

Decision of the National Commission sitting in restricted formation

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

Deliberation no. 21FR/2021 of June 11, 2021

The National Commission for Data Protection sitting in restricted formation

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

Lemmer, commissioners;

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

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

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

95/46/EC;

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

data protection and the general data protection regime, in particular

its article 41;

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

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

article 10 point 2;

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

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

in particular its article 9;

Considering the following:

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I. Facts and procedure

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

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

2. According to the decision of the Plenary Formation, the investigation carried out by the National Commission for Data Protection (hereinafter: “CNPD”) had as its purpose of verifying compliance with the provisions of 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, where applicable, installed by the four companies in the band.

3. On December 12, 2018, CNPD officials visited in the premises of the ABC group. Given that the minutes relating to the said mission of the on-site investigation only mentions, among the four companies of the ABC group, as responsible for the controlled processing Company A,<sup>2</sup> the decision of the National Commission for data protection sitting in restricted formation on the outcome of the investigation (hereinafter: “Restricted Training”) will be limited to processing controlled by the agents of the CNPD and carried out by Company A.

1 And more specifically with companies A, registered in the Luxembourg Trade and Companies Register under number [...], with registered office at L-[-...]; Company B, registered in the Trade and Companies Register of Luxembourg under number [...], with registered office at L-[-...]; Company C, registered in the commercial register and Luxembourg Companies under number [...], with registered office at L-[-...]; Company D, registered in the register du Commerce et des Sociétés de Luxembourg under number [...], with registered office at L-[-...].

2 See in particular the minutes relating to the on-site inspection mission carried out on 12 December 2018 with Company A.

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4. Company A is a [...] registered in the Trade and Companies Register of  
Luxembourg under number [...], with registered office at L-[...] (hereinafter "the controlled"). the  
controlled is a car dealer in Luxembourg [...].<sup>3</sup>

5. During the aforementioned visit of December 12, 2018 by CNPD agents to  
the controlled premises, it was confirmed to CNPD officials that the controlled uses  
a CCTV system consisting of thirty cameras, but which he did not install  
geolocation device in its vehicles.<sup>4</sup> CNPD officers observed  
that many cameras were no longer operational and this due to the fact that the  
system had become obsolete and should be modernized soon.<sup>5</sup>

6. To his response letter of January 31, 2019 to the minutes drawn up by the  
CNPD officers, the inspector attached a note entitled "Information to workers  
- Protection of privacy" indicating that it will be placed on the internal network in order to  
to be able to update it regularly.

7. At the end of his investigation, the head of investigation notified the person inspected on 16  
September 2019 a statement of objections detailing the shortcomings he considered  
constituted in this case, and more specifically a non-compliance with the requirements prescribed  
by article 13 of the GDPR with regard to employees and customers, suppliers,  
service providers and visitors (hereinafter: "third parties") and a non-  
compliance with the requirements of article 5.1.c) of the GDPR.

8. On October 7, 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 three different corrective measures, as well as to inflict  
to the control an administrative fine of 7,600 euros.

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

4 See minutes relating to the on-site inspection carried out on December 12, 2018 at  
of Company A.

5 Finding 19 of the minutes relating to the on-site inspection carried out on 12 December  
2018 with Company A.

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10. By letter dated August 27, 2020, the auditee produced written observations on  
the additional 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 Restricted Panel session of 27  
November 2020. The controller confirmed his presence at the said meeting dated 12  
November 2020.

12. During the Restricted Training session of November 27, 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.<sup>6</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>6</sup> See CNPD Guidelines (Point 4.), available at: <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>7</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>8</sup>

2. In this case

18. It was explained to CNPD officials that the purposes of setting up the CCTV system are the protection of company assets, securing access, as well as user safety and accident prevention. As for the purpose the monitoring of the various receptions, the controller specified that it would consist of the security of the cash desks located in these areas.<sup>9</sup>

19. During the on-site investigation, the CNPD agents noted that the field of vision from two cameras included parts of the public road, while six cameras allowed the permanent monitoring of the workstations of the employees who were there busy.

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

<sup>7</sup> See Guidelines for themes/videosurveillance/necessite-proportionnalite.html.

<sup>8</sup> See CNPD Guidelines (Point 4.), available at: <https://cnpd.public.lu/fr/dossiers-themes/videosurveillance/necessite-proportionnalite.html>.

<sup>9</sup> See findings 8 and 18 of the minutes relating to the on-site inspection carried out on 12 December 2018 with Company A.  
under: [https://cnpd.public.lu/fr/dossiers-](https://cnpd.public.lu/fr/dossiers-the CNPD, available)

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and that the documentation submitted to the CNPD by letter dated January 31, 2019 did not contain no evidence against this non-compliance.

