

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

of survey no.[...] conducted with companies A and B

Deliberation No. 4FR/2022 of February 16, 2022

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 companies A and B

1/26

I. Facts and procedure

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

for data protection had decided to open an investigation with two companies of Group C on the basis of article 37 of the law of August 1, 2018 on the organization of the National Commission for Data Protection and the General Data Protection Regime data protection (hereinafter: "Law of 1 August 2018") and to designate Mr. Christophe Buschmann as head of investigation.

2. According to the said decision, the investigation carried out by the National Commission for Data Protection (hereinafter: "CNPD") was intended to control the application and compliance with Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of data personal data and on the free movement of such data, and repealing Directive 95/46/EC (hereinafter: "GDPR") and the law of August 1, 2018, by verifying the compliance of the monitoring measures implemented by Group C companies (such as more amply described below), in particular by means of a geolocation device and of a CCTV device.

3. On March 20, 2019, CNPD agents carried out a visit to the premises of companies A and B1. 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.

4. Company A is a limited liability company registered in the Register of Commerce et des Sociétés de Luxembourg under number B [...], with registered office at L- [...], [...]. The company [aims to manufacture, process and transform, import and the export, purchase and sale of all industrial products]<sup>2</sup>.

5. Company B is a public limited company registered in the Trade and Luxembourg companies under number B [...], with registered office at L- [...], [...]. The society

<sup>1</sup> See Minutes no. [...] relating to the on-site fact-finding mission carried out on March 20 2019 with companies A and B (hereinafter: "Minutes no. [...]").

2 [...] See Coordinated Articles of Association filed and registered with the RCS on [...], Article 2.

---

Decision of the National Commission sitting in restricted formation on the outcome of  
survey no.[...] conducted with companies A and B

2/26

[has as its object the manufacture, dispatch and processing, import and export,  
the purchase and sale of all kinds of industrial products.]”<sup>3</sup>

6. During the aforementioned visit, it was explained to CNPD officials that

-

the controllers use a video surveillance system on  
their production site, but have not installed a geolocation device in  
their vehicles<sup>4</sup>;

-

video surveillance of the surroundings of the production site and the car park is implemented  
work only by Company A, owner of the premises<sup>5</sup>;

-

the cameras installed inside the factory buildings in order to monitor the  
different production processes are operated separately by both  
companies.<sup>6</sup> Indeed, the CNPD agents noted that “the cameras  
installed inside the production plants monitor only the  
production process inside the machines for the sake of control-  
quality. »<sup>7</sup>

7. On April 23, 2019, Company A filed written submissions relating to the  
minutes no. [...].

8. At the end of his investigation, the head of investigation notified the two companies  
reviewed on September 6, 2019 a Statement of Objections (hereinafter:

“statement of objections”) detailing the shortcomings that he considered to constitute case, and more specifically non-compliance with the requirements prescribed by Article 13 of the GDPR with regard to data subjects (right to information), i.e. say employees and non-employees, namely customers, suppliers, service providers and visitors (hereinafter: “third parties”).

9. By letter dated September 24, 2019, Company A made its observations relating to the statement of objections.

3 [...] See Statutes coordinated at [...], Article 4.

4 See Minutes no. [...], point 6.

5 Same.

6 Same.

7 See Minutes no. [...], point 8, finding 2.

---

Decision of the National Commission sitting in restricted formation on the outcome of survey no.[...] conducted with companies A and B

3/26

10. A supplementary letter to the statement of objections was sent to the two companies controlled as of August 24, 2020

(hereafter:

the mail

additoinal "). In this letter, the head of investigation proposed to the Panel

Restricted to adopt a corrective measure, as well as to impose a fine

administrative in the amount of EUR 3,100.

11. By letter dated September 4, 2020,

Company A reacted to the letter

additoinal.

