

Decision of the National Commission sitting in restricted formation

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

Deliberation No. 16FR/2022 of July 7, 2022

The National Commission for Data Protection sitting in restricted formation

composed of Messrs. Thierry Lallemand and Alain Herrmann, commissioners, and Mr.

Marc Hemmerling, alternate member;

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

sections 3, 10.2 and 12;

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:

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

Survey no. [...] conducted with Company A.

1/55

I. Facts and procedure

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

for data protection sitting in plenary session (hereafter: "Formation Plenary") had decided to open an investigation among the companies of Group A1 on the basis of article 37 of the law of 1 August 2018 on the organization of the National Commission for data protection and the general data protection regime (hereafter after "Law of August 1, 2018") and to designate Mr. Christophe Buschmann as head of investigation.

2. According to the decision of the Plenary Formation, the investigation carried out by the CNPD officers was to verify compliance with the provisions of the regulations (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 relating to the protection natural persons with regard to the processing of personal data and the free movement of such data, and repealing Directive 95/46/EC (hereinafter "GDPR") and the law of August 1, 2018, in particular by setting up systems for video surveillance and geolocation, where applicable, installed by [...] companies in the Group A.

3. On October 23, 2019, CNPD agents carried out a visit to the premises of Group A at [...], L-[-]. During the visit, it was explained to the agents of the CNPD that Company A is "the parent company" and that it "has appointed a competent DPO for all entities of the Group A structure in the Grand Duchy of Luxembourg"².

Given that the report relating to the said on-site fact-finding mission does not mention that, among the [...] companies of Group A, as controller controlled the Company A, the decision of the National Data Protection Commission sitting in restricted training on the outcome of the investigation (hereinafter: "Restricted Training") will be limited to processing controlled by CNPD agents and carried out by Company A.

1 And more specifically with the following companies:

[...].

2 See Minutes no. [...] relating to the on-site visit carried out on October 23, 2019 to the Company

Decision of the National Commission sitting in restricted formation on the outcome of
Survey no. [...] conducted with Company A.

2/55

4. [...]. Company A is a [...] registered in the Trade and Companies Register
of Luxembourg under number [...] and having its registered office at number [...], L-[...] (hereafter
after “the controlled”). The controlled [...] [is a banking institution]³.

5. During the aforementioned visit of October 23, 2019 by CNPD agents, it was
confirmed to CNPD officials that the person being checked uses a video surveillance system
and that he has not installed a geolocation device in the vehicles made available
by the controlled.⁴

6. By email of November 5, 2019, the control sent a series of documents and
other information to CNPD officials. Minutes no. [...] relating to the visit
on site carried out on October 23, 2019 with the auditee (hereinafter: “the
verbal”) was sent to the control by letter of November 13, 2019.

7. By letter dated December 13, 2019, the controller replied to the report drawn up
by CNPD officials.

8. At the end of his investigation, the head of investigation notified the person inspected on 24
August 2021 a Statement of Objections (hereafter: the “Statement of Objections”)
detailing the shortcomings that he considered constituted in this case, and more specifically a
non-compliance with prescribed requirements:

~

by article 13.1 and 2 of the GDPR (right to information) with regard to
informing all persons concerned about the system of
video surveillance; And

by article 5.1.c) of the GDPR (principle of minimization of data) with regard to
relates to the CCTV system.

In the Statement of Objections, the Head of Investigation suggested to the Panel
Restricted to adopt two corrective measures and to impose an administrative fine
for an amount of 10,500 euros.

3 According to article [...] of the coordinated statutes of control of [...].

4 See Minutes no. [...] relating to the on-site visit carried out on October 23, 2019 to the Company
A, page 2.

Decision of the National Commission sitting in restricted formation on the outcome of
Survey no. [...] conducted with Company A.

3/55

9. Following the departure of Mr. Christophe Buschmann, the Plenary Formation
decided during its deliberation session of July 23, 2021 that Mr. Marc Lemmer
will from that day hold the position of head of investigation for the investigation in question5.

10. On September 9, 2021, the controller [...] asked the head of the investigation to
transmission of the entire administrative file concerning the audit.

11. On September 22, 2021, the head of investigation responded to this request and
sent the entire administrative file (in the form of a CD-ROM) to the controller on the date
from October 1, 2021.

12. On October 4, 2021, the controller requested an extension of time to produce
its written observations on the Statement of Objections. The chief investigator gave a
favorable response to this request and extended the deadline until November 3, 2021.

13. On October 29, 2021, the auditee produced written observations on the
statement of objections.

14. By letter dated December 8, 2021, the head of investigation responded to some of the written comments on the controller's statement of objections.

15. The president of the Restricted Formation informed the controller by letter of 17 January 2022 that his case would be registered for the session of the Restricted Panel on 24 February 2022 and that he could attend this meeting. The controller confirmed his presence at said meeting dated January 21, 2022.

16. During the Restricted Training session of February 24, 2022, the leader of investigation, Mr. Marc Lemmer, was personally present. The control was represented by [...] (Data Protection Officer), [...] (Compliance Director), [...], lawyer at the Court, and [...], lawyer at the Court. The head of investigation and the representatives of the controlled presented their oral observations in support of their written observations and answered the questions posed by the Restricted Panel. The Restricted Formation has granted to the controlled the possibility of sending information within two weeks

5 See Minutes No.[...] of the CNPD plenary session.

Decision of the National Commission sitting in restricted formation on the outcome of Survey no. [...] conducted with Company A.

4/55

additional information requested by the Restricted Training. The controller had the floor last.

17. By email of March 8, 2022, the control sent the information additional information requested by the Restricted Panel during the session of February 24 2022.

18. The Restricted Panel in its decision will be limited to controlled processing by CNPD officials and the legal and regulatory provisions taken into account by the head of investigation in the statement of objections.

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

19. 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)”.

20. 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.⁶

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

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

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

Decision of the National Commission sitting in restricted formation on the outcome of Survey no. [...] conducted with Company A.

5/55

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

22. 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.⁷

23. 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.⁸

2. In this case

24. During the on-site visit on 23 October 2019, it was explained to the CNPD officials that the purposes of setting up the video surveillance system are the protection of property, securing access to private places and places to risks, user safety and accident prevention.⁹

2.1 With regard to the field of vision of cameras filming employees at their workplace work and during their break time

25. During the said visit, the CNPD agents observed that the fields of vision

- cameras n° [1] and n° [2] (documented by the photos [...] and [...]) filming safe rooms¹⁰,

guidelines

7 See Lines

of

themes/videosurveillance/necessite-proportionnalite.html.

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

9 See Minutes, page 3, finding 6.

10 See Minutes, findings 8 and 9.

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

the CNPD, available

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

Survey no. [...] conducted with Company A.

- cameras n° [3] and n° [4] (documented by photos [...] and [...]) and the camera n° [5] (documented by the photo [...]) filming meeting rooms¹¹,
- of the camera filming the reception desk located at [...] (documented by the photo [...])¹² (hereinafter: “reception camera”),
- camera no. [6] (documented by the photo [...]) filming a cash desk¹³,
- cameras n° [7], n° [8], n° [9], n° [10] (documented by photos [...], [...], [...] and [...]) filming offices¹⁴, and
- of camera n° [11] (documented by the photo [...]) filming a room of crisis/computer emergency room on the “[...]” site belonging to the Company X¹⁵,

allow permanent monitoring of employees in their workplace

(statement of objections, point 25, page 7).

26. CNPD officials also noted during the said visit that the field

view of camera n° [12] (documented by the photo [...]) allows monitoring

permanent employees during their break¹⁶ (statement of objections, point

26, page 8).

27. The head of investigation was of the opinion that “such permanent surveillance can create

significant psychological pressure for employees who feel and know they are

observed, especially since the monitoring measures last over time: the fact

that the employees concerned do not have a means of evading time from

another form of surveillance is also likely to aggravate this pressure: Such

permanent surveillance is considered disproportionate to the purpose sought

and constitutes an excessive invasion of the private sphere of the employees occupied in their positions

work and during their break time. In this case the fundamental rights and freedoms

¹¹ See Minutes, findings 10 and 14.

12 See Minutes, finding 11.

13 See Report 12.

14 See Minutes, findings 13, 15, 16 and 17.

15 See Minutes, finding 18.

16 See Minutes, finding 19.

Decision of the National Commission sitting in restricted formation on the outcome of
Survey no. [...] conducted with Company A.

7/55

employees must prevail over the interests pursued by the employer. " (communication
objections, point 27, page 8).

28. Thus, he held that the non-compliance with Article 5.1.c) of the GDPR was established
on the day of the site visit and that the documentation and photos submitted to the chief
of investigation by letter of December 13, 2019 made it possible "to document the will of the
controlled to remedy this problem in order to comply with the requirements of the GDPR
(...)" but that "the adoption of compliance measures after the visit
on site is not such as to upset this finding" (statement of objections, point 30,
page 8).

29. The controlled on his side explained in his email of November 5, 2019 (i.e.
before receipt of the minutes) that

-

he had set up "a masking system concerning the cameras filming
sensitive areas", i.e. he sent a document showing a
masking of the fields of view of cameras n° [12], n° [7], n° [8], n° [9] and
the reception camera; and that'

-

he undertook to disconnect camera no. [11] from their “private space on the site of Company X in the event of activation of our [their] backup plan”.

30. By letter dated December 13, 2019, in response to the minutes, the controller explained, on the one hand, that he considered that certain fields of vision of certain cameras above were justified and, on the other hand, that he confirmed having installed a new masking so as not to film certain workstations (by attaching photos of the changes to his mail) and, in one case, that he confirmed having ordered a new equipment to replace a camera that did not allow the function to be restricted zoom. Specifically, the auditee explained that

-
camera n° [1] was “positioned in the safe [...] in which are stored precious metals and physical securities” and that there was a “Isolated employee in this difficult to access premises with very

Decision of the National Commission sitting in restricted formation on the outcome of Survey no. [...] conducted with Company A.

