

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

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

Deliberation No. 33FR/2021 of August 5, 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 January 14, 2020, the National Commission

for data protection sitting in plenary session (hereafter: “Formation Plenary”) had decided to open an investigation with Company A on the basis of 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 monitoring the application of and compliance with the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of persons with regard to the processing of personal data and to the free movement of this data, and repealing Directive 95/46/EC (hereinafter: “GDPR”) and of the law of August 1, 2018, and more specifically the installation of surveillance cameras.

3. On January 30, 2020, CNPD agents carried out a visit to the premises of Company A<sup>1</sup>. The decision of the National Commission for the Protection of data sitting in restricted formation on the outcome of the investigation (hereinafter: “Formation Restricted”) will be limited to processing controlled by CNPD agents.

4. Company A is a company [...] registered in the Trade and Luxembourg companies under number [...], with registered office at L-[...], [...] (hereinafter: the “control”). The object of the audit “has [various completion works]. [...]”<sup>2</sup>

5. During the aforementioned visit, it was confirmed to CNPD officials that the controlled uses a video surveillance system.<sup>3</sup> CNPD officials found that this system is composed of three “fixed” type cameras, of which two cameras are installed

<sup>1</sup> See Minutes no. [...] relating to the on-site visit carried out on January 30, 2020 to Company A (hereinafter: “Minutes no. [...]").

<sup>2</sup> Cf. Coordinated statutes of [...], Article [...].

3 See Minutes no. [...], item 6.

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inside the controlled establishment and a camera is installed outside, the back of the building.<sup>4</sup>

6. The controller reacted to the report drawn up by the CNPD agents by email of March 23, 2020, and sent an additional document to the CNPD by email of April 6 2020.

7. At the end of his investigation, the head of investigation notified the person inspected on the date of the 31 August 2020 and 4 September 2020 statements of objections the content of which was identical detailing the shortcomings that he considered constituted in this case, and more precisely a non-compliance with the requirements prescribed by article 13.1 and 2 of the GDPR with regard to the persons concerned, i.e. employees and persons non-employees, namely customers, suppliers, service providers and visitors (hereinafter: "third parties"), non-compliance with the requirements of Article 5.1.c) of the GDPR, and non-compliance with the requirements of article 32.1 of the GDPR. Both identical statements of objections are explained by the fact that the head of investigation feared that the post office had lost the first shipment.

8. By letter dated September 29, 2020, sent to the CNPD only by post dated February 4, 2021, received on February 15, 2021, the audit formulated its observations on the statement of objections.

9. The president of the Restricted Formation informed the controller by mail of the January 19, 2021 that his case would be registered for the session of the Restricted Panel of February 26, 2021. The controller confirmed his presence at the said session by letter from

February 4, 2021.

10. During this meeting, the head of the investigation and the controller, represented by [...], lawyer, replacing [...], lawyer at the Court, presented their oral observations in support of their written observations and answered the questions posed by the Restricted Training. As the aforementioned letter from the audit of September 29, 2020 is not not reach the head of the investigation, he was given a two-week period to analyze said letter and to decide if he wants, in accordance with the provisions set out in article 8

4 See Minutes no. [...], point 8, finding 4.

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point 3° of the CNPD's regulations relating to the investigation procedure, respond to it. Control spoke last.

11. By letter dated March 31, 2021, the President of the Restricted Committee informed the control that the head of investigation informed the Restricted Training by email of March 5 2021 of its decision not to reply to the letter of the control of September 29, 2020.

From then on, the Restricted Panel took the matter under advisement.