12. In view of the observation by CNPD agents that “the cameras installed at inside the production plants only monitor the production processes at inside the machines”<sup>8</sup>, the Restricted Formation considers that it does not have the documentation that would demonstrate that the breach of Article 13 of the GDPR that the head of the investigation has retained, is aimed at video surveillance inside the factories. Therefore, the decision of the Restricted Panel will be limited to processing controlled by the agents of the CNPD and carried out by Company A (hereinafter: the “controlled”) in relation to the video surveillance of the surroundings of the operating site.

13. The president of the Restricted Formation informed the controller by mail of the December 18, 2020 that their case would be registered for the Restricted Panel session of February 5, 2021 and that they could attend this meeting.

14. During this session, the head of investigation presented his oral observations to the support of his written observations and answered the questions posed by the Panel Restraint. The controller was not present during the session.

<sup>8</sup> See Minutes no. [...], point 8, finding 2.

---

Decision of the National Commission sitting in restricted formation on the outcome of survey no.[...] conducted with companies A and B

4/26

## II. Place

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

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

##### 1. On the principles

15. According to Article 12.1 of the GDPR, the “controller shall take appropriate measures to provide any information referred to in Articles 13 and 14 as well as to carry out any communication under Articles 15 to 22 and Article 34 in

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

16. 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

---

Decision of the National Commission sitting in restricted formation on the outcome of survey no.[...] conducted with companies A and B

5/26

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

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

Commission or, in the case of transfers referred to in Article 46 or 47, or Article 49, paragraph 1, second subparagraph, the reference to the appropriate or suitable safeguards and the means of obtaining a copy or where they have been made available;

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

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

Decision of the National Commission sitting in restricted formation on the outcome of survey no.[...] conducted with companies A and B

6/26

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. »

17. The communication to data subjects of information relating to the processing of their data is an essential element in the context of compliance with general transparency obligations within the meaning of the GDPR.<sup>9</sup> These obligations have been explained by the Article 29 Working Party in its guidelines on the transparency within the meaning of Regulation (EU) 2016/679, the revised version of which has been adopted April 11, 2018 (hereinafter: "WP 260 rev.01").

18. It should be noted that the European Data Protection Board (hereinafter: "EDPS"), which has replaced the Article 29 Working Party since 25 May 2018, took over and reapproved the documents adopted by the said Group between May 25, 2016 and May 25 2018, as precisely the aforementioned guidelines on transparency.<sup>10</sup>

2. In this case

19. With regard to the information of third parties about the system of video surveillance, the head of investigation in the statement of objections observed that "During the on-site visit, it was noted that the video surveillance is signaled to the



data subjects (visitors, customers, suppliers, employees) through pictograms (approximately 15x25 cm) affixed to different places, in particular at the level of a turnstile and at the entrance to the car park. At the entrance to the site, video surveillance is indicated by a sticker (about 10x20 cm) with pictogram and text of the

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

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

[https://edpb.europa.eu/sites/edpb/files/files/news/endorsement\\_of\\_wp29\\_documents\\_en\\_0.pdf](https://edpb.europa.eu/sites/edpb/files/files/news/endorsement_of_wp29_documents_en_0.pdf).

under :

---

Decision of the National Commission sitting in restricted formation on the outcome of survey no.[...] conducted with companies A and B

7/26

security company "[...] affixed to a panel" and that in annex to the letter of the

April 23, 2019 it is announced "that a new information panel relating to the video surveillance will be installed at the entrance to the site".<sup>11</sup>

20. It nevertheless came to the conclusion that "the controller does not does not comply with its obligation to inform the persons concerned (visitors, customers, suppliers)"<sup>12</sup>. In particular, he argued that the documentation submitted to the CNPD by letter of April 23, 2019 does not contain sufficient evidence to counter non-compliance with the requirements of article 13 of the GDPR, and that the new panel of information installed after the on-site visit does not meet the conditions set either by said article. Thus, he held that non-compliance with the prescriptions of article 13 of the GDPR was established on the day of the site visit.<sup>13</sup>

21. By letter dated April 23, 2019, the controller informed the CNPD that a new information panel should be installed shortly at the entrance to the production site. He has appended the model of this information panel which includes the pictogram of a

camera with the mention "[...]". Furthermore, the logo "[...]" and the name "[...]"

appear at the top of the information panel.