8/55

restricted” and that he therefore considered that the presence of the said camera was justified in relation to the purposes sought¹⁷;

-
camera n° [2] was “positioned in the [...] safe [...] in which are stored values and the proceeds of the cash register” of the controlled and that the work that were located there were not “permanently occupied, but occasionally used for sensitive tasks ([...])” and that he considered therefore that the presence of said camera was justified in relation to the purposes wanted¹⁸;

-
cameras no. [3] and [4] were “intended to monitor the corridors of spaces accessible to customers” and that the meeting rooms were “in reality reception lounges, whose walls are equipped with an opacification system on order” but that he nevertheless carried out the video masking to guarantee the conformity of the device¹⁹;

-
camera no. [5] allowed “monitoring of a secondary access to space of the [...] floor of the building [...]” and captured the entrance to a meeting room.

The controlled was of the opinion that the head of investigation should have qualified the assertion according to which said camera allowed the permanent surveillance of people present in the meeting room, because, according to him, the meeting room was equipped a door allowing its contents to be completely concealed when it was occupied, but he confirmed that he nevertheless proceeded with the video masking for guarantee the conformity of the device²⁰;

-
he carried out the partial masking of the field of vision of the reception camera²¹;

-
camera no. [6] was “positioned at the level of the central counter (...), local sensitive because of the cash transactions carried out there (handling of tickets [...])” and that the workstation located there was not occupied in

17 See Letter from the audit dated December 13, 2019, ad finding 8 and photo no. 1 in the appendix.

18 See letter from the audit dated December 13, 2019, ad finding 9 and photo no. 2 in the appendix.

19 Cf. Letter from the audit dated December 13, 2019, ad finding 10 and photos 3 and 4 in the appendix.

20 Cf. Letter from the audit dated December 13, 2019, ad finding 14 and photo no. 8 in the appendix.

21 Cf. Letter from the audit dated December 13, 2019, ad finding 11 and photo no. 5 in the appendix.

Decision of the National Commission sitting in restricted formation on the outcome of
Survey no. [...] conducted with Company A.

9/55

permanently because cash transactions constituted an activity
marginal of the controlled and that he therefore considered that the presence of the said camera
was justified in relation to the purposes sought 22;

-

cameras n° [7], n° [8], n° [9], n° [10] were “oriented towards the access doors
private spaces on the floors of the building [...]” and, on the one hand, he confirmed
that camera n° [7] captured in its field of vision the workstation of a
collaborator and, on the other hand, he indicated that, according to him, it seemed “questionable
to affirm that the cameras [8], [9] and [10]” allowed “surveillance in
permanence of the workstations of the employees occupying these offices” because
that “the interior fittings (...) and the partially encrusted walls
of reasons (...)” should “make it possible to qualify this assessment”. By
against, he confirmed that he nevertheless carried out the video masking at the level of
these 4 cameras to guarantee the conformity of the device²³;

-

camera no. [11] aimed “to monitor the private space rented by Company A at
the provider Company X” and that this [...] space was in principle “never
occupied, except in cases of force majeure resulting in the temporary unavailability of
premises of Company A and the activation of a contingency plan”. He indicated
also that the camera [11] was “intended to be deactivated in such
exceptional circumstances”. On the other hand, he confirmed, “despite the absence of
finding of deficiency”, that he nevertheless carried out the video masking for

guarantee the conformity of the system 24; and

-

camera no. [12] made it possible "to monitor sensitive windows at the level of a

corridor of the building [...]" but that the presence of chairs and stools had

leads users to use this place of passage during their break time and

he confirmed that he therefore carried out the video "masking" at the level

of this camera to ensure device compliance.²⁵

22 Cf. Letter from the audit dated December 13, 2019, ad finding 12 and photo no. 6 in the appendix.

23 Cf. Letter from the audit dated December 13, 2019, ad finding 13, 15, 16, 17 and photos n°6 in the appendix.

24 Cf. Letter from the audit dated December 13, 2019, ad finding 18 and photo no. 12 in the appendix.

25 See Letter from the audit dated December 13, 2019, ad finding 19 and photo no. 14 in the appendix.

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

Survey no. [...] conducted with Company A.

10/55

31. By letter dated October 29, 2021, the auditee responded to the communication from the

grievances of the head of investigation, reiterating certain explanations already mentioned in his

letter of December 13, 2019 and also noting that the minutes lingered "

on certain cameras (n° [1], n° [5], etc) while omitting to specify that the others

cameras (No. [100], No. [200], etc.) do not allow such "surveillance

permanent". In his view, the Statement of Objections did not address "this element to be

discharge".²⁶

32. The auditee noted more specifically that he is of the opinion that the head of investigation

should have distinguished between two distinct types of places filmed by the cameras in question:

on the one hand, the counters and the safe room of the controlled and, on the other hand, the other places,

such as meeting rooms. In his view "the economic and strategic sensitivity of

these two categories should not be confused.

33. With regard to "safe rooms", the auditee noted that "even if there is is correct that the employees of Company A present in the vault and at the counters are filmed incidentally, this is proportionate and legitimized by the critical nature of these places" and that "the very quantity and value of the assets thus protected is a circumstance to be taken into account in the assessment of the proportionality of the CCTV »²⁸. In his opinion, the assertions of the head of the investigation according to which the employees were filmed "permanently" and did not have "a means of withdraw from this monitoring from time to time" (points 25 to 27 of the communication grievances) would be at fault because "the employees assigned to the safe room and the counters" were not "statically posted in the angle of the cameras in question" and that they had "permission to move outside of these viewing angles" and that they even had to "regularly do so, as part of their duties"²⁹. He pointed out also that "the employee assigned to the safe room" was "in a room locked for obvious security reasons" and that because this person isolated, it was therefore imperative for the controlled to ensure its safety and health.

According to him, the surveillance camera would be the only way to know if the employee in question was not "in the throes of discomfort" or if he was having some other problem. In

26 See Letter from the audit dated October 29, 2021, page 7, 4th paragraph.

27 See Letter from the audit dated October 29, 2021, page 20, 4th paragraph.

28 See Letter from the audit dated October 29, 2021, page 20, 7th and 8th paragraph.

29 See Letter from the audit dated October 29, 2021, page 21, 1st paragraph.

Decision of the National Commission sitting in restricted formation on the outcome of Survey no. [...] conducted with Company A.

Furthermore, he noted that the employee in question was not permanently filmed because the employee assigned to the safe room was not always the same “because rounds, time breaks and shifts are expressly provided for. This is a temporary workstation, punctual and limited (...)”³⁰.

With regard to "Company A's counters", the auditee noted that [...].³¹

More generally, the auditee was of the opinion that the respective cameras were not not “directed in such a way as to film the employees from the front”. He indicated that these were “in principle filmed from behind and only incidentally. Neither the hands nor the face, nor the devices (computers and private or professional telephones) of the employees ” were not targeted by these cameras. According to him, the cameras were “therefore installed in the strict necessary and proportional framework relating to their purposes. ³² He therefore summarized that, according to him, the fundamental rights and freedoms of his employees did not prevail over his interest in ensuring the security and integrity of the assets of its customers.

34. With regard to “other places, including meeting rooms”, the control

- reiterated his explanations in relation to camera n° [12], in particular that the space targeted by this camera was not "a place dedicated to the rest of employees" but "a simple corridor between two departments" and that the control had never “encouraged or fitted out this space so that it accommodates employees during their break time”³³;

- explained in relation to the cameras filming the workstations he practiced “a distribution of employee offices in “flexible” mode” and that this meant that its employees had no “assigned place” to carry out their tasks but that they could settle in the office of their preference and that, for Consequently, it would not be possible to reproach him for monitoring of its employees³⁴. With particular regard to the

³⁰ See Letter from the audit dated October 29, 2021, page 21, 2nd paragraph.

31 See Letter from the audit dated October 29, 2021, page 21, 3rd paragraph.

32 See Letter from the audit dated October 29, 2021, page 21, 4th paragraph.

33 See Letter from the audit dated October 29, 2021, page 22, 2nd and 3rd paragraph.

34 See Letter from the audit dated October 29, 2021, page 22, 4th paragraph.

Decision of the National Commission sitting in restricted formation on the outcome of
Survey no. [...] conducted with Company A.

12/55

camera no. [11], the person inspected reconfirmed his commitment to disconnect said
camera in the event of activation of the backup plan³⁵;

- noted in relation to the cameras filming the audited meeting rooms that a
meeting room was not "a 'permanent' workplace for employees"

because the latter only went there "on rare occasions, for a while

limited and only for certain employees" and that, consequently, it would not be
not possible to blame him for "permanent surveillance" of his employees.

He also explained that the cameras in question were filming the corridors

leading to meeting rooms, but that people inside the rooms

were "not normally identifiable". He added that all of his rooms

meeting were equipped with a system guaranteeing their opacity (i.e. the windows

were tinted/smoked or studded with patterns/logos/drawings, i.e. the rooms

were fitted with curtains/blinds/other covers) and that, consequently, the

supervision of the employees was either materially impossible or the employees

had the option of obscuring the walls of said meeting rooms.³⁶

35. 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.

36. In this case, she notes that at the time of the on-site visit, all the cameras disputed (see point 25 of this decision) allowed the monitoring of workstations work of the employees but she notes that there were some which allowed the surveillance employees only on an ad hoc basis and not on a permanent basis and who were at the same time justified in relation to the aims pursued.

35 See Letter from the audit dated October 29, 2021, page 25, 6.2.

36 See Letter from the audit dated October 29, 2021, page 22 (7th and 8th paragraph) and 23 (1st and 2nd paragraph).

Decision of the National Commission sitting in restricted formation on the outcome of Survey no. [...] conducted with Company A.

