

Decision of the National Commission sitting in restricted formation

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

Deliberation No. 46FR/2021 of December 1, 2021

The National Commission for Data Protection sitting in restricted formation

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

Lemmer, commissioners;

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

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

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

95/46/EC;

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

data protection and the general data protection regime, in particular

its article 41;

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

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

article 10 point 2;

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

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

in particular its article 9;

Considering the following:

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

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

1/24

I. Facts and procedure

1.

By deliberation no. [...] of 23 November 2017, the National Commission for Data Protection (hereafter: "CNPD") sitting in plenary session (hereafter: after: "Plenary Training") decided to carry out a verification mission to of Company A on the basis of Article 32.7 of the amended law of August 2, 2002 relating to the protection of individuals with regard to the processing of personal data and instruct Mr. Christophe Buschmann to carry out the said mission. The object of the mission was to check whether the video surveillance system was implemented in compliance with the amended law of 2 August 2002, law meanwhile repealed by the law of 1 August 2018 on the organization of the National Commission for Data Protection and the general data protection regime (hereinafter: "Law of 1 August 2018"), as well as with the conditions and restrictions defined in the deliberation n° [...] of May 24 2017 National Data Protection Commission authorizing Company A to operate video surveillance.

2.

Company A is a public limited company registered in the Commercial Register and Companies in Luxembourg under number [...], with registered office at [...], L- [...] (hereafter: the "controlled"). The controlled [is active in the field of construction metallic].

3.

On December 12, 2017, CNPD agents carried out a visit to the premises of the control. The measures put in place by the control following said visit¹ led the Plenary Formation to close the verification mission cited above by decision no. [...] of March 23, 2018.

4.

During its deliberation session on September 28, 2018, the Panel Plenary had decided to open a new investigation with the auditee on the basis of article

37 of the law of August 1, 2018 and to appoint Mr. Christophe Buschmann as head of investigation.

5.

According to the decision of the Plenary Formation, the investigation carried out by the CNPD was intended to verify compliance with the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of persons

1 See audit letter of February 20, 2018.

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

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

2/24

with regard to the processing of personal data and to the free movement of this data, and repealing Directive 95/46/EC (hereinafter: "GDPR") and of the law of August 1, 2018, in particular by setting up a video surveillance system installed by the controlled.

6.

On October 5, 2018, CNPD agents visited in the premises of the controlled.² The decision of the National Commission for the Protection data sitting in restricted formation on the outcome of the investigation (hereinafter: "Restricted Training") will be limited to processing controlled by CNPD agents.

7.

At the end of his investigation, the head of investigation notified the person inspected on the date of January 8, 2019 a statement of objections detailing the shortcomings he considered constituted in this case, and more specifically a non-compliance with the requirements prescribed by article 13.1 and 2 of the GDPR (right to information) with regard to persons concerned, i.e. employees and non-employees, i.e. customers,

suppliers, service providers and visitors (hereinafter: “third parties”)

and non-compliance with the requirements of article 5.1.c) of the GDPR (principle of minimization of Data).

8.

By letter dated January 25, 2019, the inspector made his observations on the statement of objections.

9.

An additional letter to the statement of objections has been sent to the control dated January 29, 2021. In this letter, the head of investigation proposed to the Restricted Formation to adopt two corrective measures, which should be implemented within 1 month, under penalty of a penalty payment of 50 euros per day of delay, as well as to impose on the person controlled an administrative fine in the amount of 6,000 euro.

10.

By letter dated February 23, 2021, the controller produced observations written on the supplementary letter to the statement of objections.

11.

The president of the Restricted Formation informed the controller by mail of April 29, 2021 that his case would be registered for the session of the Restricted Panel of 2 See Minutes relating to the on-site inspection carried out on October 5, 2018 at the Company A (hereinafter: the “minutes”).

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

3/24

July 14, 2021. The controlled confirmed his presence at the said session by email of April 30

2021.

12.

During this session, the head of investigation and the controller presented their oral submissions in support of their written submissions and responded to questions posed by the Restricted Panel.

13.

By email of July 14, 2021, the controller produced information additional.

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

14.

In accordance with Article 5.1.c) of the GDPR, personal data personnel must be “adequate, relevant and limited to what is necessary for the with regard to the purposes for which they are processed (minimization of data)”.