## II. Place

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

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

##### 1. On the principles

12. According to Article 12.1 of the GDPR, the “controller shall take appropriate measures to provide any information referred to in Articles 13 and 14 as well as to carry out any communication under Articles 15 to 22 and Article 34 in which relates to the processing to the data subject in a concise, transparent,

understandable easily accessible, in clear and simple terms [...]. The information is provided in writing or by other means including, when it is appropriate, electronically. When the data subject so requests, the information may be provided orally, provided that the identity of the person concerned is demonstrated by other means. »

13. 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;

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- c) the purposes of the processing for which the personal data are intended as well as the legal basis for the processing;
- d) where the processing is based on Article 6(1)(f), the legitimate interests sued by the controller or by a third party;
- e) the recipients or categories of recipients of the personal data, if they exist; and
- (f) where applicable, the fact that the controller intends to carry out a transfer of personal data to a third country or to an organization international community, and the existence or absence of an adequacy decision issued by the Commission or, in the case of transfers referred to in Article 46 or 47, or Article 49,

paragraph 1, second subparagraph, the reference to the appropriate or suitable safeguards and the means of obtaining a copy or where they have been made available;

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

- a) the retention period of the personal data or, where this is not possible, the criteria used to determine this duration;
- b) the existence of the right to request from the controller access to the data to personal character, the rectification or erasure of these, or a limitation of the processing relating to the data subject, or the right to oppose the processing and right to data portability;
- c) where the processing is based on point (a) of Article 6(1) or on Article 9, paragraph 2(a), the existence of the right to withdraw consent at any time, without affecting the lawfulness of the processing based on the consent made before the withdrawal thereof;
- d) the right to lodge a complaint with a supervisory authority;

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(e) information on whether the requirement to provide data to personal nature has a regulatory or contractual nature or if it conditions the conclusion of a contract and whether the data subject is obliged to provide the data to personal character, as well as on the possible consequences of the non-provision of those data ;

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

3. When he intends to carry out further processing of personal data personal data for a purpose other than that for which the personal data have been collected, the data controller provides the data subject beforehand concerned information about this other purpose and any other information relevant referred to in paragraph 2.

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

14. 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>5</sup> Said 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").

15. 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>6</sup>

<sup>5</sup> See in particular Articles 5.1.a) and 12 of the GDPR, see also recital (39) of the GDPR.

<sup>6</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

16. During the on-site visit, CNPD officials noted that “the presence of the video surveillance system is not reported to the persons concerned (customers visitors, suppliers). No signaling pictograms, posters or notices information could not be shown to the CNPD agents”.<sup>7</sup> In the communication of grievances, the head of the investigation therefore holds that “it emerges from these findings that the person in charge of the processing does not comply with its obligation to inform the data subjects. »<sup>8</sup>

17. With regard to the information of third parties, he notes that “the controlled mentioned in his letter of March 23, 2020, not having been aware that he had to signal the presence of the video surveillance system”.<sup>9</sup>

18. With regard to informing employees, he notes that the auditee “has explained to CNPD officials during the on-site visit that the staff had been informed orally of the presence of the video surveillance device. <sup>10</sup> However, he observes that such observation, without presentation of supporting evidence “does not make it possible to remove the observation non-observance of the right to information. »<sup>11</sup>

19. Thus, the head of investigation holds that the conditions of article 13 of the GDPR have not not been respected. He is of the opinion that the controller failed in his obligation to inform the data subjects arising from Article 13.1 and 2 of the GDPR.<sup>12</sup>

20. In his letter of September 29, 2020, the controller explains that he has meanwhile proceeded “to the installation of signaling pictograms, and to the display of a note information to the public (exhibits n°1 and n°2 Me REISCH)”, and “to the publishing and transmission of a note intended for the employees, with a view to informing them in writing of the existence of the said measure (Exhibit No. 3 Me REISCH). He also mentions that



the oral information of the employees of the presence of the video surveillance device would be

7 See Minutes no. [...], point 8, finding 1.

8 See Statement of Objections, page 7, Ad.B.1.), point 14.

9 See Statement of Objections, page 7, Ad.B.1.), point 14.a.

10 See Statement of Objections, page 7, Ad.B.1.), point 14.b.

11 See Statement of Objections, page 7, Ad.B.1.), point 14.b.

12 See Statement of Objections, page 7, Ad.B.1.), point 15.

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"accredited" by the establishment of a testimony certificate without paying  
the said certificate.