21. Furthermore, he considered that “permanent monitoring is considered to be disproportionate to the aim sought and constitutes an excessive interference with the sphere privacy of employees occupied at their workstations. In this case, the rights and freedoms employees must prevail over the interests pursued by the employer. »

Regarding the surveillance of a checkout area, he was of the opinion that the “cameras must therefore be configured in such a way that the employees present behind the checkout counters are not targeted. The documentation submitted to the CNPD by letter of January 31, 2019 does not contain any evidence against this non-compliance, nor no explanation as to the possible need for such monitoring measures. »

Thus, the head of investigation held that the non-compliance with Article 5.1.c) of the GDPR was acquired on the day of the on-site visit (statement of objections, Ad. A.4.).

22. In its response letter to the statement of objections of 7 October 2019, the controlled on his side explained that the orientations of the two cameras have been modified in such a way that parts of the public highway are no longer filmed and that no more work would still be subject to permanent surveillance, because all the cameras contentious have been redirected or deactivated.

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

entrances, accesses and interiors of other neighboring buildings possibly entering into their field of vision.<sup>10</sup>

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

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24. 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 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.<sup>11</sup>

25. The Restricted Panel finds that the audit letter of October 7, 2019 contains photos showing that the fields of view of the two disputed cameras have been modified so that they no longer apply to public roads.

26. In view of the foregoing, the Restricted Panel concurs with the finding of Chief of investigation<sup>12</sup> according to which the non-compliance with Article 5.1.c) of the GDPR with regard to the two above-mentioned cameras had been acquired on the day of the site visit by the agents of the CNPD.

27. In addition, Restricted Training would like to point out that employees have the right not to be subject to continuous and permanent surveillance in the workplace.

To achieve the aims pursued, it may seem necessary for a person in charge of the processing to install a CCTV system in the workplace. On the contrary, in respecting the principle of proportionality, the controller must use the



the most protective means of surveillance of the employee's private sphere and, for example, limit the fields of vision of the cameras to the only surface necessary to reach the or the purpose(s) pursued.

28. In its response letter to the statement of objections of 7 October 2019, the controller explained that no more workstations would still be subject to a permanent surveillance, because all of the six disputed cameras have been reoriented or disabled.

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

12 Statement of Objections, Ad. A.3.

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29. In view of the foregoing, the Restricted Panel concurs with the finding of Chief of investigation<sup>13</sup> according to which the non-compliance with Article 5.1.c) of the GDPR concerning the six aforementioned cameras was acquired on the day of the site visit by CNPD agents.

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

1. On the principles

30. 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 [...]. »

31. Article 13 of the GDPR provides the following:

“1. When personal data relating to a person

concerned are collected from this person, the data controller

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

following:

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

representative of the controller;

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;

13 Statement of Objections, Ad. A.4.

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

if they exist; and

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

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

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

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

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

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

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

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

obtained, the following additional information which is necessary to guarantee

fair and transparent treatment:

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

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personal character, as well as on the possible consequences of the non-provision of those data;

- f) the existence of automated decision-making, including profiling, referred to in Article 22, paragraphs 1 and 4, and, at least in such cases, useful information concerning the underlying logic, as well as the significance and intended consequences of such processing for the person concerned.

3. When he intends to carry out further processing of personal data

personal data for a purpose other than that for which the personal data have been collected, the data controller provides the data subject beforehand concerned information about this other purpose and any other information relevant referred to in paragraph 2.

4. Paragraphs 1, 2 and 3 do not apply where and insofar as the data subject already has this information. »

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

33. It should be noted that the European Data Protection Board (hereinafter: “EDPS”), which has replaced the Article 29 Working Party since 25 May 2018, took over and reapproved the documents adopted by the said Group between May 25, 2016 and May 25 2018, as precisely the aforementioned guidelines on transparency.<sup>15</sup>

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

<sup>15</sup> See EDPS Endorsement Decision 1/2018 of 25 May 2018, available [https://edpb.europa.eu/sites/edpb/files/files/news/endorsement\\_of\\_wp29\\_documents\\_en\\_0.pdf](https://edpb.europa.eu/sites/edpb/files/files/news/endorsement_of_wp29_documents_en_0.pdf).

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under :

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2. In this case

34. With regard to the information of third parties about the system of

video surveillance, the head of the investigation noted that the pictogram composed of a symbol of a video camera and bearing the words "Local under video surveillance" did not contain the elements required by article 13.1 and 2 of the GDPR (see communication of grievances, page 2, Ad.A.1.). He also considered that the audit letter of January 31 2019 did not contain any evidence against this non-compliance, so it held against the controlled a non-compliance with the prescriptions of article 13 of the GDPR as far as third parties are concerned.