15.

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.³

16.

Article 5.1.b) of the GDPR provides that personal data must be “collected for specified, explicit and legitimate purposes, and not be further processed in a manner incompatible with those purposes; [...] (limited

purposes)".

17.

Before installing a CCTV system, the person in charge of the processing must precisely define the purpose(s) it wishes to achieve by

3 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

4/24

using such a system, and will not then be able to use the personal data personal information collected for other purposes.⁴

18.

The necessity and proportionality of video surveillance is analyzed on a case-by-case basis. on a case-by-case basis 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.⁵

2.

In this case

19.

During the on-site visit, CNPD officials noted that the fields of vision of the cameras installed in the backyard, in front of the large gate and in the external depot, were modified compared to what they had observed during a on-site visit on December 12, 2017 as part of the previous verification mission, so that parts of the public road are no longer captured.⁶

20.

Regarding the field of view of the camera installed in the workshop

of production [...] the CNPD agents noted that, during working hours, it is closed off by a metal plate, so that monitoring of employees in the workplace is excluded. The controller explained that at the end of the working day, this shutter would be removed by the personnel in order to allow the monitoring of the room in outside working hours.⁷

21.

Nevertheless, the CNPD agents found that the camera installed in the large workshop [...] allows permanent monitoring of the employee(s) including working. When questioned, it was explained to the agents that, most of the time, a person works alone in this workshop and that the purpose of this permanent monitoring would be to guarantee the safety of this employee and that the latter would have given his consent.⁸

22.

With regard to the said camera, the head of investigation was of the opinion that a permanent monitoring of an employee at his workstation is to be considered as the CNPD, available

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

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

6 Findings 4, 5 and 6 of the minutes.

7 Finding 3 of the minutes.

8 Finding 2 of the minutes.

under: <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

disproportionate, because it can create significant psychological pressure for the employee who feels and knows he is being watched, especially since the surveillance measures persist over time and that the employee does not have a means of evading this monitoring (statement of objections, p.3).

23.

With regard to the argument of the controller that the employee would have marked his consent to such a surveillance measure, the head of the investigation refers to the “Lines guidelines on consent within the meaning of Regulation 2016/679” of the Working Group Article 29 and considers that, in this case, in view of the risk for the employee of incurring negative consequences in the event of a refusal, the consent of the employee is not to be considered as freely given.

24.

The control on his side explained in his reply letter to the statement of objections of 25 January 2019 that henceforth the procedure in place for the camera installed in the production workshop [...], that is to say that the employees block the camera during working hours by a metal plate, would also be in place for the camera installed in the large workshop [...]. He attached photos to his letter fields of view of the two cameras.⁹

25.

La Formation Restreinte would like to remind you that employees have the right not to not be subject to continuous and permanent surveillance in the workplace. For achieve the purposes pursued, it may seem necessary for a manager of the processing to install a CCTV system in the workplace. On the contrary, in respecting the principle of proportionality, the controller must use the the most protective means of surveillance of the employee's private sphere and, for example,

limit the fields of vision of the cameras to the only surface necessary to reach the
or the purpose(s) pursued.

26.

The Restricted Committee notes that henceforth the procedure for the camera
installed in the production workshop [...] is also in place for the camera installed in
the large workshop [...], that is to say that the employees themselves block the camera during
working hours by a metal plate. Nevertheless, even if the controlled had
clarified in his letter of February 20, 2018 that said procedure was already in place for

9 See appendix 1 of the audit letter of 25 January 2019.

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

6/24

the two aforementioned cameras¹⁰, it notes that on the day of the on-site visit by the
CNPD agents, this was not yet the case for the camera installed in the large
workshop [...] which therefore allowed permanent monitoring of the employee(s)
working.

27.

It also considers that even if the purpose indicated by the control is-
that is to say guarantee the safety of its employees, can find one or more bases of legality
under Article 6 of the GDPR, the permanent monitoring of employees is however
consider disproportionate. Moreover, the argument of the controller that the employee,
who works there most of the time alone would have agreed, is to be rejected. The
Restricted Training takes into account in this context the “Guidelines on the
consent within the meaning of the aforementioned Regulation 2016/679 of the Working Group Article

29. It should be noted that the European Data Protection Board (hereinafter: “EDPS”),

which has replaced the Article 29 Working Group since May 25, 2018, took over and reapproved the documents adopted by the said Group between May 25, 2016 and May 25, 2018, such as specifically the aforementioned guidelines on consent.¹¹

28.