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

22. Furthermore, it would like to point out that Article 12 of the GDPR does not de facto exclude  
that the information provided for in Articles 13 and 14 of the GDPR can be provided  
orally by the controller to the data subject. However, the group  
of Labor Article 29 insists that in this case, the data controller should ensure  
"to keep a written record, and ensure that he is able to prove it (for the purposes of  
compliance with the accountability requirement), of: i) the request for information by

oral, ii) the method by which the identity of the data subject was verified (if applicable, see point 20 above), and (iii) the fact that the information was transmitted to the person concerned. »<sup>14</sup>

23. With regard to the information of third parties, the Training Restreinte notes that during the on-site visit by CNPD agents, these people were not informed of the presence of the video surveillance system.

24. With regard to the information of employees, it notes that no documentation submitted by the auditee does not contain evidence that these persons have been duly informed, before the on-site visit, orally in accordance with GDPR Article 13.

25. The Restricted Committee also considers that a multi-level approach to communicate transparency information to data subjects may be used in an offline or non-digital context, i.e. in a real environment such as personal data collected

<sup>13</sup> See WP 260 rev.01, point 33.

<sup>14</sup> WP 260 rev.01, point 21.

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through a CCTV 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 the rights of data subjects, as well as the information having the greatest impact on the processing or any processing that may surprise data subjects.<sup>15</sup> The second level of information, i.e. all 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 regarding third parties.<sup>16</sup> It is important to note that first-level information (sign, notice, etc.) must clearly refer to the information more detailed information on the second level which includes all the mandatory information required under Article 13 of the GDPR.<sup>17</sup>

26. It notes, however, that in the present case, neither the signaling pictogram nor the information note intended for the public, nor the information note intended for employees contain all the elements required by article 13.1 and 2 of the GDPR.

27. In view of the foregoing, the Restricted Panel concurs with the opinion of Chief of investigation and concludes that at the time of the on-site visit by CNPD agents, Article 13 of the GDPR was not respected by the control with regard to third parties, nor with regard to employees.

15 See WP 260 rev.01 and EDPS Guidelines 3/2019 on the processing of personal data personal character by video devices, version 2.0, adopted on January 29, 2020 (hereinafter: "Guidelines 3/2019").

16 See WP260 rev.01, point 38.

17 CF. Guidelines 3/2019, points 114. and 117.

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

1. On the principles

28. 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)”.

29. 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>18</sup>

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

be “collected for specific, explicit and legitimate purposes, and not be further processed in a manner incompatible with those purposes; [...] (limitation of purposes)”.

31. 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>19</sup>

32. 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>20</sup>

18 See CNPD guidelines, point 4., available at: <https://cnpd.public.lu/fr/dossiers-themes/videosurveillance/necessite-proportionnalite.html>.

19 See CNPD Guidelines, point 2., available at: <https://cnpd.public.lu/fr/dossiers-themes/videosurveillance/purpose.html>

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

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2. In this case

33. During the on-site visit, it was explained to CNPD officials that the purposes of the implementation of the video surveillance system are the protection of the property of the company as well as securing access.<sup>21</sup>

34. They found that the field of view of one of the cameras, namely the camera "[camera 1]", allowed the permanent surveillance of the workstation of the secretary.<sup>22</sup>

35. In this context, the head of investigation considered that "surveillance in permanence of employees on their workstations, such as permanent monitoring of the secretary's workstation noted during the on-site visit should be considered as disproportionate. Indeed, such permanent monitoring can create a significant psychological pressure for employees who feel and know they are observed, especially since the monitoring measures persist over time. The fact that the employees concerned do not have a means of avoiding from time to time of this monitoring is also likely to aggravate this pressure. Such a permanent surveillance is therefore considered disproportionate to the purposes sought and constitutes an excessive interference with the private sphere of the employees employed at their workstations. In this case, the fundamental rights and freedoms of employees must prevail over the interests pursued by the employer. »<sup>23</sup>

36. He also maintains that this observation is not disturbed by the assertion of the controller in his email of March 23, 2020 that "the CCTV system would not have the purpose of monitoring employees".<sup>24</sup>