35. With regard to informing employees about the system of video surveillance, the head of the investigation noted that the notice entitled "Information to workers – Protection of privacy", sent by the control by post of 31 January 2019, did not contain sufficient evidence to counter a non-compliance with the requirements of article 13 with regard to employees (see statement of objections, page 3 Ad.A.2).

36. To the aforementioned letter of January 31, 2019, the inspector indeed attached a note entitled "Information to workers — Protection of privacy" indicating that it will be placed on the internal network in order to be able to update it regularly.

37. By letter dated October 7, 2019, the inspector sent to the head of the investigation photos of a new MSDS posted inside and outside the building of the controlled.

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

39. The Restricted Committee notes that during the on-site visit by the agents of the CNPD, third parties were informed of the presence of the

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video surveillance by a pictogram composed of a symbol of a video camera and bearing the words "Local under video surveillance".

40. With regard to the employees, the Restricted Training noted that during the visit on site by CNPD agents, the latter were informed of the presence of the video surveillance system by the same pictogram consisting of a symbol of a video-camera and bearing the words "Local under video surveillance". Furthermore, by letter of January 31, 2019, the control sent to the head of investigation a note entitled "Information to workers - Protection of privacy" indicating that it will be placed on the internal network in order to be able to update it regularly.

41. The Restricted Committee considers in this context that a multi-pronged approach levels to communicate transparency information to people concerned can be used in an offline or non-digital context, i.e. in a real environment such as personal data collected by means of a video surveillance system. The first level of information should generally include the most essential information, namely the details of the purpose of the processing, the identity of the controller and the existence of rights of the data subjects, as well as the information having the greatest impact on the processing or any processing that may surprise data subjects.<sup>16</sup> The second level of information, i.e. all the information required at the under Article 13 of the GDPR, could be provided or made available by other means,

such as a copy of the privacy policy emailed to

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

non-salaried third parties.<sup>17</sup>

42. The Restricted Panel notes, however, that the pictogram in place during

the site visit did not even contain the required elements of the first level

information whether for employees or non-employee third parties. For this

concerning the note entitled "Information to workers - Protection of privacy",

the Restricted Training considers that it did not contain all the required elements

<sup>16</sup> See WP 260 rev.01 and EDPS Guidelines 3/2019 on the processing of personal data

by video devices, version 2.0, adopted on January 29, 2020.

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

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by article 13.1 and 2 of the GDPR, especially since at the time of the on-site visit by the

CNPD agents, the employees were not yet in possession of the said note.

43. 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

44. 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;
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- g) order the rectification or erasure of personal data or the limitation of processing pursuant to Articles 16, 17 and 18 and the notification of these measures to the recipients to whom the personal data have been disclosed pursuant to Article 17, paragraph 2, and Article 19;
- (h) withdraw a certification or order the certification body to withdraw a certification issued pursuant to Articles 42 and 43, or order the body to certification not to issue certification if the requirements applicable to the certification are not or no longer satisfied;
- (i) impose an administrative penalty under section 83, in addition to or in addition to instead of the measures referred to in this paragraph, depending on the characteristics specific to each case;



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

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

46. 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;

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c) any action taken by the controller or processor to mitigate the damage suffered by the persons concerned;

d) the degree of responsibility of the controller or processor, account given the technical and organizational measures they have implemented pursuant to sections 25 and 32;

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

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

and to mitigate any negative effects;

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

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

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

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

ordered against the controller or processor concerned for the

same object, compliance with these measures;

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

certification mechanisms approved under Article 42; and

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

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

indirectly, as a result of the breach".

47. 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.

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48. Nevertheless, the steps taken by the control to put itself in

compliance with the GDPR during the investigation process or to remedy the

shortcomings noted by the head of investigation in the statement of objections, are taken

taken into account by the Restricted Training in the context of any corrective measures

to pronounce.

2. In this case

2.1. Regarding the imposition of an administrative fine

49. In its supplementary letter to the statement of objections of 3 August 2020, the head of investigation proposed to the Restricted Panel to impose a fine administrative audit for an amount of 7,600 euros.

50. In his response to said additional letter of August 27, 2020, the audited referred to its response dated October 7, 2019 in which it listed the various measures taken to meet the requirements of the GDPR and the grievances set out by the head of investigation in mid-September 2019.

51. 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.

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As regards the failure 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

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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.

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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 the obligations to respect the

principles of conservation minimization and limitation, as well as a

comparable information obligation already existed pursuant to Articles 4.1.

a) and 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

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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.

