation can in principle only be kept for a period maximum of two months under the aforementioned principle of Article 5.1.e) of the GDPR. However, it considers that if said data is used by the person responsible for the processing for the purposes of proof for the invoicing of the services carried out for its customers, the data necessary for such invoicing may be kept for a duration of one year, provided that it is not possible to provide proof of the services by other means.<sup>24</sup>

57. In the event of an incident, the Restricted Committee is of the opinion that the data may be kept beyond the time limits mentioned above in the context of the transmission of given to competent judicial authorities and competent law enforcement authorities to ascertain or prosecute criminal offences.

58. She would also like to point out that the data obtained by geolocation may also be kept beyond the aforementioned durations, if these have

<sup>24</sup> CNPD guidelines on the geolocation of vehicles made available to employees, point 4.4., available on its website

Internet: <https://cnpd.public.lu/content/dam/cnpd/fr/dossiers->

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been previously made anonymous, i.e. it is no longer possible to make a link  
– direct or indirect – between this data and a specific employee.

59. Finally, if the geolocation device is installed for verification purposes  
working time (when this is the only possible way), the Restricted Training considers  
that the personal data obtained by the geolocation which allow to  
check the working time may nevertheless be kept for a period  
maximum of three years in accordance with the limitation period set out in article 2277 paragraph  
1st in the Civil Code in matters of action for payment of employee compensation.<sup>25</sup>

60. In the present case, it appears from the minutes of the on-site visit by the agents of the  
CNPD that the retention period for geolocation data of seven  
months and 10 days corresponded to the date of installation of the device in question.<sup>26</sup> As  
no documentation submitted by the control to the head of investigation by mail dated 23  
November 2018 does not contain information on setting a retention period  
precise, the Restricted Panel considers that at the time of the on-site visit by the security  
the CNPD, the control had not determined, according to the different specific purposes  
continued by the geolocation device, appropriate retention periods and  
necessary to achieve these purposes.

61. The Restricted Committee notes that in its letter of February 11, 2021, the  
controlled confirmed its comments of October 2, 2019 that the retention period of  
geolocation data was limited to a maximum of two months.

The Restricted Panel nevertheless notes that said retention period has not been

determined only after the on-site visit by CNPD officials.

62. In view of the foregoing, she thus agrees with the opinion of the head of investigation<sup>27</sup> and concludes that at the time of the on-site visit by CNPD officials, Article 5.1.e) of the GDPR was not not respected by the controlled with regard to its geolocation device.

25 CNPD guidelines on the geolocation of vehicles made available to employees, point 4.4., available on its website

Internet: <https://cnpd.public.lu/content/dam/cnpd/fr/dossiers-thematiques/geolocalisation/Lignes-directrices-geolocalisation-vehicules.pdf>.

26 See finding 8.12 of the minutes.

27 Statement of Objections, Ad.A.4.

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

1. On the principles

63. With regard to the principles to be observed with regard to the obligation to inform the persons concerned in accordance with Article 13 of the GDPR, the Restricted Training refers to points 34 and 35 of this decision.

2. In this case

64. During the on-site visit, it was explained to CNPD officials that [...] vehicles are equipped with geolocation devices and that the persons concerned by said geolocation are only the employees of the company. It has moreover been affirmed to the CNPD agents that the employees were informed orally of the installation of the geolocation device in vehicles and that the written communication relating at the meeting of the joint works council of March 21, 2018 which decided on the implementation

of the device would have been published.

65. The head of the investigation considered in this context that the person checked "remains in default to produce any evidence as to the assertion that the persons concerned have been duly informed of the installation of the geolocation device in the company vehicles. Arguing that a written communication relating to the meeting of the joint works council of March 21, 2018 having approved the implementation of the device has actually been published is not likely to irritate this finding. The society did not present any other elements of mitigation in its defence. "From then on, he considered that the non-compliance with article 13 of the GDPR was established on the day of the visit to site (statement of objections, Ad.A.3.).

66. By letter dated October 2, 2019, the inspector specified that in all vehicles equipped with a geolocation device, a warning sticker has been affixed date of September 26, 2019<sup>28</sup> and that new employees are informed during the signature of the employment contract on the presence of geolocation devices in

<sup>28</sup> See appendix 6 of the audit letter of October 2, 2019.