These guidelines expressly mention the "imbalance of balance of power between an employer and the members of his staff" and that indeed "in view of the dependence resulting from the employer/employee relationship, it is unlikely that the person concerned is able to refuse to give his consent to his employer regarding the processing of his data without fear or incurring negative consequences following this refusal. It is therefore unlikely that an employee will be in able to respond freely to a request for consent from his or her employer seeking to activate surveillance systems, such as security cameras surveillance, in the workplace [...] without feeling obliged to consent"¹²

29.

Furthermore, the Restricted Panel notes that during the hearing of 14 July 2021 the controller added that the two cameras in question would have been installed at because of a theft that occurred in his establishment, that therefore the purpose pursued would be the protection of his property. Nevertheless, compliance with the principle of proportionality implies

¹⁰ See letter from the audit dated 20 February 2018 [...].

¹¹ 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.

¹² Guidelines on consent within the meaning of Regulation 2016/679 of the Working Party Article 29, version revised and adopted on April 10, 2018, p. 7 and 8.

under :

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

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

7/24

that the employer must resort to the most protective means of surveillance in the sphere private to the employee. In this case, the Restricted Panel considers that the way of proceeding controlled, i.e. leaving the responsibility of the employees to seal with a plate metal of said cameras during working hours by employees, who without closure would allow permanent monitoring of said employees, is to be considered as disproportionate to the desired end and that means less invasions of the privacy of the persons concerned exist, such as the movement of the camera outward or inward limited to the surface strictly necessary to visualize people entering or leaving.

30.

In addition, as it is the responsibility of the data controller, i.e. in the species to be checked, to respect and be able to demonstrate compliance with the rules provided for in the GDPR¹³, it considers that it is not acceptable for the controller to delegate this responsibility to its employees who must themselves ensure that the cameras are closed during working hours.

31.

Thus, the Restricted Panel considers that non-compliance with Article 5.1.c) of the GDPR had been acquired on the day of the site visit by CNPD agents with regard to concerns the cameras installed in the large workshop [...] and in the production workshop [...].

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

1. On the principles

32.

According to paragraph 1 of article 12 of the GDPR, the “controller of the

processing takes 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 [...]. »

13 See articles 5.2 and 24 of the GDPR.

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

8/24

33.

Article 13 of the GDPR provides the following:

“1. Where personal data relating to a data subject is

collected from this person, the data controller provides him, at the time

where the data in question is obtained, all of the following information:

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

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

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

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

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

(f) where applicable, the fact that the controller intends to carry out a transfer of personal data to a third country or to an organization

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

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

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

9/24

b) the existence of the right to request from the controller access to the data to personal character, the rectification or erasure of these, or a limitation of the processing relating to the data subject, or the right to oppose the processing and right to data portability;

c) where the processing is based on point (a) of Article 6(1) or on Article 9, paragraph 2(a), the existence of the right to withdraw consent at any time, without affecting the lawfulness of the processing based on the consent made before the withdrawal thereof;

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

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

those data;

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

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. »

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

10/24

34.

The communication to the persons concerned of information relating to the processing of their data is an essential element in the context of compliance with general transparency obligations within the meaning of the GDPR.¹⁴ These obligations have been explained by the Article 29 Working Party in its guidelines on the transparency within the meaning of Regulation (EU) 2016/679, the revised version of which has been adopted April 11, 2018 (hereinafter: “WP 260 rev.01”). It should be noted that the EDPS also took over and re-approved the aforementioned guidelines on transparency.¹⁵

2. In this case

35.

CNPD officials observed during their on-site visit that the CCTV is not reported to those affected by signs information, pictograms or other means, but that a sticker informing the number of the video surveillance authorization deliberation issued by the CNPD is affixed to the front door of the administrative building was the only source of information compared to the CCTV system. A simple outline of a pictogram, printed on free paper, was presented to the agents by the control, but "no proof could not be provided that these pictograms were actually affixed in such a way permanent after 7 February 2017 (date of formal notice by the CNPD). »

36.