22. By letter dated September 24, 2019, the controller informed that in addition to installation of the new information panel at the entrance to the production site, it would be proceeded to display a "Notice to the attention of all our visitors (customers, suppliers, etc.) regarding video surveillance" visibly and in three languages (French, German and English) in the building called "[...]" at the entrance to the site of production in which any visitor must register before accessing it. A copy of the draft of the manual as well as a photo showing the installation of the new panel information were attached to the aforementioned letter. By letter dated September 4, 2020, the checked confirmed that the notice would have been posted on September 16, 2019. The text of the said notice and a photo showing the display thereof have been attached to this letter.

23. With regard to informing employees about the system of video surveillance, the head of investigation in the statement of objections observed that during

11 See Statement of Objections, pages 1 to 2, point A.1.

12 See Statement of Objections, page 2, point B, paragraph 2.

13 See Statement of Objections, page 3, Ad.A.1.

---

Decision of the National Commission sitting in restricted formation on the outcome of survey no.[...] conducted with companies A and B

8/26

of the on-site visit it was noted that the employees are informed of the video surveillance by the aforementioned pictograms and sticker (see point 19 of this decision)<sup>14</sup>, and that a copy of the document entitled

"[...] Employee Personal Information Protection Notice" dated August 23, 2017 "" which

"according to the explanations provided [...] was intended for the information of the employees of the group

with regard to on-site video surveillance. »<sup>15</sup>

24. Regarding the said “[...] Employee Personal Information Protection Notice” the head of investigation noted that it was found that this document “does not include information relating to the video surveillance implemented”. He further noted that the controller provided with his letter of April 23, 2019 “a copy of the document entitled “information note relating to the protection of personal data of employees” which represents an updated version of the previous document” and that the auditee asserted in the same letter “that” this note has been revised and will contain (among other things) from presents information on the video surveillance system in place”.<sup>16</sup>

25. It is for this reason that the head of investigation noted that “the person in charge of the processing does not comply with its obligation to inform its employees either”<sup>17</sup>, and that non-compliance with the requirements of Article 13 of the GDPR was also acquired on the day the on-site visit for employees. Indeed, he resumed his argument relating to the information of third parties *mutatis mutandis* with regard to the employees and held that “no element presented by the company in its defense is nature to irritate this observation”.<sup>18</sup>

26. The controller indicated in his letter of April 23, 2019 that a “Note information relating to the protection of personal data of employees” would have been given to employees and would be given to each employee upon hiring. This note information would also be posted on a board in a visible area within the company during each update. It would have been revised and would contain “from presents information on the video surveillance system in place”. Copies of

14 See Statement of Objections, pages 1 to 2, point A.1.

15 See Statement of Objections, page 2, point A.2.

16 See Statement of Objections, page 2, point A.2.

17 See Statement of Objections, page 2, point B, paragraph 3.

Decision of the National Commission sitting in restricted formation on the outcome of survey no.[...] conducted with companies A and B

9/26

the revised information note in the three available languages (French, German and English) were attached to his letter.

27. In his above-mentioned letter, the auditee also indicated that the committee's agreement for the implementation of the video surveillance system had been requested and given unanimously in July 2017. He attached copies of the email exchange with the members of the joint committee as well as documents submitted to them at the time, namely an internal presentation on the video surveillance system in question and the draft video surveillance authorization request to the CNPD<sup>19</sup> address. the controlled further specifies that the CNPD had issued the authorization in question in [...] by deliberation no.[...]20. Finally, the controller mentioned that the employees would be informed by means of the new, more complete information panel mentioned above (cf. points 21 and 22 of this decision).