13/55

She notes that camera numbers [1] and [2], which were monitoring a space in or in front of the safes [...] of the controlled, and camera n° [6], which monitored the central counter of the controlled, seem a priori, at first, justified to achieve the purposes pursued, i.e. the protection of property, the securing of access to places at risks, user safety and accident prevention. These are three cameras that monitored particularly sensitive places in an establishment bank where regulations on the security of cash transport (law of 12 November 2002 and the Grand-Ducal Regulation of 22 August 2003 relating to the activities deprived of guarding and surveillance) makes it compulsory to provide surveillance in certain premises used by cash security guards and justifies as soon as

in the resulting data processing for monitoring purposes. She notes also that, under certain assumptions, the risk to the safety of personnel may be of such importance that it takes precedence over the protection of the privacy of the same personnel. Thus, insofar as thefts from banking establishments are often accompanied by violence, it may be necessary for certain employees to be under permanent monitoring. However, it recalls that the principle of proportionality implies that the controller must limit the processing to data adequate, relevant and not excessive in relation to the purposes to be achieved. By Therefore, the field of vision of the cameras should not, as far as possible, relate to the workstation of a particular employee, and if such cannot absolutely be avoided, the face of the employee in question must not be visible (e.g. by the use of blurring/masking computer techniques).

With regard to camera n° [1], the Restricted Panel notes that a post of work “in the safe [...]”³⁷ is in the field of vision of the said camera.

After a question posed by the Restricted Panel during the hearing of February 24, 2022, the controller has confirmed that this is the workstation of an isolated employee who must remain there for at least several consecutive hours per day (and not as mentioned in the mail from the control of October 29, 2021 “of a temporary, punctual and limited”³⁸). Consequently, the Restricted Panel finds that the employee in question is permanently monitored in the workplace and this without the use of

³⁷ See Letter from the audit dated 13 December 2019, ad finding 8 and photo n°1 (finding 8) in the appendix.

³⁸ See Letter from the audit dated October 29, 2021, page 21, 2nd paragraph.

Decision of the National Commission sitting in restricted formation on the outcome of Survey no. [...] conducted with Company A.

computer blurring/masking techniques. She concludes that even if the installation of said camera is justified in relation to the purposes pursued (i.e. the protection of property and the safety of users in a particularly sensitive area of an establishment bank), its field of vision is nevertheless excessive because there are techniques blurring/masking to prevent an employee's face from being permanently visible, so that the controlled did not respect the principle of proportionality.

With regard to camera n° [2], the Restricted Panel observes that workstations in a "secure room adjoining the safe [...]" are located in the field of view of said camera. It appears from the letters of the control that these posts of work are not "permanently occupied, but used occasionally for sensitive tasks (storage and counting of cash, cash pick-up from the counter central)" 39. Consequently, the Restricted Training finds that the employees in issue are not permanently monitored in the workplace. She concludes that, on the one hand, the installation of the camera in question is justified in relation to the purposes pursued (i.e. the protection of property and the safety of users in a place particularly sensitive of a banking establishment) and that, on the other hand, its field of vision is not excessive.

With regard to camera n° [6], the Restricted Panel notes that a post of work "at the level of the central counter" is in the field of vision of the said camera. It appears from the letters of the control that this workstation "is not occupied in permanence" because cash transactions were a marginal activity of the controlled⁴⁰ and that an employee would only go "to this counter only in the hypothesis (exceptional) handling of cash"⁴¹. Therefore, the formation

Restricted finds that the employee in question is not permanently supervised

At work. It concludes that, on the one hand, the installation of the camera in question is justified in relation to the purposes pursued (i.e. the protection of property and the security

users in a particularly sensitive area of a banking institution) and that,

on the other hand, its field of vision is not excessive.

39 See letter from the audit dated 13 December 2019, ad finding 9 and photo no. 2 (finding 9) in the appendix.

40 Cf. Letter from the audit dated 13 December 2019, ad finding 12 and photo n°6 (finding 12) in the appendix.

41 See Letter from the audit dated October 29, 2021, page 21, 3rd paragraph.

Decision of the National Commission sitting in restricted formation on the outcome of
Survey no. [...] conducted with Company A.

15/55

With regard to the reception camera and cameras n° [7], [8], [9], [10] and [11], the

Restricted Formation notes that the photos taken by CNPD agents during the

visit show that the fields of vision of the said cameras made it possible to monitor

permanence of employees in the workplace. She would like to point out that the cameras

intended to monitor a place of access (entrance and exit, door, awning, hall, etc.) must

have a field of vision limited to the area strictly necessary to view the

people about to access it. To respect the principle of proportionality, the

controlled should have limited the fields of view of cameras n° [7], [8], [9], [10] and [11] to the

only area necessary to achieve the purpose(s) pursued and, by

Consequently, in this case he should have limited the fields of vision to the access doors without

include the offices of its employees.

With regard to cameras Nos. [3], [4] and [5], it also notes that the said

cameras made it possible to constantly monitor employees in meeting rooms

controlled and that even if they are equipped with an opacification system (on

order), such a system does not guarantee that the employees who are in the

the obligation to spend their working time there are not permanently filmed during

the performance of their tasks. To respect the principle of proportionality, the

controlled should have limited the fields of vision of cameras n° [3], [4] and [5] to the sole area necessary to achieve the purpose(s) pursued and, consequently, it should have limited the fields of vision to the “corridors of spaces accessible to the customers”⁴² with regard to the two cameras n° [3] and [4], and, to the “secondary access to the private space on the 1st floor of the building [...]”⁴³ with regard to camera no. [5]. In addition, it notes that camera no. [12] allowed permanent surveillance employees during their break time. She wishes to remind that, when it comes to places reserved for employees in the workplace for private use, as in this case the corridor where there were chairs, stools and at least two tables (and where we see, on the photos taken by CNPD agents at the time of the on-site visit, employees eating), surveillance cameras are always considered disproportionate to the aims sought. It's the same for places such as, for example, changing rooms, toilets, smoking areas, areas

⁴² See Letter from the audit of December 13, 2019, ad finding 10.

⁴³ See Letter from the audit dated December 13, 2019, ad finding 14.

Decision of the National Commission sitting in restricted formation on the outcome of Survey no. [...] conducted with Company A.

16/55

rest, the canteen, the kitchenette or any other place reserved for employees for use private. In this case, the fact that the place in question was, according to the controlled, not officially reserved for employees for private use, does not prevent its employees from have de facto used this place to spend their break there, especially since furniture has made available for this purpose a priori by the controller. In these cases, the rights and freedoms employees must prevail over the legitimate interests pursued by the employer.

37. As for the argument of the inspector that the employees were generally not filmed "permanently" because they would not have a "dedicated place" to carry out their tasks and that they could freely choose a workstation each day, the Training Restreinte would like to mention that after a question was asked during the Training session Restricted on February 24, 2022, the auditee confirmed that even if its employees have not fixed workstation, they nevertheless choose a place each morning on which they stay all day, that is to say the fact of not having a designated place does not prevent not that an employer can monitor employees all day in the workplace if the field of view of a camera allows it.

38. As for the argument of the control that the head of investigation would not have noted of "exculpatory element"⁴⁴ according to which only certain cameras allowed a permanent surveillance of employees, but other cameras did not allow no such monitoring (see point 31 of this decision), the Restricted Panel considers that it would not be appropriate to pay particular attention to the cameras supervision which corresponded to the legal provisions in force at the time of the site visit. It notes that the cameras which corresponded to the legal provisions in force at the time of the on-site visit are to be considered as a neutral element and not as an exculpatory element of the controlled.

39. In view of the foregoing, the Restricted Panel concurs with the opinion of Chief investigation in relation to cameras n° [1], [3], [4], [5], reception camera, [7], [8], [9], [10], [11] and [12] and concludes that a non-compliance with Article 5.1.c) of the GDPR was established at the day of the site visit by CNPD agents.

⁴⁴ See Letter from the audit dated October 29, 2021, page 7, 4th paragraph.

40. On the other hand, it does not follow the analysis of the head of investigation in relation to the cameras Nos. [2] and [6] and concludes that said cameras complied with Article 5.1.c) of the GDPR on the day of the site visit by CNPD agents.

41. As for the measures taken by the control after the on-site visit of the agents of the CNPD, Restricted Training refers to point 93 as well as to Chapter II.2. Section 2.2. of this decision for the related explanations.

2.2 With regard to the field of vision of cameras filming public roads or buildings neighboring

42. During the on-site visit on October 23, 2019, CNPD officials notice that

-

the “dome” camera n° [13] (documented by the photos [...], [...], [...], [...], [...] and [...]) allowed permanent monitoring of part of the road system belonging to the public domain as well as buildings not belonging to the controlled⁴⁵;

-

the “dome” camera n° [14] (documented by the photos [...] and [...]) allowed the permanent monitoring of buildings not belonging to the controlled⁴⁶; And

-

camera n° [15] (documented by the photo [...]) allowed surveillance in continuous from the public road⁴⁷

(statement of objections, point 28, page 8).

43. The head of investigation was of the opinion that “in view of the aforementioned purposes for which CCTV is operated, it is not necessary to encompass the parts of the track public and surrounding land, including buildings not belonging to the

45 See Minutes, finding 20.

46 See Minutes, finding 21.

47 See Minutes, finding 22.

Decision of the National Commission sitting in restricted formation on the outcome of
Survey no. [...] conducted with Company A.

18/55

controller. This monitoring is therefore considered to be
disproportionate" (statement of objections, point 29, page 8).

44. Thus, he held that the non-compliance with Article 5.1.c) of the GDPR was established
on the day of the on-site visit and that the documentation and photos submitted by the controller
by letter of December 13, 2019 made it possible "to document the will of the control of
remedy this problem in order to comply with the prescriptions of the GDPR (...)" but
that "the adoption of compliance measures after the on-site visit
is not such as to upset that finding" (statement of objections, point 30, page 8).

45. The controlled on his side explained in his email of November 5, 2019 (i.e.
before receipt of the minutes) that

-

he had set up "a masking system concerning the cameras filming
sensitive areas", i.e. he sent photos showing a
masking of the fields of vision of camera n° [15] and of the "dome" camera
No. [14]; And

-

he had programmed the replacement of the "dome" camera n° [13] because,
according to him, it did not allow a "masking" of certain areas.