In his Statement of Objections, the Head of Investigation clarified that the "Vignette issued by the CNPD and affixed to the main entrance door is not nature to irritate this finding, given that since May 25, 2018, video surveillance is no longer subject to the obligation of prior authorization and that, a fortiori, the authorization indicated on the said sticker no longer has any legal value. » Lack of evidence contrary, he thus reproached the person inspected for not having informed the persons concerned in accordance with the provisions of Article 13 of the GDPR.

37.

By letter dated January 25, 2019, the inspector specified that he installed four places outside the panels.¹⁶ Then, by letter dated February 23, 2021, the controller added that the staff members would have signed a memorandum which would mention the existence of surveillance cameras. Two signed copies of the said memorandum have

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

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

¹⁶ See appendix 2 of the audit letter of 25 January 2019.

under :

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

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

11/24

attached to the aforementioned letter (appendix 3), one undated copy and the other dated 9

February 2021.

38.

The Restreinte Committee wishes first of all to point out that Article 13 of the

GDPR refers to the obligation on the controller to “provide”

all the information mentioned therein. The word “provide” is crucial here and it “

means that the controller 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 such information (for example by means of

a direct link, a QR code, etc.). (WP260 rev. 01. paragraph 33).

39.

It also believes that a multi-level approach to

Communicating transparency information to data subjects can be

used in an offline or non-digital context, i.e. in an environment

real, such as personal data collected by means of a

CCTV system. The first level of information (warning sign,

information note, 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 and the existence of the rights of data subjects, as well as the information

having the greatest impact on the treatment or any treatment likely to surprise

the persons concerned, as well as a reference to the more detailed information of the

second level (for example, via a QR code or a website address).¹⁷ The second level of information, i.e. all of the information required under of Article 13 of the GDPR, could be provided or made available by other means, such as a copy of the privacy policy emailed to employees or a link on the website to an information notice with regard to non-salaried third parties¹⁸.

40.

Regarding the first level of information, the Restricted Training notes that even if the controller had specified in his letter of February 20, 2018 that traffic signs showing a surveillance camera would have already been

¹⁷ Cf. WP260 rev 01 (point 38) and EDPS Guidelines 3/2019 on the processing of personal data by video devices, version 2.0, adopted on January 29, 2020 (points 114. and 117.).

¹⁸ See WP260 rev. 01 (Item 38.)

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

12/24

attached¹⁹, she noted that during the on-site visit by CNPD agents, the only source of information in relation to the video surveillance system for employees and third parties was the old sticker affixed to the entrance door of the building administrative and informative the number of the deliberation of authorization of the CCTV issued by the CNPD. However, as these vignettes were issued by the CNPD under the former authorization regime of the amended law of 2 August 2002 relating

the protection of individuals with regard to the processing of personal data 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. Thereby, no document contained the required elements of the first level of information for employees and third parties.

41.

With regard to the second level of information²⁰, the Training Restricted notes that such information intended for employees and third parties was non-existent at the time of the site visit by CNPD officials. She notices however, in his letters of January 25, 2019 and February 23, 2021, the auditee clarified that he installed in four places outside the panels and that the members of the staff would have signed a memorandum which would mention the existence of security cameras surveillance. However, the Restricted Panel finds that the pictograms and said memorandum do not contain all the information required under Article 13 GDPR.

42.

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

¹⁹ See audit letter of 20 February 2018; [...].

²⁰ See Point [35.] of this Decision for further information on the two levels of information.

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

II. 2. On corrective measures and fines

1. On the principles

43.

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

- "(a) notify a controller or processor of the fact that the operations of the envisaged processing are likely to violate the provisions of this regulation;
- (b) call a controller or processor to order when the processing operations have resulted in a breach of the provisions of this Regulation;
- (c) order the controller or processor to comply with requests submitted by the data subject with a view to exercising their rights under this these regulations;
- d) order the controller or the processor to put the operations of processing in accordance with the provisions of this Regulation, where applicable, of specific manner and within a specified time;
- (e) order the controller to communicate to the data subject a personal data breach;
- f) impose a temporary or permanent restriction, including prohibition, of processing;
- g) order the rectification or erasure of personal data or the limitation of processing pursuant to Articles 16, 17 and 18 and the notification of these measures to the recipients to whom the personal data have been disclosed pursuant to Article 17, paragraph 2, and Article 19;
- (h) withdraw a certification or order the certification body to withdraw a certification issued pursuant to Articles 42 and 43, or order the body to certification not to issue certification if the requirements applicable to the certification

are not or no longer satisfied;

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

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

14/24

(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. »

44.