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vehicles and their personal data protection rights

by an information notice on geolocation.<sup>29</sup> In addition, the control has indicated that the paper register containing historical data on the use of vehicles was modified on September 25, 2019 so that before each use vehicles, users are informed in advance via the information notice in matter of geolocation.<sup>30</sup>

67. By letter dated February 11, 2021, the auditee reiterated that an "information notice

on geolocation has been drafted. The personnel concerned by the system of geolocation is informed by consulting this information notice. The register of use of vehicles equipped with these geolocation devices has been modified from in such a way as to record in writing the knowledge by the user of the vehicle of the content of this geolocation information notice. Dashboards of vehicles equipped with the geolocation device have been identified thanks to the affixing with a warning sticker. »

68. The Restricted Committee wishes to specify first of all that Article 12 of the GDPR does not exclude de facto that the information provided for in Articles 13 and 14 may be provided orally by the controller to the data subject. However, the WP260 rev. 01 (paragraph 21) 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 orally, ii) the method by which the identity of the data subject was verified (if applicable, see point 20 above), and (iii) whether the information has been transmitted to the person concerned. »

During the on-site visit by CNPD agents, the inspector specifically mentioned that the persons concerned have been informed orally of the presence of the device geolocation in vehicles.

Nevertheless, the Restricted Panel finds that no documentation submitted by the controlled does not contain proof that its employees have been duly informed,

29 See appendix 4 of the audit letter of October 2, 2019.

30 See appendices 4 and 7 to the audit letter of October 2, 2019.

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before the on-site visit by CNPD officials, orally in accordance with Article 13 GDPR.

69. She then noted that the written communication relating to the committee meeting joint venture of March 21, 2018 having stopped the implementation of the system, which would have been published, contains only the following information: "For security reasons a geolocation system will be installed in vehicles [...] used for travel/transportation. This communication does not even contain the information required for the first level of information (see point 35 of this decision) and therefore does not comply with the conditions of Article 13 of the GDPR.

70. It also appears from the letters of the audit of October 2, 2019 and February 11 2021 that warning stickers have been affixed to the dashboards of vehicles equipped with the geolocation device and that the personnel concerned by the said device is informed by consulting an information notice on geolocation. The register of use of vehicles equipped with these devices geolocation has even been modified so that each person using such a vehicle must record in writing the knowledge of the content of this information notice, which is also annexed to the employment contracts of the new employees of the audit. The Restricted Committee notes that, even if the information notice on aforementioned geolocation contains all the information required under article 13 of the GDPR, it was only put in place and brought to the attention of employees after on-site visit by CNPD officers.

71. In view of the foregoing, it therefore concludes that at the time of the on-site visit CNPD agents, article 13 of the GDPR was not respected by the control in geolocation for employees.

II.1.3. On the breach of the obligation to guarantee appropriate security

1. On the principles

72. Pursuant to Article 32.1 of the GDPR and “taking into account the state of knowledge, the costs of implementation and the nature, scope, context and purposes of the treatment as well as risks, the degree of likelihood and severity of which vary, for the

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rights and freedoms of natural persons, the controller and the processor implement the appropriate technical and organizational measures in order to guarantee a level of security appropriate to the risk including, among other things, as required:

- a) pseudonymization and encryption of personal data;
- b) the means to guarantee the confidentiality, integrity, availability and ongoing resilience of processing systems and services;
- c) means to restore the availability of personal data and access to them within appropriate timeframes in the event of a physical or technical incident;
- (d) a procedure for regularly testing, analyzing and evaluating the effectiveness of technical and organizational measures to ensure the security of the processing. »

2. In this case

73. During the on-site visit, it was confirmed to CNPD officials that the accounts electronic mail individuals are exclusively administered by the

IT manager, that he is the sole holder of the login credentials of all of said accounts, which it also stores on a paper document, and that he can potentially access the content of these mailboxes. In addition, identifiers

connection of email accounts and workstations would never be

renewed.<sup>31</sup>

74. The head of the investigation considered in this context that the “fact that the identifiers of connection of e-mail accounts are never renewed and that these are stored on a paper document kept by the IT manager, do not satisfy to the requirements of article 32 of the aforementioned GDPR. Indeed, the aforementioned practices do not represent the state of the art applicable in the matter and do not make it possible to guarantee a level of security appropriate to the risks run by the data controller. »

(statement of objections, Ad. A.6 and A.7.).

