

Decision of the National Commission sitting in restricted formation

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

Deliberation no. 47FR/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:

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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 with Company A on the basis of article 37 of the law of 1 August 2018 on the organization of the National Commission for the data protection and the general data protection regime (hereinafter: "Law of August 1, 2018") and to appoint Mr. Christophe Buschmann as Chief of investigation.

2. According to the decision of the Plenary Formation, the investigation carried out by the National Commission for Data Protection (hereinafter: "CNPD") was to purpose of verifying compliance with the provisions of Regulation (EU) 2016/679 of the Parliament European Parliament and of the Council of 27 April 2016 relating to the protection of 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 1 August 2018, in particular through the installation of video surveillance systems and geolocation if necessary installed by Company A.

3. On March 20, 2019, CNPD agents carried out a visit to the Company premises A.1 The decision of the National Commission for the Protection of data sitting in restricted formation on the outcome of the investigation (hereinafter: "Formation Restricted") will be limited to processing controlled by CNPD agents.

4. Company A is a public limited company registered in the Trade and Luxembourg companies under number [...], with registered office at L- [...], [...] (hereinafter: Control "). The controlled [has as its corporate purpose the operation of a transport]. »2

5. During the aforementioned visit, it was confirmed to CNPD officials that the controlled uses a video surveillance system, but has not installed a surveillance device

1 See Minutes no. [...] relating to the on-site visit carried out on March 20, 2019 to the Company A (hereinafter: "Report No. [...]").

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geolocation in its vehicles.³ CNPD officials noted that the system

of video surveillance is composed by fixed cameras, as well as by cameras of the

“dome” type.⁴

6. The controller reacted to the report drawn up by the CNPD agents by mail

of March 20, 2019, delivered by hand after the site visit, as well as by mail from

May 6, 2019.

7. At the end of his investigation, the head of investigation notified the person inspected on 30

October 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

Datas).

8. By letter dated November 29, 2019, the auditee made his observations on the

statement of objections.

9. A supplementary letter to the statement of objections was sent to the

checked on August 3, 2020. In this letter, the head of investigation proposed to the

Restricted training to adopt three corrective measures and to inflict on the controlee a

administrative fine of 6,800 euros.

10. By letter dated September 10, 2020, the controller produced written observations

on the supplementary letter to the statement of objections.

11. The President of the Restricted Formation informed the controller by letter of 29

April 2021 that his case would be registered for the Restricted Panel session of 30

June 2021. The controller confirmed his presence at the said session by email of June 8, 2021.

12. During this session, the head of the investigation and the controller, represented by [...], lawyer

to the Court, presented their oral observations in support of their written observations and

3 See Minutes no. [...], finding 20.

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

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answered the questions posed by the Restricted Panel. The President granted

to the control the possibility of sending information to the Restricted Training

over the area covered by the field of view of a specific camera, within

two weeks. The controller spoke last.

13. By mail dated 14

July 2021,

the controlled produced

them

information

additional requested.

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 must be “adequate, relevant and limited to what is necessary in view of the purposes for which they are processed (data minimization)”.

15. The principle of data minimization in video surveillance involves that only what appears to be strictly necessary to achieve the or the purpose(s) pursued and that the processing operations must not be disproportionate.⁵

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

17. Prior to the installation of a video surveillance system, the controller must define, precisely, the purpose(s) it wishes to achieve by resorting to

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

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such a system, and may not subsequently use the personal data collected for other purposes.⁶

18. 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.⁷

2. In this case

19. During the on-site visit, it was explained to CNPD officials that the purposes

of the implementation of the video surveillance system are the protection of the property of the responsible for processing, access protection, as well as the security of users and the accident prevention.⁸

2.1. With regard to the field of vision of the camera aiming at reception

20. During the said visit, the CNPD agents noted that the field of vision

of the camera called "[...]" allows the permanent surveillance of the employee employed in the reception desk.⁹