46. These explanations were reiterated by the controller in his letter of 13

December 2019 in response to the minutes. In said letter, the controller reaffirmed

have ordered a new camera to replace the “dome” camera n° [13] in sight

compliance of the device and he sent back the same photos he had already

sent as an appendix to his email of November 5, 2019⁴⁸.

47. By letter dated October 29, 2021, the auditee responded to the communication from the

grievances of the chief of investigation, noting that, according to him, the reasons for which the chief

of investigation had considered that the control had not respected the principle of minimization

in relation to the disputed cameras seemed to him “little talkative”⁴⁹.

48 Cf. Letter from the audit dated December 13, 2019, ad findings 20, 21 and 22 and photos n° 15 to 18 and photo

No. 19 attached.

49 See Letter from the audit dated October 29, 2021, page 23, point 5.3.1.

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

Survey no. [...] conducted with Company A.

19/55

48. The auditee referred in particular to the “EDPS Guidelines 3/2019 on

the processing of personal data by video devices, version 2.0,

adopted on 29 January 2020” (hereinafter: “EDPB Guidelines 3/2019”) and that,

according to him, said EDPB 3/2019 guidelines seemed to contradict

analysis of the head of investigation, in particular because the EDPB indicated that “Most of the

time, the need to use video surveillance to protect the premises of the

controller applies only to the boundaries of the property. However, he does

It is not always enough to monitor the places concerned to guarantee effective protection.

In certain specific cases, it may be necessary to extend the video surveillance to

the immediate surroundings of the property. »⁵⁰

49. The inspector considered that in this case, “effective protection of the premises, property

and persons required Company A to video-surveillance its own buildings but also places adjoining them. Video surveillance of a party (minimum) of public roads and third-party buildings was therefore necessary, adequate and proportional". He was of the opinion that it is inefficient to film only the threshold of the controlled building because this did not make it possible to identify threats that directed towards this threshold from an external zone. For example, he mentioned vehicles or suspicious individuals on the public road directly adjoining the building of the controlled who could not be monitored and/or arrested if the controlled could not only filming its own façade⁵¹. In his opinion, "if the elements dangerous to the safety of Company A (goods or people) and of its customers and employees cannot be detected only once they have already entered Company A's buildings, such security could easily be described as flawed and at the very least as insufficient and non-effective".⁵²

50. Consequently, he considered that the processing could not be qualified as disproportionate and did not violate the principle of data minimization. Moreover, he has mentioned again that the controller has already carried out "masking of the areas whose question (public road and third places)" but he stressed that these measures marked the

50 See EDPB Guidelines 3/2019, page 10, point 27.

51 See Letter from the audit dated October 29, 2021, pages 23 to 24, points 5.3.1. to 5.3.2.

52 See Letter from the audit dated October 29, 2021, page 24, point 5.3.3.

Decision of the National Commission sitting in restricted formation on the outcome of Survey no. [...] conducted with Company A.

20/55

respect and sincere desire for cooperation of the audited party towards the CNPD and that they do not should not be understood "as recognition, even tacit, on the part of the

Company A of any breach of the duty of data minimization”⁵³.

51. The Restricted Committee would like to point out that the cameras intended to monitor a place of access (entrance and exit, threshold, porch, door, awning, hall, etc.) must have a field of vision limited to the area strictly necessary to view people getting ready to get there. Those who film exterior accesses must not mark the entire width of a sidewalk along, where applicable, the building or public roads adjacent. Similarly, outdoor cameras installed near or around a building must be configured so as not to capture the public thoroughfare or the surroundings, entrances, accesses and interiors of other neighboring buildings possibly entering their field of vision.⁵⁴

52. She nevertheless admits that depending on the configuration of the premises, it is sometimes impossible to install a camera that would not include in its field of vision a part of the public thoroughfare, surroundings, entrances, accesses and interiors of other buildings. In such a case, it considers that the data controller should put in place masking or blurring techniques to limit the field of view to its property.⁵⁵

53. She notes that the photos taken by the CNPD agents during the visit on site show that the field of vision of the “dome” camera n° [13] allowed the surveillance of a small part of the roads belonging to the public domain as well as buildings not belonging to the controlled. It takes into consideration that said camera did not monitor the roads on board and that this only represents a small part of the field of view of said camera.

In addition, she notes that the dome camera no. [14] allowed surveillance in permanence of buildings not belonging to the controlled, so that the controlled does not did not respect the principle of proportionality.

⁵³ See Letter from the audit dated October 29, 2021, page 24, point 5.3.3 and 5.3.4.

⁵⁴ See CNPD Guidelines (Point 4.1.), available at: <https://cnpd.public.lue/dossiersthematiques/>

[video surveillance/necessity.Q:proportionality.html](#).

55

available

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

guidelines

Lines

CNPD

(Point

4.1.),

see

of

there

below

:

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

Survey no. [...] conducted with Company A.

21/55

With regard to camera No. [15], the Restricted Panel notes that it allowed surveillance of the entrance to the controlled building overlooking [...], i.e. an entrance accessible to the public, and that it allowed at the same time the surveillance of a small part of the road belonging to the public domain. She finds that the field of vision of said camera is sufficiently limited to what is necessary to achieve the purposes continued (in this case, securing access to high-risk locations and the safety of users) and that the principle of proportionality has thus been respected.

As for the argument of the control that the opinion of the EDPB would be contrary to the opinion of the head

point 29 of its statement of objections according to which the monitoring performed by the three disputed cameras were disproportionate, the Formation Restreinte would like to remind that the auditee quoted point 27 of the EDPB guidelines 3/2019 to explain why he believed the EDPB was allowing surveillance of the premises adjoining the controlled buildings⁵⁶. She notes that he quoted only the first part of the said point 27 concerning the opinion of the EDPB with regard to a possible need to extend the video surveillance in the immediate environment of the property of a manager of the treatment: "Most of the time, the need to use video surveillance to protecting the premises of the data controller applies only to the limits of the property. However, it is not always enough to monitor the places concerned to guarantee effective protection. In some specific cases, it may be necessary to extend the video surveillance in the immediate environment of the property. »

The Restricted Committee points out that point 27 of the EDPB 3/2019 guidelines continues with the following sentence: "In this context, the data controller should consider additional physical and technical means, consisting of example to block or pixelate irrelevant areas. ". Then, the EDPB finishes its explanations with an example: "a bookstore wishes to protect its premises against vandalism. In general, the cameras should film only the premises concerned, because it is not necessary to monitor neighboring premises or public places located at around the bookstore for this purpose. ⁵⁷ Consequently, it is of the opinion that the opinion of the EDPB

⁵⁶ See Letter from the audit dated October 29, 2021, pages 23 to 24, point 5.3.1 and 5.3.2.

⁵⁷ See EDPB Guidelines 3/2019, page 11, point 27.

Decision of the National Commission sitting in restricted formation on the outcome of Survey no. [...] conducted with Company A.

further reinforces the analysis of the head of investigation in his statement of objections by compared to “dome” cameras n° [13] and [14].

54. In view of the foregoing, the Restricted Panel therefore agrees with the opinion of the head of investigation in relation to “dome” cameras n° [13] and [14] and concludes that a non-compliance with Article 5.1.c) of the GDPR was acquired on the day of the on-site visit by the agents of the CNPD.

55. On the other hand, she does not follow the analysis of the head of investigation in relation to the camera No. [15] and concludes that said camera complied with Article 5.1.c) of the GDPR on the day of the on-site visit by CNPD officers.

56. As for the measures taken by the control after the on-site visit of the agents of the CNPD, Restricted Training refers to point 93 as well as to Chapter II.2. Section 2.2. of this decision for the related explanations.

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

1. On the principles

57. 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 [...]. »

58. 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;

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

Survey no. [...] conducted with Company A.

23/55

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

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

d) where the processing is based on Article 6(1)(f), the legitimate interests sued by the controller or by a third party;

e) the recipients or categories of recipients of the personal data, if they exist; And

(f) where applicable, the fact that the controller intends to carry out a transfer of personal data to a third country or to an organization international community, and the existence or absence of an adequacy decision issued by the Commission or, in the case of transfers referred to in Article 46 or 47, or Article 49, paragraph 1, second subparagraph, the reference to the appropriate or suitable safeguards and the means of obtaining a copy or where they have been made available;

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

Decision of the National Commission sitting in restricted formation on the outcome of Survey no. [...] conducted with Company A.

24/55

without affecting the lawfulness of the processing based on the consent made before the withdrawal thereof;

d) the right to lodge a complaint with a supervisory authority;

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

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

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

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

59. 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.⁵⁸ 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”).

⁵⁸ See in particular Articles 5.1.a) and 12 of the GDPR, see also recital (39) of the GDPR.

Decision of the National Commission sitting in restricted formation on the outcome of Survey no. [...] conducted with Company A.

25/55

60. 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.⁵⁹

2. In this case

61. With regard to the information of customers, suppliers, service providers services and visitors (hereinafter: “third parties”) and employees with regard to the video surveillance system, the CNPD agents noted during their visit to site that they are informed “by a pictogram and an old authorization sticker for the CNPD at the level of the entrance door located at [...]” and by “a pictogram at the level of the passage not open to the public, located between [...] and [...]”.⁶⁰

62. The Head of Investigation noted in the Statement of Objections that “while a certain information is provided by the controlled party to signal the presence of the video surveillance, it should be noted that in view of the requirements of the aforementioned article 13, this information is incomplete. In particular, the audit fails to provide the following elements:

-

-
-
-
-
-
-

the identity and contact details of the controller;

the contact details of the data protection officer;

the purposes of the processing for which the personal data are intended

personnel as well as the legal basis of the processing;

the legitimate interests pursued by the controller;

the recipients or categories of recipients of the personal data

staff ;

the length of the conversation ;

the existence of the right to request from the controller access to the

personal data, the rectification or erasure thereof, or

restriction of processing relating to the data subject; And

59 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.