28. By letter dated September 24, 2019, the controller informed that all employees would have received a revised version of the "Information note relating to the protection personal data of employees" in English and German by e-mail. the said note would however be available in three languages (French, German, English). Copies of the information note in English and German as well as his email of April 26, 2019 are attached to his letter.

29. The Restricted Committee would first like to point out that Article 13 of the GDPR refers to the obligation imposed on the data controller to "provide" all the information mentioned therein. The word "provide" is crucial here and it "means

that the data controller must take concrete measures to provide the information in question to the person concerned or to actively direct the person concerned to the location of said information (for example by means of a link direct, a QR code, etc.). »<sup>21</sup>

original title in German: “Genehmigungsantrag

19 Translation

French from

Videoüberwachung”.

20 Beschluss Nr. [...] vom [...] der nationalen Kommission für den Datenschutz bezüglich eines

Genehmigungsantrags zwecks Videoüberwachung durch die Gesellschaft mit beschränkter

Haftung [...] The former authorization scheme of the amended law of 2 August 2002 relating to the protection of individuals with regard to the processing of personal data has been repealed by law

from August 1, 2018.

21 See WP 260 rev.01, point 33.

for

---

Decision of the National Commission sitting in restricted formation on the outcome of survey no.[...] conducted with companies A and B

10/26

30. The Restricted Committee would like to point out that there is in the GDPR a “conflict inherent between, on the one hand, the requirement to communicate to the persons concerned the complete information that is required under the GDPR and, on the other hand, the requirement of do so in a concise, transparent, understandable and easily accessible manner”.

Prioritize the information to be provided to the persons concerned and determine which are the appropriate levels of detail and methods for reporting information is not not always obvious.

31. It is for this reason 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 processed through a system of geolocation. The first level of information should generally include the most important information, namely details of the purpose of the processing, the identity of the controller and the existence of the rights of data subjects, as well as that the information having the greatest impact on the processing or any processing likely to surprise those concerned. The second level of information i.e. the other information required under Article 13 of the GDPR, could be provided later and by other means, such as a copy of the privacy policy sent by e-mail<sup>23</sup>.

## 2.1 Information of third parties

32. 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 video surveillance only by means of the pictograms and the sticker documented by the agents of the CNPD. It was only after the site visit that a new information panel was installed at the entrance to the production site, and that an information notice in three languages has been displayed in the building called "[...]" at the entrance to the site.

33. It notes, however, that neither the camera pictograms nor the sticker with a pictogram of a camera as well as the mention "Site under Video Surveillance

<sup>22</sup> See WP 260 rev.01, point 34.

<sup>23</sup> See WP 260 rev.01, point 38 as well as EDPS Guidelines 3/2019 on the processing of personal data by video devices whose version 2.0 was adopted on January 29, 2020, point 110 et seq.

---

Decision of the National Commission sitting in restricted formation on the outcome of survey no.[...] conducted with companies A and B

11/26

[...]” documented at the time of the site visit, nor the new information panel installed after the site visit which includes the pictogram of a camera as well as the mention “[...]”, the logo “[...]” and the name “[...]” do not contain all of the elements required by articles 13.1 and 13.2 of the GDPR.

34. She also noted that the new “Notice to the attention of all our visitors (customers, suppliers, etc.) in terms of video surveillance” intended for people third parties does not contain all of the elements required by article 13.1 and 13.2 either. of the GDPR.

35. In view of the foregoing, the Restricted Panel concurs with the opinion of Chief of investigation and concludes that at the time of the on-site visit by CNPD agents, Article 13 of the GDPR was not respected by the control with regard to third parties.