21. With regard to the said camera, the head of investigation was of the opinion that even if the aforementioned purposes "may find one or more bases of lawfulness under Article 6, the permanent monitoring of employees at their workstations should be considered as disproportionate. Indeed, such permanent monitoring can create a significant psychological pressure for employees who feel and know they are observed, especially since the monitoring measures persist over time. »

(statement of objections, Ad. A.3.). He thus held against the auditee a non-compliance with the requirements of article 5.1. c) GDPR and control documentation submitted by the letters of March 20 and May 6, 2019 did not contain any evidence for him against this non-conformity, nor any explanation as to the possible necessity such surveillance measures.

⁶ See Guidelines for themes/videosurveillance/necessite-proportionnalite.html.

⁷ See CNPD Guidelines (Point 4.), available at: <https://cnpd.public.lu/fr/dossiers-themes/videosurveillance/necessite-proportionnalite.html>.

⁸ See finding 9 of minutes no. [...].

⁹ See finding 10 of minutes no. [...].

under: [https://cnpd.public.lu/fr/dossiers-](https://cnpd.public.lu/fr/dossiers-the CNPD, available)
the CNPD, available

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22. The controlee for his part explained in his reply letter to the
statement of objections of 29 November 2019 that the disputed camera was intended to
securing access to the building and the reception area, but which she had in her
field of view part of the reception desk and the employee who worked there. There's
also explained that following the visit of the CNPD agents, a masking was first carried out
been set up and that afterwards, for technical reasons, the camera had been
disconnected from the system and had not been functional since June 3, 2019. Annex 2 of the
control letter of September 10, 2020 contains photos showing that the field
of vision of the camera would have been masked in order to no longer target the employee in the process of
work at the reception.

23. La Formation Restreinte would like to remind you 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. On the other hand, respecting
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.

24. The Restricted Team notes that the person being controlled has masked the field of vision of the
camera aimed at the employee working in the reception.

25. She nevertheless agrees with the finding of the head of the investigation that the 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 with regard to said camera.

2.2 With regard to the field of vision of the camera aiming at the "smoking area"

26. During the said visit, the CNPD agents noted that the field of vision

of the camera "[...]" allowed the surveillance of a space reserved for the free time of the

employees, in this case a "smoking area". 10

10 See finding 17 of minutes no. [...].

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27. Regarding the camera having the "smoking area" in its field of vision, the chef

investigation estimated that "the surveillance of employees in a space reserved for their time

free is to be considered disproportionate when the persons present in the

the smoking area will be permanently subject to video surveillance. He thus

retained against the controlled a non-compliance with the prescriptions of article 5.1. c) of

GDPR (Statement of Objections, Ad. A.11.).

28. The auditee for his part explained in his reply letter to the

statement of objections of 29 November 2019 that the purpose of the said camera was to

secure access between the car park and its building and that the supervised area would never have

been an official smoking area and authorized by the controlled. As employees would have

moved the ashtray themselves in this passage area subject to surveillance, the

controlled would have decided to remove this smoking area, which would never have been

permitted, and to direct employees to official break locations. By mail from

September 10, 2020, the controller repeated these remarks.

29. When it comes to places reserved for employees in the workplace for use

private, such as a smoking area, surveillance cameras are in principle

considered disproportionate to the aims pursued. It's about even for places such as, for example, changing rooms, toilets, rest, the kitchenette or any other place reserved for employees for private use. In these cases, the fundamental rights and freedoms of employees must prevail over the interests lawsuits pursued by the employer.