60 Minutes, page 3, finding 1.

below :

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

Survey no. [...] conducted with Company A.

the right to lodge a complaint with a supervisory authority. »61

He therefore noted that "the pictograms affixed on site, as well as the old

CNPD vignettes are of such a nature as to fulfill the conditions of the aforementioned article 13. »62

63. The head of investigation clarified that "in his email of November 5, 2019 and in

his letter of December 13, 2019, the controller specifies that he initiated the replacement and

upgrading of pictograms warning employees and third parties of the presence

of a CCTV system. Nevertheless, it fails to note that the non-

compliance with article 13 of the GDPR was acquired on the day of the on-site visit. In effect,

the adoption of compliance measures after the on-site visit is not

likely to upset this finding. »63

Thus, it held that the controller failed in its "obligation to inform the

data subjects of the video surveillance system (employees and customers) resulting from

Article 13, paragraphs 1 and 2 of the GDPR. »64

64. The controlled on his side attached to his email of November 5, 2019 (i.e.

say before sending the minutes) "a series of additional documents mentioned

together during your [the] control mission":

~

the formalization of the "Data Protection Impact Assessment" carried out on the

Group A CCTV device;

~

a "screenshot of the "GDPR" section" of the intranet site accessible

to all Group A employees (hereafter: the "intranet section

GDPR");

61 See Statement of Objections, page 5, point 13.

62 See Statement of Objections, page 6, point 14.

63 See Statement of Objections, page 6, point 15.

64 See Statement of Objections, page 6, point 16.

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

Survey no. [...] conducted with Company A.

27/55

~

Group A's "Data Protection Policy" available at

the intranet site as well as on the website of the controller [...] (hereinafter: the

"data protection policy"⁶⁵);

~

the "Rules of Procedure" of Group A (hereinafter: the "Rules of Procedure"

interior")⁶⁶; And

~

the "GDPR [...] e-learning training" (hereinafter: the "e-learning training learning").

He also mentioned the "launch of an internal study with a view to

in accordance with the pictograms indicating to employees and third parties the existence of a camera surveillance system.

65. In his letter of December 13, 2019, in response to the minutes, the

controlled reported that it had "initiated the replacement and upgrading of

pictograms warning employees and third parties of the presence of a

video surveillance" and that it will indicate in the future "in particular the name of the person responsible for the

device, the legal basis, the retention period of the images and the methods of complaint” to the Data Protection Officer and to the CNPD.

66. With regard more specifically to informing employees about the CCTV system, the head of investigation noted in his statement of objections that “the controller declared that the employees were informed of the protection policy data via the distribution of related documents via the company's intranet as well as through compulsory participation in an e-learning course on data protection. »⁶⁷

67. After analyzing the GDPR intranet section, the data protection policy data, internal rules and e-learning training, he noted that “the controlled fails to provide, in particular, the following elements:

65 The controller mentioned in his email of November 9, 2019 that “video surveillance is mentioned there [...]”.

66 The controller mentioned in his email of November 9, 2019 that “video surveillance is mentioned there [...]”.

67 See Statement of Objections, page 6, point 17.

Decision of the National Commission sitting in restricted formation on the outcome of Survey no. [...] conducted with Company A.

28/55

- the purposes of the processing for which the personal data are intended personnel as well as the legal basis of the processing;
- the legitimate interests pursued by the controller;
- the length of the conversation. »⁶⁸

In particular, he noted that the GDPR intranet section “did not contain any mention of the specific processing of video surveillance”⁶⁹, that the protection policy of the data contained “a mention of video surveillance processing [...]” but that

“the purposes mentioned during the on-site visit (...) are not indicated in this document”⁷⁰ and that the internal regulations “contain a mention of video surveillance [...], but none of the other mentions provided for” in article 13 of the GDPR.

Thus, the head of the investigation again held that the control failed in its

“Obligation to inform data subjects arising from Article 13(1) and 2 of the GDPR”⁷¹.

68. By letter dated October 29, 2021, the auditee responded to the communication from the grievances to set out his opinion on Article 13 of the GDPR which, according to him, “does not impose any specific form to controllers for the communication of information to the people whose data is collected. (...)” and “does not require the “one-shot” transmission of relevant information.”⁷² He has also quoted the CNPD website on which it is mentioned that the CNPD recommends to data controllers to meet their obligation to transparency (and to avoid too long mentions at the level of a form) of “give a first level of information at the end of the form and send it back to your [their] privacy policy or a dedicated privacy page on your [their] website which must include all of the above. »⁷³

68 Statement of Objections, page 6, point 18.

69 Statement of Objections, page 6, point 18.

70 Statement of Objections, page 7, point 20.

71 See Statement of Objections, page 7, point 22.

72 See Letter from the audit dated October 29, 2021, page 10, point 4.1.1.

73 See <https://cnpd.public.lu/fr/dossiers-thematiques/guide-monde-associatif/information-pc.html>

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

Survey no. [...] conducted with Company A.

The inspector concluded "that the only vignette and the only pictogram of the Company

A did not include all of the information identified in Article 13 of the GDPR"

but this only because he had "carried out information in several stages

of these mentions, the vignette and the posters raised (...) being only the first"⁷⁴. He

considered that "such a practice is in accordance with the law and the recommendations of the

supervisory authorities (EDPB, CNPD, etc.). He also cited WP 260 rev. 01 in

which the Article 29 Working Party mentioned that "a controller may

take a tiered approach, whereby it chooses to use multiple

methods to ensure transparency"⁷⁵. He explained that he had precisely followed this

multi-level approach and that the vignette served, "in the first place, to warn all

the persons concerned on the principle that its buildings are potentially under

CCTV" and that details of other information were "easily accessible

on other cumulative media more suited to this information objective"⁷⁶. On this

base, he contested the grievance of which he was accused by the head of investigation in his

statement of objections⁷⁷ and it was of the opinion that "the absence of an element in a medium

does not constitute a fault, if this "missing" element is found in another medium

communicated to the persons concerned".

Then, he explained why, according to him, the various media used by him

complied with its obligation to inform the persons concerned. In his opinion, the

thumbnail and pictogram on one side, and its website which contained and linked to its

data protection policy, towards [a "data regulation"]⁷⁹ and, among others,

to a "page dedicated to the protection of personal data"⁸⁰, on the other side,

together included "clear and detailed information relating to the treatment

data from the security cameras installed on and in its buildings" and this

"both vis-à-vis the employees (..) and vis-à-vis the third parties concerned"⁸¹.

74 See Letter from the audit dated October 29, 2021, page 11, point 4.1.2.

75 See WP 260 rev. 01, item 35.

76 See Letter from the audit dated October 29, 2021, page 11, point 4.1.2.

77 See Statement of Objections, point 22.

78 See Letter from the audit dated October 29, 2021, page 12, point 4.1.3.

79 [...]

80 [...]

81 See Letter from the audit dated October 29, 2021, page 13, points 4.2.1. and 4.2.2.

Decision of the National Commission sitting in restricted formation on the outcome of
Survey no. [...] conducted with Company A.

30/55

Regarding his employees, he added that there were still other media
additional information, such as informing the staff delegation, the execution of
mandatory training for its employees concerning the protection of personal data
staff⁸², the GDPR intranet section specifically for its employees, the regulation
internal control that would apply to all members of its staff and
the continuous information of its staff, which was in charge of the DPO and/or the management of the
controlled⁸³.

Regarding third parties, he added that he is of the opinion that the obligation
of information instituted by Article 13 of the GDPR would not be an absolute obligation and it
would in particular not be necessary "when the communication of information to the person
concerned proves impossible or would require disproportionate efforts" (see recital
⁶² GDPR). The controller was of the opinion that in this case the sticker and the billboard
were the only direct tool he had, because it would be "materially impossible,
if not extremely difficult (...) to prosecute each of the third parties passing within reach of its

security cameras to deliver to them in person a document containing all the information required by Article 13 of the GDPR”⁸⁴.

The controlled also mentioned that he had in the meantime

□

installed new, larger and more numerous billboards on and in his buildings and he has attached a photo of these new panels billboards⁸⁵ (hereinafter: the “new billboards”);

□ updated its data protection policy and published the said document on its website⁸⁶;

⁸² See Letter from the audit dated October 29, 2021, exhibit no. 10.

⁸³ See Letter from the audit dated October 29, 2021, page 14, point 4.2.3 last paragraph.

⁸⁴ Letter from the audit dated October 29, 2021, page 18, point 4.4.

⁸⁵ See Letter from the audit dated October 29, 2021, exhibit no. 12; and page 11, point 4.1.2; and page 25, point 6.2.

⁸⁶ See Letter from the audit dated October 29, 2021, exhibit no. 21; and page 25, point 6.2.

Decision of the National Commission sitting in restricted formation on the outcome of Survey no. [...] conducted with Company A.

31/55

□ updated an “internal personal data protection policy” addressed to employees in terms of data protection and published the said document on its intranet⁸⁷; And

□ sent an internal communication to all employees informing them of the publication of new versions of the data protection policy and the “internal personal data protection policy”.⁸⁸

He also stressed that not all improvements made should “be interpreted, even implicitly, as an acknowledgment of violations

allegedly identified” in the Statement of Objections⁸⁹.

69. 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. point 33).

70. She also believes that a multi-level approach to communicating transparency information to data subjects can be used in a offline or non-digital context, i.e. in a real environment such as for example personal data collected by means of a system of video surveillance. The first level of information (warning sign, note information, etc.) should generally include the most important information essential, namely the details of the purpose of the processing, the identity of the person responsible for the processing, the existence of the rights of data subjects, the information with the most strong impact on the treatment or any treatment likely to surprise the data subjects, as well as a reference to the more detailed information of the second level (e.g. via QR code or website address)⁹⁰. THE

87 See Letter from the audit dated October 29, 2021, exhibit no. 22; and page 25, point 6.2.

88 See Letter from the audit dated October 29, 2021, exhibit no. 23.

89 See Letter from the audit dated October 29, 2021, page 25, point 6.1.

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

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

Survey no. [...] conducted with Company A.

32/55

second level of information, i.e. all of the information required under
of Article 13 of the GDPR, could be provided or made available by other means,
such as a copy of the privacy policy emailed to
employees or a link on the website to an information notice with regard to
non-salaried third parties⁹¹.