<sup>31</sup> See findings 10.6, 10.7 and 10.8 of the minutes.

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75. By letter dated October 2, 2019, the controller specified that the migration to a new e-mail server is in progress and that with this "new solution for electronic messaging, users will no longer need a password password to access their email accounts. They will be able to access after their Windows authentication (SSO principle). In this way, the IT manager will no longer have the identifiers of the user accounts that will be personal. He further explained that a “password directive (Password Policy) will be put in place to require users to change their passwords every six months” and that the paper document held by the head of the IT department and containing all the login credentials of the email accounts “has been kept in a safe and will be destroyed as soon as the solution [...] of electronic messaging will have been replaced by the new solution of

email. »

76. In his letter of February 11, 2021, the auditee confirmed that the migration to a new e-mail server located on its site at [...] has been made, that a password directive, as mentioned above, has been put in place and that finally the paper document containing all the connection identifiers of the email accounts was destroyed.

77. The Restricted Committee nevertheless notes that, even if due to these modifications the requirements of Article 32.1 of the GDPR would henceforth be complied with, they were only put in place by the control after the on-site visit by the agents of the CNPD. At the time of the visit, email account access policies however, did not meet the minimum requirements necessary for terms of security and did not represent the state of the art applicable in this area.

78. In view of the foregoing, the Restricted Panel thus concludes that at the time of the on-site visit by CNPD agents, article 32.1 of the GDPR was not respected by the control.

## II. 2. On corrective measures and fines

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### 1. Principles

79. In accordance with article 12 of the law of 1 August 2018, the CNPD has the power to adopt all the corrective measures provided for in Article 58.2 of the GDPR:

"(a) notify a controller or processor of the fact that the operations of the envisaged processing are likely to violate the provisions of this Regulation;

(b) call a controller or processor to order when the

processing operations have resulted in a breach of the provisions of this Regulation;

(c) order the controller or processor to comply with requests

submitted by the data subject with a view to exercising their rights under this

these regulations;

d) order the controller or the processor to put the operations of

processing in accordance with the provisions of this Regulation, where applicable, of

specific manner and within a specified time;

(e) order the controller to communicate to the data subject a

personal data breach;

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

g) order the rectification or erasure of personal data or the

limitation of processing pursuant to Articles 16, 17 and 18 and the notification of these

measures to the recipients to whom the personal data have been disclosed

pursuant to Article 17, paragraph 2, and Article 19;

(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;

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(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. »

80. 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.

81. 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 under the sections 25 and 32;

e) any relevant breach previously committed by the controller or the subcontractor ;

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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”.

82. 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.

83. 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.

2. In this case

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## 2.1. Regarding the imposition of an administrative fine

84. In its supplementary letter to the statement of objections of 29 January 2021, the head of the investigation proposed to the Restricted Panel to impose a fine administrative audit for an amount of 6,600 euros.

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

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

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.

As to the failure to have in place the minimum requirements necessary for terms of security in accordance with Article 32.1 of the GDPR, the Restricted Training considers that, faced with the risks represented by data breaches at



personal nature, the European legislator intended to strengthen the obligations data controllers in terms of processing security. So, according to recital 83 of the GDPR and in order to “guarantee the security and prevent any processing carried out in violation of this Regulation, it is important that the

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controller or processor assesses the risks inherent in the treatment and implements measures to mitigate them, such as encryption. These measures should ensure an appropriate level of security, including including confidentiality, taking into account the state of knowledge and the costs of implementation in relation to the risks and the nature of the personal data personnel to be protected. [...] . However, in view of the fact that the e-mail accounts individual electronic devices were exclusively administered by the manager computer, that he was the sole holder of the login credentials of all of said accounts, which he also stored on a document paper, and that the login credentials of e-mail accounts and workstations were never renewed, the Restricted Training considers that the auditee did not measure the importance of data security personal data contained in its computer system.