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

45.

Article 83 of the GDPR provides that each supervisory authority ensures that that the administrative fines imposed are, in each case, effective, proportionate and dissuasive, before specifying the elements that must be taken into account in deciding whether to impose an administrative fine and in deciding the amount of this fine:

“(a) the nature, gravity and duration of the breach, taking into account the nature, scope or the purpose of the processing concerned, as well as the number of data subjects affected and the level of damage they suffered;

b) whether the breach was committed willfully or negligently;

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

d) the degree of responsibility of the controller or processor, account

given the technical and organizational measures they have implemented under the

sections 25 and 32;

e) any relevant breach previously committed by the controller or

the subcontractor ;

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

and to mitigate any negative effects;

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

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

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

15/24

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

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

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

ordered against the controller or processor concerned for the

same purpose, compliance with these measures;

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

certification mechanisms approved under Article 42; and

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

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

indirectly, as a result of the violation. »

46.

The Restricted Committee would like to point out that the facts taken into account in

the context of this decision are those found at the start of the investigation. The

any changes relating to the processing of data under investigation

occurred subsequently, even if they make it possible to establish entirely or partial compliance, do not allow a breach to be reversed retroactively found.

47.

Nevertheless, the steps taken by the controller to put themselves in compliance with the GDPR during the investigation process or to remedy the shortcomings noted by the head of investigation in the statement of objections, are taken taken into account by the Restricted Training in the context of any corrective measures and/or setting the amount of any administrative fine to be imposed.

2. In this case

2.1 Regarding the imposition of an administrative fine

48.

In the supplementary letter to the statement of objections of 29 January 2021, the head of investigation proposes to the Restricted Panel to impose a fine administrative control for an amount of six thousand (6,000) euros.

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

16/24

49.

In his letter of February 23, 2021, the controller wonders why a fine of such an amount would be justified considering its efforts to comply with the rules in this regard.

50.

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

includes the elements provided for in Article 83.2 of the GDPR:

51.

As to the nature and seriousness of the breach (Article 83.2.a) of the GDPR), it notes that with regard to breaches of Article 5.1.c) of the GDPR, they are constituting breaches of a fundamental principle of the GDPR (and of the law of the data protection in general), namely the principle of data minimization devoted to Chapter II “Principles” of the GDPR. Note that at the time of the site visit by CNPD agents, the camera installed in the large workshop [...] allowed the permanent supervision of at least one employee.

52.

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 the information and transparency relating to the processing of personal data are essential obligations incumbent on data controllers so that data subjects are fully aware of the use that will be made of their personal data staff, once collected. A breach of Article 13 of the GDPR is thus constituting an infringement of the rights of the persons concerned. This right to information has have also been strengthened under the GDPR, which demonstrates their very importance. particular. It should be noted that at the time of the on-site visit by CNPD agents, all the persons concerned, i.e. employees and third parties, were only informed of the implementation of the video surveillance system by a old sticker affixed to the entrance door of the administrative building and providing information the number of the video surveillance authorization deliberation issued by the CNPD under the old regime provided for by the repealed law of 2 August 2002 on the protection of individuals with regard to the processing of personal data.

53.

As for the duration criterion (article 83.2.a) of the GDPR), the Training Restreinte finds that these shortcomings have lasted over time, at least since May 25, 2018 and until the day of the site visit. She recalls here that two years have

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

17/24

separated the entry into force of the GDPR from its entry into application to allow controllers to comply with their obligations. Especially more, an obligation to respect the principle of minimization, just like an obligation comparable information 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 personal data. Guidance on principles and obligations provided for in the said law was available from the CNPD, in particular through mandatory prior authorizations for video surveillance and guidance available on the CNPD website.

54.

As for the number of data subjects (Article 83.2.a) of the GDPR), the Formation Restreinte notes that these are [...]21 employees working on the premises of the controlled, as well as all third parties visiting said premises.

55.