30. With regard to the camera having the smoking area in its field of view, the Restricted Panel notes that said camera shows a large poster of a cigarette, signaling the authorization to smoke in this area, as well as an ashtray of a size not negligible. However, it takes into account the letter of the control of July 14, 2021, by which the latter explains that after the session of June 30, 2021 of the Restricted Training, he realized that for security reasons the team in charge of managing of the buildings ("[...]") would have moved the smoking area into the field of vision of the contentious camera without informing its internal security team. The controller specified also that he assumed that after the site visit by CNPD agents, the "[...]" team would realize his mistake and would have moved the smoking area by replacing the aforementioned poster announcing the authorization to smoke by a poster announcing the prohibition of

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smoke here. In said letter, the controller thus admitted that the smoking area was in the field of view of a camera and that this configuration was linked to a lack of internal communication.

31. The Restricted Panel thus agrees with the finding of the head of investigation that the non-compliance with article 5.1.c) of the GDPR was acquired on the day of the site visit of the CNPD officials with respect to said camera.

2.3 With regard to the field of vision of cameras aimed at public roads / grounds

neighboring

32. During the on-site visit of March 20, 2019, CNPD officials noted

that the fields of view of four cameras include part of a field

surrounding area,¹¹ that the fields of view of two cameras include the public road,¹²

while a camera allows the surveillance of part of the public road and land

neighboring.¹³

33. In his letter of 6 May 2019, the controller specified that he was “currently

the limitation of the field of vision of the cameras and the blurring of the areas in question, in order to

ensure that the cameras [...] do not include parts of neighboring land or

parts of the public road. »

34. In his Statement of Objections, the Head of Investigation was of the view that although the

purposes indicated by the controlled can find one or more bases of lawfulness under

Article 6 of the GDPR, surveillance of public roads and surrounding land is

however, to be considered disproportionate. He also felt that the "documentation

submitted to the CNPD by the letters of March 20 and May 6, 2019 do not contain any

proof against this non-conformity, nor any explanation as to the possible

need for such monitoring measures. However, in his letter of May 6, 2019,

the data controller has presented mitigating elements on this subject. »

11 See findings 12, 13, 15 and 19 of minutes no. [...]. These are the cameras called "[...]", "[...]",

" [...]" and " [...]" .

12 See findings 14 and 16 of minutes no. [...]. These are the cameras called "[...]" .

13 See finding 18 of minutes no. [...]. This is the camera called "[...]" .

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35. The head of investigation thus found that the person inspected had failed to comply with the prescribed by Article 5.1.c) of the GDPR.

36. The Restricted Committee would like to point out that the cameras intended to monitor a place of access (entrance and exit, threshold, porch, door, awning, hall, etc.) must have a field of vision limited to the area strictly necessary to view people getting ready to get there. Those who film exterior accesses must not mark the entire width of a sidewalk along, where applicable, the building or public roads adjacent. Similarly, outdoor cameras installed near or around a building must be configured so as not to capture the public thoroughfare or the surroundings, entrances, accesses and interiors of other neighboring buildings possibly entering into their field of vision.¹⁴

37. 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.¹⁵

38. The Restricted Panel notes that in its letter of November 29, 2019, the controlled took position on each camera which contained in its field of vision a part of the public road and/or neighboring land. Regarding the cameras referred to as "[...]" and "[...]", the inspector specified that since the on-site visit of the CNPD officers, the fields of vision have been masked in order to no longer include a surrounding terrain,¹⁶ while the "[...]" and "[...]" cameras, even though their fields of vision have been partially obscured, still aiming for a minimal portion of land neighbours.¹⁷

39. Furthermore, the field of vision of the camera "[...]" was masked so as not to

target the public road and neighboring land, while that of the camera called "

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

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

16 See photos in annexes 1 and 2 of the letter from the inspector of November 29, 2019.

17 See photos in annexes 3 and 4 of the letter from the inspector of November 29, 2019.

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[...]" no longer targets public roads.¹⁸ With specific regard to the camera "[...]

", the controller specified that, even if the field of vision was partially masked, it

always targets part of the public road and a nearby forest.¹⁹

40. The steps taken by the controller, following the on-site visit by the agents of the CNPD, in order to comply with the provisions of Article 5.1.c) of the GDPR will be taken taken into account by the Restricted Formation in part "II.2. As for the measures corrections and fines".