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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 principles of data minimization and retention limitation, while as obligations of information and security of comparable processing already existed pursuant to Articles 4.1. b) and d), 10.2, 22 and 26 of the law repealed from August 2, 2002 relating to the protection of persons 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 prior authorizations for video surveillance and guidance available on the CNPD website.

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As for the number of data subjects (Article 83.2.a) of the GDPR), the Restricted Training notes that for video surveillance, these are [...]

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employees<sup>32</sup> working on the controlled site, as well as all third parties, i.e. customers, suppliers, service providers and visitors visiting said site.

With regard to the geolocation system, these are the various employees who used the [...] cars equipped with such a system.

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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.

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As for the measures taken by the auditee to mitigate the damage suffered by the data subjects (article 83.2.c) of the GDPR), the Restricted Training takes account of the measures taken by the auditee and refers to Chapter II.2. section 2.2. of this decision for the related explanations.

86. 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.

32 As indicated on the website of the controlled [...].

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87. 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

20 November 2018 (see also point 83 of this decision).

88. 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), 13 and 32.1 of the GDPR.

89. 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, 13 and 32 of the GDPR is blamed for 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.

90. In view of the relevant criteria of Article 83.2 of the GDPR mentioned above, the Restricted Panel considers that the pronouncement of a fine of four thousand six hundred (4,600) euros appears to be effective, proportionate and dissuasive, in accordance with the requirements of Article 83.1 of the GDPR.

## 2.2. About taking corrective action

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

“a) Inform the persons concerned by the video surveillance system

in accordance with the provisions of Article 13 of the GDPR;

b) Inform the persons concerned by the geolocation device

in accordance with the provisions of Article 13 of the GDPR;

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c) Precede a "blurring", redirect or remove the disputed cameras in order to that they no longer capture parts of neighboring land;

d) Limit

the retention period of the geo-positioning data

in accordance with the provisions of Article 5 letter e) of the GDPR;

e)

Implement and

respect security measures

techniques and

Organizational guidelines for managing email passwords

electronically in accordance with the provisions of Article 32 paragraph (1) of the GDPR.

92. As for the corrective measures proposed by the head of investigation and by reference to point 84 of this decision, the Restricted Formation takes into account the steps taken by the control, following the visit of the CNPD agents, in order to comply with the provisions of Articles 5.1.c), e), 13 and 32.1 of the GDPR, as detailed in his letters of November 23, 2018, October 2, 2019 and February 11

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

- As for the corrective measure proposed by the head of investigation mentioned under a) of the point 92 of this Decision concerning the introduction of measures information for people affected by the system of

video surveillance in accordance with the provisions of Article 13 of the GDPR, the controlled specified in its letter of October 2, 2019 concerning the persons third parties that the warning signs have been updated and that on simple request an information notice will be distributed to the public and visitors.<sup>33</sup> By

letter of February 11, 2021, the controller confirmed that he had displayed the updated panels “on the fence [...] of the site in video-monitored places” and that the above-mentioned information note is available “for free consultation for visitors to the guardhouse. »

In said letter of October 2, 2019, the controller further specified that the notice information, available at the guard post for third parties, is

appended to the employment contract for new audited employees. In his

33 See Appendices 1 and 2 of the audit letter of October 2, 2019.

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letter of February 11, 2021, he added that an “information notice on

CCTV was drafted. CCTV personnel

is informed. “, therefore also including the current employees of the controlled. He has

also specified that a general information notice concerning the protection

personal data has been sent to all employees together

with the pay slip of February 2021.

The Restricted Panel considers that the panels contain the information

of the first level of information and that the second level of information, i.e.

say the information note on video surveillance, contains all the

information required under Article 13 of the GDPR, subject to a

formal modification: The term “data protection officer” must be

replaced by the term "data protection officer". Like the

contact details of the said control delegate were communicated to the CNPD on the date

of [...], the Restricted Committee assumes that it is indeed only an error

formal.