37. In his email of March 23, 2020, the controller specified that he redirected the said camera so that the secretary's workstation is no longer in the field of vision. As for this measure, the head of the investigation recalls that "even if the measure of

21 See Minutes no. [...], point 8, finding 12.

22 See Minutes no. [...], point 8, finding 8.

23 See Statement of Objections, page 8, Ad.B.2.), point 17.

24 See Statement of Objections, page 8, Ad.B.2.), point 18.

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mitigation after the on-site visit may be taken into account as an element

mitigating, the non-compliance was established on the day of the site visit. »25

38. Thus, the head of investigation holds that the conditions of article 5.1.c) of the GDPR  
have not been respected. He concludes that the auditee breached his obligation under  
of article 5.1.c) of the GDPR.<sup>26</sup>

39. In his letter of September 29, 2020, the controller explains that the  
positioning of the cameras would not be "attributable to any action  
voluntary" of the controlled. No instruction to this effect was given to the professional  
who installed the CCTV system. The positioning of the cameras would have  
fact has been modified by the service provider responsible for decorating the controlled premises. Of the  
testimonial certificates of service providers employed by the auditee are  
paid in support of these claims. The Restricted Committee notes, however, that these  
arguments are not such as to irritate the finding that during the on-site inspection the  
field of vision of one of the cameras allowed permanent monitoring of the station  
work of the secretary.

40. La Formation Restreinte would like to point out that employees have the right not to  
be subject to continuous and permanent supervision in the workplace. To reach  
the purposes pursued, it may seem necessary for a data controller

installing a CCTV system in the workplace. However, to respect the principle of proportionality, the controller must use the means of most protective of the employee's private sphere and, for example, limit the fields of vision of the cameras to the only surface necessary to reach the purpose(s) pursued.

41. With regard to the permanent surveillance of the workstation of the secretary of the controlled, she notes that the controlled has not adapted the field of vision of the camera in question only after the on-site visit by CNPD officials. A photograph documenting this adaptation was attached to his email of April 6, 2020.

25 See Statement of Objections, page 8, Ad.B.2.), point 19.

26 See Statement of Objections, page 5, Ad.B.2.), point 20.

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42. In view of the foregoing, the Restricted Panel agrees with the conclusion of Chief of investigation and concludes that at the time of the on-site visit by CNPD agents, the article 5.1.c) of the GDPR was not respected by the controlled.

C. On the breach of the obligation to guarantee appropriate security

1. On the principles

43. 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 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

44. The head of investigation examined the aspect related to the security of access to data included in the CCTV system. According to the Statement of Objections "it was found during the on-site visit that access to the operating software of the device video surveillance is not secured by any technical means, so that any employee or third parties would be able to view its content, copy it or delete it. However, in pursuant to the aforementioned provision, any controller is, among other things, obliged to secure software processing personal data, in particular through measures

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logical access, such as setting up individual user accounts with strong passwords. »<sup>27</sup>

45. The head of investigation also notes that the aforementioned finding is not disturbed by the argument invoked in the controlled email of March 23, 2020 that he "did not know that a such an obligation was incumbent on him",<sup>28</sup> and holds against the inspected party "a non-compliance to the measures prescribed by Article 32, paragraph (1) of the GDPR which was acquired at the most late on the day of the site visit. »<sup>29</sup>



46. In his letter of September 29, 2020, the auditee specified that "the software operation of the video surveillance device is secured by the prior referral of a password, so that no employee or third party would be able to view their content, to copy it or to view it (Exhibit No. 4 Mr. REISCH). »

47. The Restricted Committee notes that on the day of the on-site visit, the measures technical and organizational measures taken to secure access to the software video surveillance did not meet the minimum necessary requirements in terms of security, i.e. having in place individual accounts by means of an identifier and a password for persons authorized to access it within the framework of the accomplishment of their missions. In addition, no documentation submitted by the checked, including the aforementioned Exhibit 4, does not contain evidence that no person not authorized cannot access the video surveillance system.