41. In view of the foregoing, the Restricted Panel concurs with the finding of Chief of investigation²⁰ according to which the non-compliance with Article 5.1.c) of the GDPR with regard to the aforementioned cameras was acquired on the day of the on-site visit by the agents of the CNPD.

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

1. On the principles

42. 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 [...]. »

43. 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;

18 See photos in annexes 5 and 6 of the letter from the inspector of November 29, 2019.

19 See photo in appendix 7 of the inspector's letter of November 29, 2019.

20 Statement of Objections, Ad. A.4. to A.10.

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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,

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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. »

44. 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.²¹ 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”).

²¹ See in particular Articles 5.1.a) and 12 of the GDPR, see also recital (39) of the GDPR.

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45. 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.²²

2. In this case

46. CNPD officials noted during their on-site visit that the presence of the video surveillance system is not reported to the persons concerned. On question, it was nevertheless explained to the CNPD agents that the employees were informed by an explanatory sending in the form of an e-mail followed by a physical mail.²³

In his letter of May 6, 2019, the controller clarified that the document that the employees received on May 25, 2018 by electronic and physical mail is the one entitled "Note to all employees on personal data" and that he is working on "setting up a information

relating to the video surveillance system using two methods

complementary: i) the installation of pictograms at the entrance to the supervised areas, a part, and (ii) the publication of a detailed information notice on [...]’s website. These operations will be completed by July 1, 2019.”

47. With regard to third parties, the head of investigation retained in his statement of objections "that no means have been implemented to inform the customers, visitors or suppliers of the presence of CCTV cameras, in particular by means of road signs or pictograms affixed to strategic points within the premises of the controller's buildings" and that it therefore fails to retain against the controlled a non-compliance with the prescriptions of the article 13 of the GDPR with regard to third parties (statement of objections, Ad.A.1.).

48. Regarding the employees, the head of the investigation held that the non-compliance with Article 13 of the GDPR was also acquired on the day of the on-site visit, because "the document "Note to all employees on Personal Data" communicated to employees does not contain certain

²² See EDPS Endorsement decision 1/2018 of 25 May 2018, available

23 See findings 1 and 2 of minutes no. [...].

under :

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the mandatory information prescribed by article 13 of the GDPR. (communication of grievances, Ad.A.2.).

49. By letter dated November 29, 2019, the controller specified that after the departure of the CNPD officers, first-level information has been put in place by

pictograms and a brief text in French, German and English to alert the public as soon as

that he enters the supervised area.²⁴ The pictograms would refer to a note

second-level information package containing all the information required within the meaning of

article 13 of the GDPR accessible to the public and to employees on their website. In what

specifically concerns employees, the controller specified that the "Note to all employees

on Personal Data" communicated to employees on May 25, 2018 has been updated and the

employees would also be informed by the pictograms and the information note available

on the controller's website. At the same time, the GDPR section on the intranet of the

checked would have been updated and the staff delegation would have been informed and consulted

at all stages of the implementation of the video surveillance system.

50. The Restricted Committee would first like to point out that Article 13 of the GDPR makes

reference to the obligation imposed on the data controller to "provide" all the

information mentioned therein. The word "provide" is crucial here and it "means

that the data controller must take concrete measures to provide the

information in question to the person concerned or to actively direct the person

concerned to the location of said information (for example by means of a link direct, a QR code, etc.). (WP260 rev. 01. paragraph 33).

51. 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 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

24 See appendix 8 of the audit letter of 29 November 2019.

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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).²⁵ The second level of information, i.e. all of the information required under of Article 13 of the GDPR, could be provided or made available by other means, such as a copy of the privacy policy emailed to employees or a link on the website to an information notice with regard to non-salaried third parties.²⁶

2.1. Information from third parties

52. The Restricted Committee notes that during the on-site visit by the agents of the CNPD, third parties were not informed of the presence of the security system.

video surveillance.