52. 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.

53. 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 6 March 2019 (see also point 47 of this decision).

54. 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.

55. 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.

56. 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 7,600 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

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

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“(a) Order the person in charge of the supplement treatment measures information intended for persons concerned by video surveillance, in accordance with the provisions of Article 13, paragraphs (1) and (2) of the GDPR in indicating in particular the identity of the data controller, the purposes of the processing and its legal basis, the categories of data processed, the interests

legitimate interests pursued by the control, the recipients, the retention period of the data as well as the indication of the rights of the person and the manner of exercise ;

b) Order the controller to only process data

relevant, adequate and limited to what is necessary in relation to the purposes of protection of property and securing access and, in particular, adapting the video device so as not to film the employees on their workstation and the way public, for example by deleting or reorienting the cameras called C4

[...], C13 [...], C14 [...], C15 [...], C16 [...], C7 [...], C10 [...] and C12 [...];

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

58. In its response letter of August 27, 2020 to the additional letter to the statement of objections, the controller referred to its reply dated 7 October 2019 in which he had listed with supporting photographs the various measurements carried out on their own initiative in less than fifteen working days in order to meet the requirements of the GDPR and the grievances set out by the CNPD in mid-September 2019.

59. As for the corrective measures proposed by the head of investigation and by reference to point 48 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 January 31, 2019, October 7, 2019 and August 27, 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 has developed and displayed inside and outside of

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its premises with new pictograms and it has made available to employees on its  
intranet a note entitled “Information to employees – Protection of privacy”.

The mail of October 7, 2019 from the control contains a photo of the new  
pictogram, as well as a copy of the aforementioned note.

With regard to the information of third parties, the Restricted Training  
considers that the aforementioned pictogram does not contain all the information  
required by Article 13 of the GDPR, in particular the precise legal basis for the  
video surveillance, the existence of the right of rectification and erasure, as well as the  
right to object to processing.

With regard to employee information, Restricted Training considers  
that the aforementioned pictogram, combined with the aforementioned information note, does not  
do not contain all the information required by Article 13 of the GDPR,  
in particular the recipients and the precise legal basis for the video surveillance.

In consideration of the compliance measures taken by the control in  
case and point 48 of this decision, the Restricted Panel considers  
as soon as it is necessary to pronounce the corrective measure proposed by the head  
investigation under a).

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As for the obligation to only process data that is relevant, adequate and  
limited to what is necessary with regard to the purposes of protecting property and  
securing access and, in particular, adapting the video device so as not to  
not film employees at their workstations and public roads, the controller has



explained in its reply letter to the statement of objections of 7 October 2019 that the orientations of two cameras (supporting documents submitted) were modified in such a way as to no longer film parts of the public highway and that no longer no workstation would still be subject to permanent surveillance, because all of the disputed cameras have been reoriented or deactivated (documents in support paid). In view of the compliance measures taken by the controlled in this case and point 48 of this decision, the Panel Restreinte therefore considers that there is no need to pronounce the measure correction proposed by the head of investigation under b).

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As for the removal of cameras that are out of order, the controlled claimed in its August 27, 2020 letter that no "out-of-state" cameras of operation" is installed within its premises. In consideration of compliance measures taken by the audited in this case and point 48 of this decision, the Restricted Panel therefore considers that there is no appropriate to pronounce the corrective measure proposed by the head of investigation under c).

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

- to retain the breaches of Articles 5.1.c) and 13 of the GDPR;
- impose an administrative fine on Company A in the amount of seven thousand six hundred euros (7,600 euros), with regard to breaches of the articles 5.1.c) and 13 of the GDPR;

- issue against Company A an injunction to bring the

processing with the provisions of Article 13 of the GDPR, within two months

following notification of the decision of the Restricted Committee, the supporting documents

in compliance, to be sent to the Restricted Training, at the latest, within this period;

and especially :

1. inform non-employee third parties in a clear and complete manner,

in accordance with the provisions of Article 13 of the GDPR, in particular by providing

third parties information relating to the precise legal basis for the

video surveillance, the existence of the right of rectification and erasure, as well as the right

to oppose the processing;

2. individually inform employees in a clear and complete manner, in accordance with the

provisions of Article 13 of the GDPR, in particular by providing employees with a

information relating to the recipients and

the base

precise legal

the

video surveillance.

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Thus decided in Belvaux on June 11, 2021.

For the National Data Protection Commission sitting in formation

restraint

Tine A. Larsen

Thierry Lallemand

Marc Lemmer

President

Commissioner

Commissioner

Indication of remedies

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

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