In view of the foregoing, the Restricted Panel agrees with the head of investigation and concludes that at the time of the on-site visit by CNPD officials, article 32.1 of the GDPR had not been been complied with by the controller.

27 See Statement of Objections, page 9, Ad.B.3.), point 22.

28 See Statement of Objections, page 9, Ad.B.3.), point 23.

29 See Statement of Objections, page 9, Ad.B.3.), point 24.

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## II. 2. On corrective measures and fines

### 1. On the principles

48. 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. »

49. 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.

50. 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 ;

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;

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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 violation. »

51. 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.

52. 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

2.1 Regarding the imposition of an administrative fine

53. In the Statement of Objections, the Head of Investigation proposes to the Panel

Restricted to impose an administrative fine to the control of an amount of one thousand (1,000)

euros.<sup>30</sup>

54. In his letter of September 29, 2020, the controller requested that this fine

administrative is not applied to him "with regard to good faith [...], and the

<sup>30</sup> See Statement of Objections, page 11, Ad.C., point 29.

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regularization of the grievance relating to information to the public, and more broadly of the consideration

take into account all corrective measures in a proactive manner".

55. 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:

- As to the nature and seriousness of the violation (Article 83.2.a) of the GDPR), it is

that with regard to breaches of Article 5.1.c) of the GDPR, they are

constituting breaches of a fundamental principle of the GDPR (and the right to

data protection in general), namely the principle of minimization of

data 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. To note that at the time of the site visit by the CNPD agents, no pictogram signage, nor any poster or information notice could be shown to CNPD officials. Thus, neither employees nor third parties were informed of video surveillance in accordance with Article 13 of the GDPR. As for 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 with regard to the security of processing. 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 controller of the processing or the processor assesses the risks inherent in the processing and puts

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implement measures to mitigate them, such as encryption. These measures should ensure an appropriate level of security, including confidentiality, taking into account the state of knowledge and the costs of implementation by in relation to the risks and the nature of the personal data to be protected.

[...]" In this case, it was found that at the time of the on-site visit, access to the operating software of the video-surveillance device was not secured by any technical means and that any employee or any third party would have been able to

view its content, copy it or delete it.<sup>31</sup> Restricted Training

believes that the auditee did not measure the importance of data security

personal information contained in the video surveillance system.

- 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 site visit. She recalls here that two years have

separated the entry into force of the GDPR from its entry into application to allow

controllers to comply with the obligations that they

are incumbent. All the more, an obligation to respect the principle of minimization,

as well as a comparable information obligation already existed in application

Articles 4.1.b), 10.2 and 26 of the repealed law of 2 August 2002 relating to the

protection of individuals with regard to the processing of personal data

personal. Guidance relating to the principles and obligations provided for in said

law was available from the CNPD. At the time of the site visit, it was

explained to CNPD agents that the CCTV system had been installed

during the year 2017,<sup>32</sup> which the auditee confirmed in his email from

March 23, 2020.

- As for the number of data subjects (Article 83.2.a) of the GDPR), the

Restricted Training notes that these are all employees working in the

premises of the controlled, as well as all third parties visiting the said

local.

- As to whether the breaches were committed deliberately

or not (by negligence) (article 83.2.b) of the GDPR), the Restricted Panel reminds

<sup>31</sup> See Statement of Objections, page 9, Ad.B.3.), point 22.

<sup>32</sup> See Minutes no. [...], point 8, finding 3.

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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, it takes into account the assertion of the head of the investigation that

"the only disputed camera with the purpose of monitoring access to the building

and that the secretary was in his field of vision only so

incident and that no element of the investigation made it possible to detect any

the company's bad faith in this regard. 33 She is of the view that the facts and

breaches observed do not reflect a deliberate intention to violate the

GDPR in the head of the control.

- As to the degree of cooperation established with the supervisory authority (Article 83.2.f) of the GDPR), the Restricted Training takes into account the assertion of the head of investigation that the co-operation of the auditee throughout the investigation was good, as well as than its willingness to comply with the law as soon as possible.<sup>34</sup>

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

56. 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.