53. It notes, however, that in its letter of November 29, 2019, the person inspected clarified its multi-tiered approach to communicating information on the transparency to third parties through pictograms and an information note available on its website. The Restricted Panel considers that the pictograms contain the information of the first level of information and that the second level information, i.e. the information note available on the website, contains all the information required under Article 13 of the GDPR.

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

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

25 See 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.).

26 See WP260 rev. 01 (Item 38.)

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2.2. Employee information

55. With regard to informing employees about the system of video surveillance, the Restricted Panel notes that during the on-site visit by the agents

of the CNPD, employees were informed of the presence of the video surveillance system by the document "Note to all employees on Personal Data".²⁷ While the said document contains some of the statements provided for in Article 13 of the GDPR, it nevertheless concerns all data processed by the controller, all legal bases applicable to the different processing carried out by the controller and all the purposes invoked for these treatments, without making a differentiation by targeted treatment. These information therefore does not comply with the principle of transparency to which each controller. According to this principle, information must be addressed to the data subject "in a concise, transparent, comprehensible and easily accessible, in clear and simple terms".²⁸ Moreover, the said document does not does not contain all the information within the meaning of Article 13 of the GDPR.

56. It notes, however, that in its letter of November 29, 2019, the person inspected clarified its multi-tiered approach to communicating information on the transparency to employees, in particular through pictograms and an information note available on its website. Moreover, he mentioned that the document "Note to all [...] employees on Personal Data" has been updated to include the information available on said site. The Restricted Panel considers that the pictograms contain the information of the first level of information and that the second level information, i.e. the information note available on the website, contains all the information required under Article 13 of the GDPR.

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

²⁷ That document is annexed to the inspection letter of 6 May 2019 and mentions the following: [...].

²⁸ See Article 12.1. of the GDPR.

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57. In view of the foregoing, she concurs 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.

II. 2. On corrective measures and fines

1. On the principles

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

- "(a) notify a controller or processor of the fact that the operations of the envisaged processing are likely to violate the provisions of this regulation;
- (b) call a controller or processor to order when the processing operations have resulted in a breach of the provisions of this Regulation;
- (c) order the controller or processor to comply with requests submitted by the data subject with a view to exercising their rights under this these regulations;
- d) order the controller or the processor to put the operations of processing in accordance with the provisions of this Regulation, where applicable, of specific manner and within a specified time;
- (e) order the controller to communicate to the data subject a personal data breach;
- f) impose a temporary or permanent restriction, including prohibition, of processing;
- g) order the rectification or erasure of personal data or the limitation of processing pursuant to Articles 16, 17 and 18 and the notification of these measures to the recipients to whom the personal data have been disclosed

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

(h) withdraw a certification or order the certification body to withdraw a certification issued pursuant to Articles 42 and 43, or order the body to

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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. »

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

60. Article 83 of the GDPR provides that each supervisory authority shall ensure that the administrative fines imposed are, in each case, effective, proportionate and deterrents, before specifying the elements that must be taken into account to decide whether an administrative fine should be imposed and to decide on the amount of this fine :

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

b) whether the breach was committed willfully or negligently;

- c) any action taken by the controller or processor to mitigate the damage suffered by the persons concerned;
 - d) the degree of responsibility of the controller or processor, account given the technical and organizational measures they have implemented under the sections 25 and 32;
 - e) any relevant breach previously committed by the controller or the subcontractor ;
 - f) the degree of cooperation established with the supervisory authority with a view to remedying the breach and to mitigate any negative effects;
-

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- 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 violation. »

61. 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.

62. Nevertheless, the steps taken by the control to bring itself into compliance with the GDPR during the investigation process or to remedy breaches noted by the head of investigation in the statement of objections, are taken into account by the Restricted Training within the framework 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

63. In the supplementary letter to the statement of objections of 3 August 2020, the head of investigation proposes to the Restricted Panel to impose an administrative fine on the control of an amount of six thousand eight hundred (6,800) euros.