As to whether the breaches were committed deliberately or not (by negligence) (article 83.2.b) of the GDPR), the Restricted Training recalls that "not deliberately" means that there was no intention to commit the breach, although the controller has not complied with the duty of care incumbent on him under the law, which is the case here.

56.

As for the degree of cooperation established with the supervisory authority (Article 83.2.f) of the GDPR), the Restricted Panel takes into account the assertion of the head of investigation that the co-operation of the auditee throughout the investigation was good.²²

57.

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

58.

As to the relevant violations previously committed by the controller or processor (article 83.2.c), the Restricted Training decides to take into account only the facts noted at the start of the investigation carried out on 5
21 As stated on the auditee's website: [...]
22 See supplementary letter to the statement of objections.

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

18/24

October 2018 by CNPD officials, i.e. after the entry into force of the GDPR.

59.

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.

60.

It also notes that while several measures have been put in place by the
checked in order to remedy in whole or in part certain shortcomings, these have not
adopted only following the control of CNPD agents on October 5, 2018
(see also point 42 of this decision).

61.

Therefore, the Restricted Committee considers that the pronouncement 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.

62.

As regards the amount of the administrative fine, it recalls that the
paragraph 3 of Article 83 of the GDPR provides that in the event of multiple infringements, such as
this is the case here, the total amount of the fine may not exceed the amount set for
the most serious violation. To the extent that a breach of Articles 5 and 13 of the GDPR
is accused of the controlled, the maximum amount of the fine that can be withheld is
€20 million or 4% of worldwide annual revenue, whichever is greater
being retained.

63.

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

2.2. About taking corrective action

64.

In its supplementary letter to the statement of objections of 29
January 2021 the head of investigation proposes to the Restricted Panel to adopt the measures

following corrective measures, which should be implemented within 1 month, under fine of 50 euros per day of delay:

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

19/24

“1. Order the person in charge of the

supplement treatment

measures

information intended for persons concerned by video surveillance,

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

indicating in particular the identity of the data controller, the purposes of the

processing and its legal basis, the categories of data processed, the interests

legitimate interests pursued by the control, the recipients, the retention period of the

data as well as the indication of the rights of the person and the manner of

exercise ;

2. Order the controller to put in place measures to avoid

to film employees permanently or almost permanently on their

personal work places. »

65.

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

reference to point 43 of this decision, the Restricted Formation takes into account

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

in order to comply with the provisions of Articles 5.1.c) and 13 of the GDPR, as detailed

in his letters of January 25, 2019, of February 23, 2021, as well as in his email of

July 14, 2021. More specifically, it takes note of the following facts:

- With regard to the implementation of information measures intended for persons concerned (third parties and employees) by video surveillance, in accordance to the provisions of Article 13.1 and 2 of the GDPR, the controller has specified in its letters of January 25, 2019 and February 23, 2021 that he installed in four places outside the signs and that the staff members would have signed a memorandum which would mention the existence of surveillance cameras. To his email of July 14, 2021, the controller also attached a photo showing that the old vignette indicating the number of the authorization deliberation video surveillance issued by the CNPD under the former regime of the repealed law of 2 August 2002 on the protection of individuals with regard to the processing of personal data is always affixed to the front door of the administrative building.

The Restricted Formation would first like to point out that the old vignettes of the CNPD have become obsolete, because they were issued by the CNPD under

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

20/24

the former authorization regime of the amended law of 2 August 2002 relating to the protection of individuals with regard to the processing of personal data personnel which was repealed by the law of August 1, 2018. Then, it notes that the aforementioned signs are just posters of a camera without text supplement, while the aforementioned memorandum only mentions what follows: [...]

The Restricted Panel considers that the panels and the memorandum do not do not contain the information required by Article 13 of the GDPR.

Thus, the identity and contact details of the controller, the purposes of the processing for which the personal data are intended as well as the legal basis for processing, recipients or categories of recipients personal data, the retention period of the data to personal nature, the existence of the right to ask the person responsible for the processing access to personal data, rectification or the erasure of these, or a limitation of the processing relating to the person concerned, or the right to oppose the processing and the right to the portability of the data, as well as the right to lodge a complaint with an authority of control are not mentioned.

Furthermore, it is noted that the information provided by the controller does not fulfill neither the conditions required for the first level of information, nor those for the second level of information (see point 35).