2.1. Information from third parties

71. The Restricted Committee notes that during the on-site visit by the agents of the
CNPd, third parties were only informed of the presence of the security system.

video surveillance only by means of road signs containing pictograms
a camera and the words "Local/Locals under video surveillance" and the old
CNPd thumbnail. A panel and the old CNPD sticker were affixed to the
level of the entrance door located at [...] and another panel was affixed at the level of a
passage not open to the public located between [...] and [...].⁹²

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

73. Next, it notes that the aforementioned panels, in place at the time of
investigation, did not contain the elements required by the first level of information, nor a
reference to the second level of information (see point 70 of this decision).

74. With regard to the first level of information, it lacked in particular the
details of the purpose of the processing, the identity of the controller, the existence of
rights of the data subjects and the reference to the more detailed information of the

second level.

75. With regard to the second level of information (i.e. all of the information required under Article 13 of the GDPR), the Restricted Panel finds

91 See WP260 rev. 01 (Item 38.)

92 See Minutes, page 3, finding 1; and Statement of Objections, page 5, point 12.

Decision of the National Commission sitting in restricted formation on the outcome of Survey no. [...] conducted with Company A.

33/55

that the control sent to the CNPD agents on November 5, 2019, that is to say say before sending the report to the controller, a series of documents which contained, among other things, the data protection policy of the controlled which was accessible "in line on the intranet site as well as on Company A's website" (i.e., it was accessible to third parties). In said data protection policy ([...]) there was a link for "customers and third parties" [...] via [a "data regulation"] whose controlled has not transmitted a copy and of which the Restricted Panel does not know the content⁹³.

76. While the said data protection policy did indeed contain certain of the information provided for in Article 13 of the GDPR, it nevertheless did not specify the purposes mentioned during the on-site visit (i.e. the protection of property, the securing of access to private places and places at risk, the safety of users as well as the prevention of accidents), nor the specific retention period in relation to the images video surveillance. Chapter [...] of the data protection policy contained only a general list of all purposes for all data processing carried out by the controlled and video surveillance is mentioned there as one of the purposes and not as a processing of personal data in itself.

77. Furthermore, the Restricted Committee would like to point out that Article 13 of the GDPR requires that, when the data controller collects personal data personal contact with the person concerned, he “provides him, at the moment when the data in question are obtained” the information listed therein. As mentioned above in point 69 of this decision, the word “provide” is crucial because it “means that the person responsible for the processing must take concrete steps to provide the information in question to the data subject or to actively direct the data subject to the location of said information (for example by means of a direct link, a code QR, etc.). (WP260 rev. 01. point 33).

Thus, “simply providing the information electronically and in writing, by example in an online privacy statement or notice, may not be suitable or not work on a device collecting the data at personal character that does not have a screen (connected/smart devices) to 93 [...].

Decision of the National Commission sitting in restricted formation on the outcome of Survey no. [...] conducted with Company A.

34/55

display the website or this written information. In such a case, alternative means additional and suitable should be considered, for example the provision of the statement or notice on the protection of privacy in an instruction guide at the paper format or the supply in paper format, in the instructions or on the packaging, the URL address of the website (more precisely, the specific page of the website) where is the privacy notice or statement. (WP 260, rev.01, point 19).

78. In the present case, the Restricted Panel considers, as the panels of

signage in place at the time of the on-site visit contained only a pictogram
a camera with the words “Local/Locals under video surveillance” and the old
thumbnail of the CNPD, that they therefore did not contain any reference to the website
of the controlled where the data protection policy of the controlled was located. By
therefore, a third party visiting the premises of the controlled could not have known where
find the relevant information. Furthermore, when the data of a person
third party are obtained by the controlled party, i.e. when the latter visits the premises of the
controlled and falls into the field of vision of one of the cameras, we cannot expect
that it has previously visited the website of the controlled to read the
information
relating to
data processing operated by
the system of
video surveillance.

79. The Restricted Committee takes note of the assertion of the control stipulating that the
panels and the old CNPD sticker were the only direct tool that it
had, because it would have been “materially impossible, if not extremely difficult
(...) to prosecute each of the third parties passing within range of its security cameras for their
hand deliver a document containing all the information required by
Article 13 of the GDPR”⁹⁴.

80. However, it is not mandatory to hand-deliver to all persons
third parties a paper document containing all the information required by Article 13
of the GDPR. Indeed, and as also stated by the controller in his aforementioned letter
of October 29, 2021, a multi-layered approach to communicating information
information on transparency to data subjects can be used

⁹⁴ See Letter from the audit dated October 29, 2021, page 18, point 4.4.2.

Decision of the National Commission sitting in restricted formation on the outcome of
Survey no. [...] conducted with Company A.

35/55

in the event of the collection of personal data by means of a system of
video surveillance (see point 70 of this decision on information at two levels).

However, the first level information (such as, for example, the panels of
signs at the entrance to a building) should therefore contain a reference
to more detailed information of the second level (for example, a link via a website
or a QR code).

81. In view of the foregoing, the Restricted Panel agrees with the opinion of Chief
of investigation⁹⁵ and concludes that at the time of the on-site visit by CNPD agents, the article
13 GDPR was not complied with by the video surveillance check for this
concerning third parties.

82. As for the measures taken by the controller after the on-site visit by the
the CNPD, Restricted Training refers to point 93 as well as to Chapter II.2. Section
2.2. of this decision for the related explanations.

2.2. Employee information

83. With regard to
informing employees about the system of
video surveillance, the Restricted Panel notes that at the time of the on-site visit by the
CNPD officers, they were informed of the video surveillance by the same panels
signs and the old CNPD sticker that third parties (see points
71 to 74 of this decision). She also notes that the auditee stated that the
employees were informed of the data protection policy via the distribution of
related documents via its intranet as well as by compulsory participation in an e-

learning on data protection (minutes, finding 7).

84. In addition, it notes that the controller sent CNPD officials on November 5, 2019, that is to say before the report was sent to the controller, a series of documents which contained, among other things, the GDPR intranet section, the protection policy data, internal regulations and e-learning training.

85. Regarding the data protection policy, she would like to refer to point 76 of this decision. With regard to the GDPR intranet section, she notes that she

95 See Statement of Objections, pages 6 to 7, points 16 and 22.

Decision of the National Commission sitting in restricted formation on the outcome of Survey no. [...] conducted with Company A.

36/55

indeed contained most of the information provided for in Article 13 of the GDPR, but did not contained no mention of the specific CCTV processing. However, the GDPR intranet section referred to the data protection policy in which there was a mention of CCTV processing in pages [...]. The rule interior also contained a mention of CCTV on page [...], but none of the other mentions provided for in Article 13 of the GDPR. Regarding the e-learning training, Restricted Training notes that it was a general training concerning the GDPR, the objective of which was to train and raise awareness among employees in the field of personal data protection. It was not information individual employees with respect to video surveillance processing. It is the same for the other aforementioned documents, because these documents can be qualified as a collective information, but not as individual employee information. Furthermore, it considers that, even if the auditee had chosen a two-pronged approach levels to communicate the information required by Article 13 of the GDPR to its

employees, all of their information must nevertheless “be accessible in a place unique or in the same document (in paper or electronic format) that can be easily consulted by this person if he wishes to consult all of the information addressed to it” (WP260 rev. 01, point 17). In this case, the information is scattered in different documents available in various places, which makes it difficult for employees to become familiar with this information.

86. She also notes that the controller mentioned in his letter of October 29 2021 that the staff delegation had been in possession of all the information necessary regarding CCTV processing. Attached to said letter, he sent the agreement of [...] concerning said processing⁹⁶. In the aforementioned letter, the controller also mentioned that, during e-learning training for its employees, “the issue of surveillance cameras was addressed by employees of Company A and relevant information was provided to them”⁹⁷.

However, the Restricted Panel has no proof of such information from employees, on the one hand, and it would like to point out that simply informing the [...] does not ensure

⁹⁶ See Letter from the audit dated October 29, 2021, exhibit no. 17.

⁹⁷ See Letter from the audit dated October 29, 2021, page 14, 4.2.3.

Decision of the National Commission sitting in restricted formation on the outcome of Survey no. [...] conducted with Company A.

37/55

that the control employees had been informed individually about the elements of article 13 of the GDPR.

87. In view of the foregoing, she thus agrees with the opinion of the head of investigation⁹⁸ and concludes, that at the time of the on-site visit by CNPD officials, Article 13 of the GDPR was not complied with by the control in terms of video surveillance as far as employees are concerned.

88. As for the measures taken by the control after the on-site visit of the agents of the CNPD, Restricted Training refers to point 93 as well as to Chapter II.2. Section 2.2. of this decision for the related explanations.

II. 2. On corrective measures and fines

1. Principles

89. 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;

98 See Statement of Objections, pages 6 to 7, points 16 and 22.

Decision of the National Commission sitting in restricted formation on the outcome of Survey no. [...] conducted with Company A.

38/55

- (e) order the controller to communicate to the data subject a personal data breach;
- f) impose a temporary or permanent restriction, including prohibition, of processing;
- g) order the rectification or erasure of personal data or the

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

(h) withdraw a certification or order the certification body to withdraw a certification issued pursuant to Articles 42 and 43, or order the body to certification not to issue certification if the requirements applicable to the certification are not or no longer satisfied;

(i) impose an administrative penalty under section 83, in addition to or in addition to instead of the measures referred to in this paragraph, depending on the characteristics specific to each case;

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

90. 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.

91. 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 :

Decision of the National Commission sitting in restricted formation on the outcome of Survey no. [...] conducted with Company A.

39/55

“(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;

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

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

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

ordered against the controller or processor concerned for the

same purpose, compliance with these measures;

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

certification mechanisms approved under Article 42; And

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

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

indirectly, as a result of the breach”.

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

Survey no. [...] conducted with Company A.

92. 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.

93. 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 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

94. In his Statement of Objections of 24 August 2021 (point 36), the Head of Investigation proposed to the Restricted Panel to impose an administrative fine on the control of a amount of 10,500 euros.