64. In his letter of September 10, 2020, the auditee estimated that the amount of the fine is disproportionate due to the absence of any intention to cause the

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alleged violations and its compliance efforts, while in its mail

of July 14, 2021 he indicated that he accepts the fact of having monitored by a camera a corner smoker in violation of the requirements of the GDPR and that he accepts the fine of 6,800 euros.²⁹

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

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

that with regard to breaches of Article 5.1.c) of the GDPR, they are constituting breaches of a fundamental principle of the GDPR (and the right to data protection in general), namely the principle of minimization of data devoted to Chapter II “Principles” of the GDPR. Note that at the time of the on-site visit by CNPD agents, a camera allowed the permanent monitoring of the employee working at the reception desk, a camera allowed the surveillance of a space reserved for employees' free time, in the species a "smoking area, while seven cameras aimed at land neighbors and/or the public road.

- As to the breach of the obligation to inform the persons concerned in accordance with article 13 of the GDPR, the Restricted Training recalls that information and transparency relating to the processing of personal data personnel are essential obligations incumbent on those responsible for processing so that individuals are fully aware of the use that will be made of their personal data, once collected. A breach of Article 13 of the GDPR thus constitutes an infringement of the rights of the persons concerned. This right to information has also been reinforced in terms of the GDPR, which demonstrates their particular importance. To note that at the time of the site visit by the CNPD agents, no pictogram signage, nor any poster or information notice could be shown to CNPD officials. Thus, third parties were not at all informed of the presence of the video surveillance system in accordance with Article 13 of the GDPR, while the document given to employees, i.e. the

29 Original text of the letter from the auditee of July 14, 2021: “Accordingly we accept the fact that we monitored a smoking area by CCTV in contravention of CNPD requirements and accept the penalty of Euro 6,800.”

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"Note to all employees on Personal Data", did not contain all the

information required by Article 13 of the GDPR.

- As for the duration criterion (article 83.2.a) of the GDPR), the Restricted Training

notes that these shortcomings have persisted over time, at least since the

May 25, 2018 and until the day of the site visit. She recalls here that two years have

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

controllers to comply with the obligations that they

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

as well as a comparable information obligation already existed in application

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

protection of individuals with regard to the processing of personal data

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

law was available from the CNPD, in particular through authorizations

mandatory prerequisites for video surveillance.

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

Restricted Training notes that these are [...] employees³⁰ working in the

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

local.

- As to whether the breaches were committed deliberately

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

that "not deliberately" means that there was no intention to commit the

breach, although the controller has not complied with the obligation to

due diligence required by law, which is the case here.

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

- As to the degree of cooperation established with the supervisory authority (Article 83.2.f) of the GDPR), the Restricted Training takes into account the assertion of the head of investigation

30 [...].

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that the co-operation of the auditee throughout the investigation was good, as well as as its willingness to comply with the requirements of the GDPR as soon as possible deadlines.³¹

66. 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 imposition of a administrative fine and its amount.

67. It also notes that while several measures have been put in place by the control in order to remedy in whole or in part certain shortcomings, these have only been adopted only following the control of CNPD agents on March 20, 2019 (see also point 61 of this decision).

68. 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.

69. With regard to the amount of the administrative fine, she recalled that paragraph 3 of Article 83 of the GDPR provides that in the event of multiple violations, as is the case in

case, the total amount of the fine may not exceed the amount fixed for the violation the worse. Insofar as a violation of Articles 5 and 13 of the GDPR is alleged at the time of the inspection, the maximum amount of the fine that can be withheld is 20 million euros or 4% of worldwide annual turnover, whichever is higher.