Considering the sufficient compliance measures taken by the controlled in this case and point 84 of this decision, the Restricted Panel therefore considers that there is no reason to pronounce the corrective measure proposed by the head of investigation in this regard as set out in point 92 (a) with regard to concerned informing the persons concerned about the system of video surveillance, subject to the aforementioned formal modification.

- As for the corrective measure proposed by the head of investigation mentioned under b) of the point 92 of this Decision concerning the introduction of measures information for people affected by the device of geolocation in accordance with the provisions of Article 13 of the GDPR, the controlled specified in its letters of October 2, 2019 and February 11, 2021 that warning stickers have been affixed to the dashboards of vehicles equipped with the geolocation device and that the personnel concerned by said device is informed by consulting an information notice on geolocation. The register of use of vehicles equipped with these devices geolocation has even been modified so that each person using such vehicle must record in writing the awareness of the content of this

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information notice, which is also annexed to the employment contracts of the new employees of the control.

The Restricted Committee notes that the information notice on  
aforementioned geolocation contains all the information required under  
GDPR Article 13.

Considering the sufficient compliance measures taken by the  
controlled in this case and point 84 of this decision, the Restricted Panel  
therefore considers that there is no reason to pronounce the corrective measure proposed  
by the head of investigation in this regard as set out in point 92 (b) with regard to  
concerned  
informing the persons concerned about the system of  
geolocation.

- As for the corrective measure proposed by the head of investigation mentioned under c) of the  
point 92 of this Decision concerning the obligation to precede a  
"blurring", redirecting or removing the disputed cameras so that they do not  
capture more parts of neighboring land, the Restricted Panel notes that  
appendix 3 of the control letter of October 2, 2019 contains photos  
demonstrating that he has redirected or obscured the cameras' fields of view  
disputes which concerned neighboring land.

Considering the sufficient compliance measures taken by the  
controlled in this case and point 84 of this decision, the Restricted Panel  
therefore considers that there is no reason to pronounce the corrective measure proposed  
by the head of investigation in this regard as set out in point 92 (c).

- As for the corrective measure proposed by the head of investigation mentioned under d) of the  
point 92 of this Decision concerning the obligation to limit the duration of  
retention of geo-positioning data in accordance with the provisions  
of Article 5.1.e) of the GDPR, the Restricted Panel notes that in its letter of  
February 11, 2021, the audited confirmed its comments of October 2, 2019 that the duration



conservation of geolocation data has been limited to a period

maximum of two months.

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Considering the sufficient compliance measures taken by the

controlled in this case and point 84 of this decision, the Restricted Panel

therefore considers that there is no reason to pronounce the corrective measure proposed

by the head of investigation in this regard as set out in point 92 (d).

- As for the corrective measure proposed by the head of investigation mentioned under e) of the

point 92 of this Decision concerning the obligation to implement and

comply with technical and organizational security measures regarding the

managing e-mail passwords in accordance with the

prescribed by Article 32.1 of the GDPR, the Restricted Panel notes that the controller has

specified in its letter of October 2, 2019 that the migration to a new

e-mail server is in progress and that with this "new

solution for electronic messaging, users will no longer need

password to access their email accounts. They

will be able to access it after their Windows authentication (SSO principle). Of this

manner, the IT manager will no longer have the identifiers of the

user accounts which will be personal. He further explained that a “

password directive (Password Policy) will be put in place to impose

users to change their passwords every six months

» and that the paper document held by the head of the IT department and containing

the set of login credentials for email accounts "has been

kept in a safe and will be destroyed as soon as the solution [...] of the e-mail will have been replaced by the new solution of email. »

In his letter of February 11, 2021, the auditee confirmed that the migration to a new e-mail server located on its site at [...] has been carried out, that a password directive, as mentioned above, has been put in place and that finally the paper document containing all the login credentials of email accounts has been destroyed.

Considering the sufficient compliance measures taken by the controlled in this case and point 84 of this decision, the Restricted Panel therefore considers that there is no reason to pronounce the corrective measure proposed by the head of investigation in this regard as set out in point 92 (e).

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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 e), 13 and 32.1 of the GDPR;
- to pronounce against the company an administrative fine of an amount of four thousand six hundred (4,600) euros, with regard to breaches of articles 5.1.c) and e), 13 and 32.1 of the GDPR.

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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