In conclusion, considering the insufficient compliance measures taken by the auditee in this case and point 43 of this decision, the Restricted Panel therefore considers that it is necessary to pronounce the measure correction proposed by the head of investigation in this regard as set out in point 52 first point with regard to the information of employees and persons third parties regarding the video surveillance system.

- As to the obligation to only process data that is relevant, adequate and limited to what is necessary with regard to the purposes of user safety and accident prevention, the Restricted Panel notes that the controller has

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

explained in his letter of January 25, 2019 that henceforth the procedure in place for the camera installed in the production workshop [...], that is to say that the employees block the camera during working hours with a plate metal, would also be in place for the camera installed in the large workshop [...], so that no employee would be subject to permanent surveillance. He has attached to his letter photos of the fields of view of the two cameras.²³

Nevertheless, as mentioned in point 29 of this decision, the Panel Restreinte considers that the manner in which the audit is carried out should be considered as disproportionate to the purpose pursued, i.e. the protection of assets of the controlled, and that means less intrusive to the privacy of people involved exist. She also considers that the assertion of the controlled contained in his letter of February 23, 2021 only between seven a.m. and 4 p.m. hours the images from video surveillance would not be recorded, is not likely to irritate this observation. Indeed, compliance with the principle of proportionality implies that the employer must resort to means of surveillance the most protective of the employee's private sphere. In this case, in view of the configuration of the premises and taking into account the purpose pursued by the controller, the Restricted Panel considers that the two cameras in question must be limited to film the only places of access to the establishment of the controlled and that they must have a field of vision limited to the area strictly necessary to visualize people about to access it.

In conclusion, considering the insufficient compliance measures taken by the auditee in this case and point 43 of this decision, the Restricted Panel therefore considers that it is necessary to pronounce the measure correction proposed by the head of investigation in this regard as set out in point 52 second point.

The Restricted Committee nevertheless considers that there is no need to impose a
on the controlled person to compel him to comply with the two corrective measures.

23 See appendix 1 to the audit letter of 25 January 2019.

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

22/24

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

- to retain the breaches of Articles 5.1.c) and 13 of the GDPR;
- impose an administrative fine on Company A in the amount of
two hundred (200) euros, with regard to the breaches constituted in articles 5.1.c) and 13
GDPR;

- issue against Company A an injunction to bring the
processing with the provisions of Article 13 of the GDPR, within 2 (two) months
following notification of the decision of the Restricted Panel;

and especially :

- inform third parties in a clear and complete manner, in accordance with the
provisions of Article 13 of the GDPR, in particular by providing persons
third parties information relating to the identity and contact details of the person responsible for the
processing, for the purposes of the processing for which the data to be
personal character as well as on the legal basis of the processing, to the recipients
or the categories of recipients of the personal data, for the duration
retention of personal data, the existence of the right to
ask the controller for access to personal data
personal data, the rectification or erasure thereof, or a limitation of the

processing relating to the data subject, or the right to oppose the processing

and the right to data portability, as well as the right to introduce a

complaint to a supervisory authority;

-

inform

individually

employees in a clear and complete manner,

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

employees with information relating to the identity and contact details of the

responsible for the processing, for the purposes of the processing for which the

personal data as well as the legal basis of the processing, to the

recipients or categories of recipients of personal data

personal data, the retention period of the personal data, the

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

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

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

23/24

personal data, rectification or erasure thereof, or

limitation of processing relating to the data subject, or the right to oppose

to processing and the right to data portability, as well as the right to introduce

a complaint to a supervisory authority.

- issue against Company A an injunction to bring the

processing with the provisions of Article 5.1.c) of the GDPR, within 2 (two) months

following notification of the decision of the Restricted Panel;

and in particular remove or move the two cameras installed in the large workshop

[...] and in the production workshop [...] (for example: installation of a camera outside of the building) in order to target only the access to the establishment of the controlled.

Thus decided in Belvaux on December 1, 2021.

For the National Data Protection Commission sitting in formation

restraint

Tine A. Larsen Thierry Lallemand

Marc Lemmer

President

Commissioner

Commissioner

Indication of remedies

This administrative decision may be the subject of an appeal for review in the

three months following its notification. This appeal is to be brought before the administrative court.

and must be introduced through a lawyer at the Court of one of the Orders of

lawyers.

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

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

24/24