70. In view of the relevant criteria of Article 83.2 of the GDPR mentioned above, the Restricted Committee considers that the pronouncement of a fine of six thousand eight hundred (6,800) euros appears to be effective, proportionate and dissuasive, in accordance with the requirements of Article 83.1 of the GDPR.

2.2 Regarding the taking of corrective measures

71. In its supplementary letter to the statement of objections of 3 August 2020 the head of investigation proposes to the Restricted Panel to adopt the corrective measures following:

31 See supplementary letter to the Statement of Objections.

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“a) Order the controller to complete the information measures

intended for people

third parties ([...]) affected 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 contact details of the

data protection officer, the purposes of the processing and its legal basis,

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

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

human rights and how to exercise them.

b) Order the controller to complete the information measures

intended for employees affected by

video surveillance,

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

indicating in particular the purposes of the processing and its legal basis, the categories

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

of the data as well as the retention period of the data.

c) Order the controller to process only relevant data,

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

property, securing access, user safety and prevention

accidents and, in particular, adapt the video system so as not to film the employees

at their workstation or in spaces reserved for their free time, nor to film

parts of the public road or neighboring land, for example by removing

or reorienting the cameras. »

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

in point 62 of this decision, the Restricted Panel takes into account the

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

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

in his letters of 6 May 2019, 29 November 2019, 10 September 2020 and 14

July 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

letter of November 29, 2019 its multi-level approach to

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communicate transparency information to those affected by the
pictograms containing a brief text in French, German and English, as well as
by an information note available on its website. Furthermore, the
document "Note to all [...] employees on Personal Data" has been updated to
to include the information available on said site.

The Restricted Panel considers that the pictograms contain the
information of the first level of information and that the second level
information, i.e. the information note available on the website,
contains all the information required under Article 13 of the GDPR.

As for the obligation to only process data that is relevant, adequate and
limited to what is necessary with regard to the purposes of the protection of property,
access protection, as well as user safety and the prevention
accidents, Restricted Training takes into account that:

oh

appendix 2 to the inspection letter of September 10, 2020 contains
photos showing that from now on the field of vision of the camera "[...]"
has been hidden in order to no longer permanently target the employee in
working at reception;

oh

the controller attached to his letter of November 29, 2019 photos
demonstrating that the fields of vision of the cameras "[...]" "[...]", "[...]"

and "[...]" have been masked out so that they no longer include surrounding land and

/ or the public road;

oh

the controller attached to his letter of November 29, 2019 photos

demonstrating that the fields of view of the cameras "[...]", "[...]" and "

[...]" were masked, but he specified that they still aim for a minimal

part of a neighboring piece of land (a field) and/or public road.

In view of the sensitivity of the terrain placed under surveillance ([...]), the Formation

Restricted considers that masking in place has minimized the

field of vision of the cameras in question necessary in order to pursue the

purposes of securing the surroundings and the entrances to the building.

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oh

the controller specified in his letter of July 14, 2021, following the meeting

of June 30, 2021 of the Restricted Formation, that the camera "[...]"

allowed the surveillance of a space reserved for employees' free time,

in this case a "smoking corner", and that this constellation was linked to a

internal communication failure. Indeed, he would have realized that

for security reasons, the team in charge of managing

buildings ("[...]") would have moved the smoking area into the field of vision

of the litigious camera, without knowing that a smoking area was henceforth

in the field of vision of a camera and without informing his team of

internal security and that he assumes that after the on-site visit by the agents of the

CNPD, the "[...]" team would have moved the smoking area by replacing the aforementioned poster announcing the authorization to smoke by a poster announcing no smoking in this place.

73. In consideration of the compliance measures taken by the control in case and point 62 of this decision, the Restricted Panel therefore considers that there is no need to pronounce the three corrective measures proposed by the chief investigation in this regard as set out in point 71 of this decision.

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 pronounce against Company A an administrative fine of the amount of six thousand eight hundred (6,800) euros, with regard to breaches of the articles 5.1.c) and 13 of the GDPR;

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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.

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