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

As regards the breach of the obligation to inform the persons concerned in accordance with article 13 of the GDPR, the Restricted Training recalls that

information and transparency relating to the processing of personal data

Decision of the National Commission sitting in restricted formation on the outcome of
Survey no. [...] conducted with Company A.

41/55

personnel are essential obligations incumbent on those responsible for
processing so that individuals are fully aware of the use that
will be made of their personal data, once collected. A
breach of Article 13 of the GDPR thus constitutes an infringement of the rights
of the persons concerned. This right to information has also been reinforced in
terms of the GDPR, which demonstrates their particular importance.

~

As for the duration criterion (article 83.2.a) of the GDPR), the Restricted Training
notes that these shortcomings have persisted over time, at least since the
May 25, 2018 and until the day of the on-site visit. The Restricted Formation reminds
here that two years separated the entry into force of the GDPR from its entry into
application to enable data controllers to comply with the
obligations incumbent on them, even if an obligation to respect the principle
data minimization, as well as a comparable information obligation
already existed pursuant to Articles 4.1. b), 10.2 and 26 of the repealed law of 2
August 2002 on the protection of individuals with regard to the processing of
personal data. Guidance on principles and obligations
provided for in the said law was available from the CNPD, in particular through
prior authorizations for video surveillance and guidance
available on the CNPD website.

~

As for the number of data subjects (Article 83.2.a) of the GDPR), the Restricted Training notes that for video surveillance, it is all the employees working on the controlled site, as well as all third parties, i.e. customers, suppliers, service providers and visitors visiting said site.

~

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.

Decision of the National Commission sitting in restricted formation on the outcome of Survey no. [...] conducted with Company A.

42/55

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

~

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

~

As for the measures taken by the auditee to mitigate the damage suffered by the data subjects (article 83.2.c) of the GDPR), the Restricted Training takes

account of the measures taken by the auditee and refers to Chapter II.2. Section 2.2.

of this decision for the related explanations.

96. 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.

97. 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 23 October 2019 (see also point 92 of this decision).

98. 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.

99. 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.

Decision of the National Commission sitting in restricted formation on the outcome of Survey no. [...] conducted with Company A.

43/55

100. With regard to the relevant criteria of Article 83.2 of the GDPR mentioned above, the Restricted Panel considers that the pronouncement of a fine of ten thousand (10,000) euros appears to be both effective, proportionate and dissuasive, in accordance with the requirements of

GDPR Article 83.1.

2.2. About taking corrective action

101. The adoption of the following corrective measures was proposed by Chief inquiry to the Restricted Panel in its statement of objections (point 33.):

a) "Order the controlled party to complete the information measures intended for people affected by

video surveillance, in accordance with

provisions of Article 13, paragraphs 1 and 2 of the GDPR by filling in

notably :

- the identity and contact details of the controller;
- the contact details of the data protection officer;
- the purposes of the processing for which the personal data are intended personnel as well as the legal basis of the processing;
- the categories of personal data concerned;
- the legitimate interests pursued by the controller;
- the recipients or categories of recipients of the data to be personal character;
- the length of the conversation ;
- the existence of the right to request from the data controller access to the personal data, rectification or erasure thereof, or restriction of processing relating to the data subject; And
- the right to lodge a complaint with a supervisory authority.

b) Order the controlled to process only relevant, adequate data

and limited to what is necessary with regard to the purposes of protecting the goods and securing access and, in particular, adapting the security system

video surveillance so as not to film public roads and buildings and

surrounding land, as well as employees at their workstations. Such a

Decision of the National Commission sitting in restricted formation on the outcome of
Survey no. [...] conducted with Company A.

44/55

adaptation can take place, for example, by removing and/or redirecting
the disputed cameras, and/or by adapting the field of vision of these cameras
by means of blurring or darkening. »

102. As for the corrective measures proposed by the head of investigation and by
reference to point 93 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 email of November 5, 2019 and in his letters of December 13, 2019 and 29
October 2021. More specifically, it takes note of the following facts:

1. As for the corrective measure proposed by the head of investigation mentioned in point
101 of this decision under b), concerning the obligation to deal only with
relevant, adequate and limited data to what is necessary with regard to
the purposes of protecting property, securing access to places
at risk and the safety of users, in accordance with the provisions of
article 5.1.c) of the GDPR, the controller confirmed in his email of November 5
2019 and in his letters of December 13, 2019 and October 29, 2021
- with regard to cameras n° [1], [2] and [6] allowing surveillance in
permanence of employees in their place of work:

☐ that he did not make any changes to the fields of vision of the three
disputed cameras because he considers the fields of vision of said
justified cameras (see points 30 and 33 of this decision for more

details).

The Restricted Panel considers that the arguments of the audited (see point 30 and 33 of this decision) in relation to cameras Nos. [1], [2] and [6] are understandable since surveillance was aimed at premises in a banking establishment, in this case the vaults (camera n° [1] and [2]) and the central controlled desk (camera no. [6]), which are places particularly sensitive where there is a risk of theft or vandalism.

As elaborated in point 36 (2nd and 3rd paragraph) of this decision, it is nevertheless of the opinion that the field of vision of camera n° [1] is disproportionate because it must not relate to the workstation of an employee

Decision of the National Commission sitting in restricted formation on the outcome of Survey no. [...] conducted with Company A.

45/55

in particular who is obliged to spend at least several hours in a row there by day, and if such can absolutely not be avoided, the face of the employee in question must not be visible (for example by the use of computer techniques blurring/masking). As regards cameras n° [2] and [6], it notes that the workstations in question are not occupied in permanently but are only used occasionally by the employees of the controlled for sensitive tasks. Therefore, she is of the opinion that no corrective action is required with respect to cameras #[2] and [6].

In view of the absence of compliance measures taken by the controlled in this case (with regard to cameras Nos. [1], [2] and [6]) and point 93 of the

this decision, the Restricted Panel therefore considers that there is reason to pronounce the corrective measure proposed by the head of investigation in this regard and taken up in point 101 of this decision under b), but only by compared to the field of view of camera n° [1].

- with regard to cameras n° [3], [4], [5], the reception camera, [7], [8], [9], [10], [11] and [12], allowing permanent monitoring of employees on their place of work or during their break time:

☐ that it brought a masking system to the field of vision of all aforementioned cameras and that he confirmed his commitment to disconnect the camera no. [11] in the event of activation of the backup plan.

Considering the sufficient compliance measures taken by the controlled in this case (with regard to cameras n° [3], [4], [5], the reception camera, [7], [8], [9], [10], [11] and [12]) and point 93 of this decision, the Panel Restreinte therefore considers that there is no need to pronounce the measure correction proposed by the head of investigation in this regard and repeated in point 101 of this Decision under b).

- with regard to cameras n° [13], [14] and [15] allowing the monitoring of public roads or buildings not belonging to the controlled:

Decision of the National Commission sitting in restricted formation on the outcome of Survey no. [...] conducted with Company A.

46/55

☐ that it masked the field of view of cameras n° [15] and [14] and he attached photos showing the fields of view of said cameras after this adjustment; And

☐ that he ordered a new camera to replace the “dome” camera

No. [13] because, according to the inspected, it did not allow masking of certain areas. In his letter of October 29, 2021, he confirmed that the dome camera no.

[13] was

replaced⁹⁹. However, none

documentation submitted by the auditee does not contain evidence that said camera was finally replaced by a new camera and that a proper masking has been installed.

Furthermore, the corrective measures taken by the audited in relation to the camera [14] correspond to the EDPB instructions on this subject in its EDPB guidelines 3/2019 because the controlled has blurred the areas not relevant to said camera.

With regard to camera n° [15], the Restricted Panel considers that the field of view of said camera was not disproportionate to the purposes pursued by the control (see point 53 of this decision for related explanations).

In view of the incomplete compliance measures taken by the controlled in this case (with regard to cameras n° [13], [14] and [15]) and the point 93 of this decision, the Restricted Panel therefore considers that there takes place to pronounce the corrective measure proposed by the head of investigation to this regard and taken up in point 101 of this decision under b), but only in relation to the field of view of the “dome” camera n° [13].

2. As for the corrective measure proposed by the head of investigation mentioned in point 101 of this decision under a), concerning the introduction of measures information for people third parties on

the system of

99 See Letter from the audit dated October 29, 2021, page 25, 6.2.

Decision of the National Commission sitting in restricted formation on the outcome of
Survey no. [...] conducted with Company A.

47/55

video surveillance in accordance with the provisions of Article 13 of the GDPR, the
Restricted Training finds that the controlled explained that he was proceeding "to a
information in several stages (...), the thumbnail and the posters raised (...) do not
being that the first '100. In this context, the controlled explained that he installed
new billboards "larger and more numerous on and in
his buildings" 101 and he attached a photo of the new billboards
(Exhibit No. 12 of the audit letter of October 29, 2021). He also explained
that the more detailed information of the second level of information, would be
easily accessible on its website which contained and linked to

-

its data protection policy via the link [...] and that it had updated this
data protection policy (Exhibit 21 of his letter of October 29
2021),

-

[a "data settlement"] via the link [...], and

- a "page dedicated to the protection of personal data" via the link [...].

Regarding the first level of information, the Restricted Training

notes that the new billboards do not contain all the

information required according to the first level of information (see point 70 of the

this decision), because the auditee mentioned only "the exercise of the right

of access to images” and not the existence of other rights of persons concerned. As to the reference to the more detailed information of the second level, it finds that the person inspected has mentioned a link [...] to the "legal information" from the controlled's website, and he also added a code QR on new billboards that leads to the same site page web. This "legal information" covers a large number of subjects (between other, information about financial instruments and other products of the controlled, the intellectual property and the applicable law) and mention [...] the “protection of personal data”. This chapter contains, among others, a hypertext link to the new version of the privacy policy

100 See Letter from the audit dated October 29, 2021, page 11, point 4.1.2.

101 See Letter from the audit dated October 29, 2021, page 25, point 6.2.

Decision of the National Commission sitting in restricted formation on the outcome of Survey no. [...] conducted with Company A.