57. It also notes that while several measures have been put in place by the control in order to remedy in whole or in part certain shortcomings, these have only been



adopted only following the control of CNPD agents on January 30, 2020 (see

also point 52. of this decision).

33 See Statement of Objections, page 11, Ad.C., point 28.b.

34 See Statement of Objections, page 11, Ad.C., point 28.c.

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58. 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), 13 and 32.1 of the GDPR.

59. With regard to the amount of the administrative fine, it recalls that the  
paragraph 3 of Article 83 of the GDPR provides that in the event of multiple infringements, such as  
this is the case here, the total amount of the fine may not exceed the amount set for  
the most serious violation. To the extent that a breach of Articles 5, 13 and 32 of the  
GDPR is blamed on the controlled, the maximum amount of the fine that can be withheld  
amounts to 20 million euros or 4% of worldwide annual turnover, whichever is the greater  
high being retained.

60. In view of the relevant criteria of Article 83.2 of the GDPR mentioned above, the  
Restricted Formation considers that the pronouncement of a fine of one thousand (1,000) euros  
appears to be both effective, proportionate and dissuasive, in accordance with the requirements of  
GDPR Article 83.1.

## 2.2 Regarding the taking of corrective measures

61. In the statement of objections of 4 September 2020 the head of investigation  
proposes to the Restricted Formation to adopt the following corrective measures:

"which should be implemented within 1 month, under penalty of

up to 50 EUR per day of delay:

has. Order the data controller to put in place information measures

intended for persons concerned by video surveillance, in accordance with the

provisions of Article 13, paragraphs (1) and (2) of the GDPR by informing in particular

the identity of the controller, the purposes of the processing and its legal basis, the

categories of data processed, the legitimate interests pursued by the controller, the

recipients, the retention period of the data as well as the indication of the rights of the

person and how to exercise them;

b. Order the controller to process only relevant data,

adequate and limited to what is necessary with regard to the purposes of protecting the

goods and securing access and, in particular, adapting the video system

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(respectively maintain the adaptation already carried out) in order not to film the employees on

their workstation, for example by deleting or reorienting the cameras.

vs. Order the controller to take all security measures in the

context of the use of the operating software of the video surveillance device, in particular

(i) to define authorizations to access the video streams only for people to

which it is strictly necessary for the accomplishment of their missions and (ii)

create individual accounts using a username and password for

persons authorized above. »35

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

reference to point 52 of this decision, the Restricted Formation takes into account

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

in order to comply with the provisions of articles 5.1.c), 13 and 32.1 of the GDPR, as detailed in his email of March 23, 2020 and his letter of September 29, 2020. More in particular, it takes note of the following facts, which have been confirmed by the audited during the meeting of February 26, 2021:

- With regard to the implementation of information measures intended for persons third parties involved in the video surveillance, in accordance with the provisions of Article 13.1 and 2 of the GDPR, the controlled person maintains that he displayed on his premises "Camera surveillance" pictograms as well as an "information note to the audience ". This is demonstrated by photographs attached to his letter of September 29, 2020.

The Restricted Panel observes that the pictograms, combined with the note information intended for the public do not contain all the information required by Article 13 of the GDPR.

Thus, the basis of lawfulness (Article 13.1 c) of the GDPR) and the right to introduce a complaint to the CNPD (article 13.2 d) of the GDPR) are not mentioned and the rights of data subjects (Article 13.2b) of the GDPR) are not specified in detail.

35 See Statement of Objections, page 10, Ad.C., point 26.

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Furthermore, it is noted that the information provided by the controller does not fulfill neither the conditions required for the first level of information, nor those for the second level of information (see point 25).

With regard to the implementation of information measures intended for employees

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

and 2 of the GDPR, the controller maintains that in addition to the pictograms and the note information intended for the public displayed on its premises, it edited and transmitted to employees a "note intended for employees". He attaches a photograph to his letter of September 29, 2020 which shows the posting of an "information letter intended for employees.

The Restricted Committee observes that the pictograms combined with the mail information intended for employees does not contain all the information required by Article 13 of the GDPR.