48/55

data in pdf format, without mentioning the processing of specifically CCTV.

Consequently, the Restricted Committee finds that the reference to the second level of information is not sufficiently clear and it does not refer directly to the source of the second level of information. However, in his letter of December 13, 2019, in response to the minutes, the controller reported that he had “initiated the replacement and upgrading of the pictograms warning the employees and

THE

third of

the presence of a system of

video surveillance” and he announced that he will indicate in the future “in particular the name

of the person responsible for the device, the legal basis, the retention period of the images

and how to complain” to the Data Protection Officer

and with the CNPD on the new panels. In this case, the Formation

Restricted finds that it has not added the retention period of the images (nor

at the first level of information on the new billboards, nor at the

second level of information) and that it decided to mention the methods of

complaint to the CNPD only at the second level of information,

which is sufficient.

With regard to the second level of information, she notes that the

mentioned data protection policy was updated in [...] 2021. By

However, said document still does not contain a specific section regarding

the specific purposes in relation to the video surveillance system, nor the duration

specific conservation for

THE

pictures

from

Treatment of

video surveillance (as already raised by the head of investigation in his

statement of objections, point 20). CCTV is mentioned there.

only in chapter [...] among the categories of data processed.

The same applies to [the “data regulation”] [...] on the website of the controlled

which contains no specific mention of CCTV.

Regarding the “page dedicated to the protection of personal data”

[...], she notes that it is only by going through the text [of the “regulation data”] that a third party could find this other hypertext link which leads to the said “page dedicated to the protection of personal data”. THE

Decision of the National Commission sitting in restricted formation on the outcome of Survey no. [...] conducted with Company A.

49/55

CCTV processing is mentioned there only in a list of several purposes that the controller has listed to justify the processing of data it performs and therefore this document also does not contain information about the CCTV system.

Consequently, the Restricted Panel holds that in this case there is no “a single place or (...) the same document (in paper or electronic)”¹⁰² where all of the information required by Article 13 of the GDPR regarding the CCTV system can be easily viewed by third parties.

In view of the insufficient compliance measures taken by the controlled in this case and point 93 of this decision, the Restricted Panel therefore considers that it is appropriate to pronounce the corrective measure proposed by the head of investigation in this regard as set out in point 101 (a) of this decision regarding the information of third parties about the system video surveillance.

3. As for the corrective measure proposed by the head of investigation mentioned in point 101 of this decision under a), concerning the introduction of measures information intended more specifically for employees on the system of video surveillance in accordance with the provisions of Article 13 of the GDPR, the

Formation Restreinte wishes first of all to refer to the explanations above by compared to the first and second level information given to the third parties (point 102 sub-heading 2). She adds that the controlled has indicated in his letter of October 20, 2021 that he

- updated its "internal policy addressed to employees with regard to the protection data" and that he had published it on his intranet site (Exhibit 22 of the letter of the audit of October 29, 2021), and

102 See WP260 rev. 01, item 17.

Decision of the National Commission sitting in restricted formation on the outcome of Survey no. [...] conducted with Company A.

50/55

- carried out an "internal communication (...) informing all employees of the publication of new versions of its privacy policies data"¹⁰³ (Exhibit No. 23 of the audit letter of October 29, 2021).

Even if the Restricted Formation recognizes the efforts undertaken concerning the individual information of its employees, it must nevertheless note that the controlled employees have not received more specific information with respect to the CCTV system than third parties. The "internal policy" addressed to employees with regard to data protection" contains, as already the data protection policy, some of the statements provided for in Article 13 of the GDPR, but also contains no mention of the processing specific to CCTV.

Consequently, the Restricted Panel holds that in this case there is not "a single place or (...) the same document (in paper or electronic format)"¹⁰⁴ where all of the information required by Article 13 of the GDPR with regard to

concerns the video surveillance system can be easily consulted by the employees of the controlled.

In view of the insufficient compliance measures taken by the controlled in this case and point 93 of this decision, the Restricted Panel therefore considers that it is appropriate to pronounce the corrective measure proposed by the head of investigation in this regard as set out in point 101 (a) of this decision with regard to the information of the employees of the control as to the CCTV system.

II. 3. On access to the entire administrative file

103. On September 9, 2021, the controller, represented by [...], asked the chief investigation the transmission of the entire administrative file referred to in Article 11 of the Grand-Ducal Regulation of 8 June 1979 relating to the procedure to be followed by

103 See Letter from the audit dated October 26, 2021, page 25, footnote no. 36.

104 See WP260 rev. 01, item 17.

Decision of the National Commission sitting in restricted formation on the outcome of Survey no. [...] conducted with Company A.

51/55

state and municipal administrations. On September 22, 2021, the chief of investigation responded to this request and transmitted the entire administrative file (in CD-ROM form) to the controller on October 1, 2021. At the request of the controller, the head of investigation then extended the deadline to produce written observations on the statement of objections until 3 November 2021.

104. By letter dated October 29, 2021, the auditee produced written observations on the statement of objections and he, among other things, raised in the "remarks preliminary and retroacts" of the said letter that he was of the opinion that the administrative file

transmitted by the CNPD “did not seem complete”¹⁰⁵. He noted the following:

- the absence of a document justifying the change of the head of investigation for the case in species between Mr. Buschmann and Mr. Lemmer;
- the finding that the head of investigation was not in possession of the communications exchanged after his statement of objections and the fear that the latter could not have “finalize its grievances and its proposed sanction (...) based on communications after that date”;
- criticism of the division of files transmitted to the control by the CNPD on the CD-ROM between “official” files and “parts”; And
- the question in relation to the basis of the CNPD's intervention.

105. By letter dated December 8, 2021, the head of investigation responded to these "Preliminary and retroactive remarks" of the controlled in his letter of October 29 2021 and he took a stand on all the criticisms raised by the controlled. Furthermore, he has sent to the person inspected a copy of the extract from the report no. [...] formalizing the resumption of the function of head of investigation by Mr. Lemmer following the departure of Mr. Buschman.

106. The Restricted Committee wishes first of all to emphasize that communication of grievances contains only the assessments and proposals made by the head of investigation on the basis of the facts observed and that the Restricted Panel makes its decisions

¹⁰⁵ See Letter from the audit dated October 29, 2021, page 3, point 1.3.

Decision of the National Commission sitting in restricted formation on the outcome of Survey no. [...] conducted with Company A.

52/55

independently and that it is under no circumstances obliged to follow the assessments and proposals made by the head of investigation. Then, she notices that the CD-ROM that the

head of investigation transmitted to the control contained, with the exception of the extract from the report no. [...] formalizing the takeover of the function of head of investigation by Mr. Lemmer continued at the departure of Mr. Buschmann, the same documents as the Restricted Training itself received from the head of investigation for the purpose of making this decision. In what concerning the said extract from minutes No [...], it notes that it is a document which only retains a change of personnel within the CNPD, which cannot no circumstances influence his decision-making. For the other points raised in the letter of October 29, 2021, the Restricted Training refers to the letter of December 8, 2021 of the head of investigation in which there are answers to all questions and criticisms raised by the controller in relation to his administrative file. Restricted Training would also like to note that after a question was asked during the training session Restriction of February 24, 2022, as to whether the auditee was still of the opinion that he had not received the entire administrative file, the controller replied that the completeness of the administrative file is not the most important point at this pre-litigation stage. In view of the foregoing, she concurs with the opinion of the head of investigation that the controlled has received the entire administrative file.

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;
- to impose an administrative fine on Company A in the amount of ten thousand (10,000) euros, with regard to breaches of articles 5.1.c) and 13 GDPR;

Decision of the National Commission sitting in restricted formation on the outcome of Survey no. [...] conducted with Company A.

- issue against Company A an injunction to bring it into compliance

processing with the provisions of Article 5.1.c) of the GDPR, within a period of 3 months following the notification of the decision of the Restricted Panel, and, in particular,

☐ change the field of vision of camera n° [1] so that the face of the employee in question is no longer visible (e.g. through the use of techniques blurring/masking software) or, if this is not possible, install real-time blurring of the employee occupying the workstation in question ; And

☐
replace the “dome” camera [13] with a device that allows you to hide the roads belonging to the public domain as well as the buildings not belonging to the controlled.

- to order Company A to maintain the modifications made during the investigation procedure to the fields of view of cameras n° [3], [4], [5], camera reception, [7], [8], [9], [10], [11], [12] and [14];

- issue against Company A an injunction to bring it into compliance processing with the provisions of Article 13 of the GDPR, within 3 months following the notification of the decision of the Restricted Panel, and, in particular,

☐
inform non-employee third parties and employees of the control of clearly and completely on the video surveillance system, either by adding a specific chapter on CCTV processing in its data protection policy, either by creating a notice specific information for the processing of video surveillance which contains

(in a single place and in the same document) all the
information required under Article 13 of the GDPR and, in particular, the
THE
specific purposes of
data processing
issues of
there
video surveillance and the retention period in relation to the images of
video surveillance ;

Decision of the National Commission sitting in restricted formation on the outcome of
Survey no. [...] conducted with Company A.

54/55

☐ adapt the new billboards on and in the buildings of the
controlled by modifying the reference to the second level of information (i.e. the
link to the website of the controlled and the QR code) and replacing it with a
new reference to the second level of information which leads directly
to a modified data protection policy (in particular by
report to a new chapter on the video surveillance system) and/or
towards a new information notice specifically concerning the
CCTV processing; And

☐
individually inform employees in a clear and complete manner on the
video surveillance of the controlled site, emphasizing in particular, in its
communication, modification of the data protection policy
(particularly in relation to a new chapter on the system of

video surveillance) and/or the creation of a new information notice

specifically relating to CCTV processing.

Thus decided in Belvaux on July 7, 2022.

For the National Data Protection Commission sitting in formation

restraint

Thierry Lallemand

Alain Hermann

Marc Hemmerling

Commissioner

Commissioner

Substitute member

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.

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

Survey no. [...] conducted with Company A.

55/55