Thus, the basis of lawfulness (Article 13.1 c) of the GDPR), the rights of persons concerned (article 13.2 b) of the GDPR) and the right to lodge a complaint with the CNPD (article 13.2 d) of the GDPR) are not mentioned.

Furthermore, it is noted that the information provided by the controller does not fulfill neither the conditions required for the first level of information, nor those for the second level of information (see point 25).

In view of the insufficient compliance measures taken by the controlled in this case and point 52 of this decision, the Restricted Panel therefore considers that the corrective measure proposed by the head of investigation in this regard.<sup>36</sup>

Regarding the information letter intended for employees, it should be specified that the words "this device is declared to the CNPD" should be deleted.

Indeed, as the amended law of 2 August 2002 on the protection of persons with regard to the processing of personal data has been repealed and replaced by the law of August 1, 2018, the authorization system

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<sup>36</sup> See Statement of Objections, page 10, Ad.C., point 26.a.

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prerequisites and prior notifications no longer exists, so that this

information above in quotes does not correspond to reality.

- As to the obligation to only process data that is relevant, adequate and

limited to what is necessary with regard to the purposes of securing the

people, property and accesses, the controller attached to his email from

April 6, 2020 a photograph of the screen showing among other things the adjustment of the

field of view of camera "[camera 1]".

In consideration of the compliance measures taken by the control in

case and point 52 of this decision, the Restricted Panel considers

when there is no reason to pronounce the corrective measure proposed by the chief

investigation in this regard.<sup>37</sup>

- As to the obligation to take any appropriate security measures under this

Article 32.1 of the GDPR in connection with the use of the operating software of the

video surveillance device under Article 32.1 of the GDPR, the controlled

maintains in his letter of September 29, 2020 that access to the software

operation of the video-surveillance device has been "secured by the referral

of a password, so that no employee or third party would be able

view its content, copy it or view it". Training

Restricted notes, however, that no documentation submitted by the audited

contains evidence attesting to the security of access to the operating software of the

CCTV device. It considers that despite the efforts made by

the controlled, the latter must, by virtue of the principle of accountability

("accountability") from Article 5.2 of the GDPR implement mechanisms

and internal procedures to demonstrate compliance with Article 32.1 of the GDPR.

In consideration of the compliance measures taken by the control in case and point 52 of this decision, the Restricted Panel considers as soon as it is necessary to pronounce the corrective measure proposed by the head investigation in this regard.<sup>38</sup>

<sup>37</sup> See Statement of Objections, page 10, Ad.C., point 26.b.

<sup>38</sup> See Statement of Objections, page 10, Ad.C., point 26.c.

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63. The Restricted Committee considers, however, that there is no need to impose a obligation to the controlled to compel him to comply with these corrective measures.

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), 13 and 32.1 of the GDPR;
- to pronounce against Company A an administrative fine of the amount one thousand (1,000) euros, with regard to the breaches constituted in articles 5.1.c), 13 and 32.1 GDPR;
- issue an injunction against Company A to bring it into compliance processing with the provisions of Article 13 of the GDPR, within 2 (two) months following the notification of the decision of the Restricted Panel; and especially :

1.

inform third parties in a clear and complete manner, in accordance

the provisions of Article 13 of the GDPR, in particular by providing persons  
third parties information relating to the basis of lawfulness resulting from Article 6 of the GDPR on  
on which video surveillance is based, the rights of data subjects as well as  
the right to lodge a complaint with the CNPD;

2.

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 basis of lawfulness resulting from Article 6 of the GDPR on which  
establishes video surveillance, the rights of the persons concerned as well as the right  
lodge a complaint with the CNPD;

3. delete the words "this device is declared to the CNPD" in the  
information letter for employees;

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- issue an injunction against Company A to bring it into compliance  
processing with the provisions of Article 32.1 of the GDPR, within 2  
(two) months following the notification of the decision of the Restricted Panel;  
and especially,  
implement internal mechanisms and procedures to  
demonstrate compliance with this article.

Thus decided in Belvaux on August 5, 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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