## 2.2 Employee information

36. The Restricted Committee notes that during the on-site visit by the agents of the CNPD, these people were only informed of the presence of video surveillance at the using the pictograms and the sticker documented by the CNPD agents, the “[...] Employee Personal Information Protection Notice” dated August 23, 2017, which has given to CNPD officials during the on-site visit, containing no information relating to the video surveillance operated by the controlled party. It is indeed a note general information of the C24 Group relating to the processing of personal data employees of local group companies<sup>25</sup> at their place of work. It's not that after the site visit a new information panel was installed at the entrance of the production site, and that revised briefing notes have been prepared and sent employees in English and German.

37. She also considers that the agreement of the Joint Committee in July 2017 for the implementation of a video surveillance system does not ensure that the employees of the controlled have been individually informed about the specific elements of Article 13 of the GDPR.

24 For example, reference is made to the original text in English: "[...]".

25 For example, reference is made to the original text in English: "local [...] company".

---

Decision of the National Commission sitting in restricted formation on the outcome of survey no.[...] conducted with companies A and B

12/26

38. The first revised version of the information note that the auditor submitted to the CNPD by letter of April 23, 2019 contains a paragraph relating to video surveillance at the end of said note in the description of "Types of personal data that we may collect, use, transfer and share"<sup>26</sup>. However, the auditee did not submit proof to the CNPD demonstrating the individual delivery of the said note to the employees, nor of proof demonstrating the display of the said note within the company which could at any time no longer qualify as collective information.

39. In the second revised version of the information note that the auditee submitted to the CNPD by letter dated September 24, 2019, the paragraph relating to the video surveillance is now in the main part of the information note<sup>27</sup>.

In order to prove that all employees have received a revised version of the said note information in English and German, the controller has attached a copy of his email from April 26, 2019. This email is titled "[...]" and was addressed to "[...]". he is also written in German and English, and contains no additional information<sup>28</sup>.

26 For example: Full text of the paragraph in question in the French version:

“ • CCTV:



Certain categories of personal data (video/image) will also be collected when you pass an area on our site where surveillance cameras have been installed. These cameras are intended to guarantee the safety of any employee/visitor on our premises, the protection of access, to control the security of the equipment located on our premises (protection against theft, destruction, etc.), as well as to control production processes. These purposes at the same time constitute the legitimate interests justifying the video surveillance. [...] guarantees well sure that security videos are secure using technical measures and/or appropriate organizational arrangements. With regard to the images collected by the cameras of monitoring, the data will be automatically deleted after a period of 8 days. »

27 For example: Full text of the paragraph in question in the English version:

#### “6. CCTV

Specific categories of personal data (video/image) will also be gathered whenever you are passing an area on our site where surveillance cameras have been installed. These cameras have as purposes to guarantee the safety of any employee/visitor circulating within our premises, access control, to control the safety of the material located within our premises (protection against theft, destruction etc.), as well as to control the production process.

These purposes constitute at the same time the legitimate interests justifying the video surveillance.

[...] guarantees of course that the security camera footage is kept secure by using appropriate technical and/or organizational measures.

As for the footage collected from the surveillance cameras, the data will automatically be deleted after a period of 8 days. »

28 For example: Text of the email of April 26, 2019 in the English version:

« Message from HR

To all employees

On behalf of [HR manager's name], I'm forwarding you attached an updated version of the

“Employee Privacy Notice”.

---

Decision of the National Commission sitting in restricted formation on the outcome of survey no.[...] conducted with companies A and B

13/26

40. The Restricted Committee recalls that it found that neither the pictograms of cameras and the sticker documented at the time of the site visit, nor the new information panel installed after the site visit does not contain all of the elements required by Articles 13.1 and 13.2 of the GDPR (see point 33 of this decision).

41. She further noted that the revised versions of the information note intended for to employees produced after the on-site visit do not contain all of the elements required by articles 13.1 and 13.2 of the GDPR.

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

## II. 2. About corrective measures and fine

### 1. On the principles

43. 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;

---

Decision of the National Commission sitting in restricted formation on the outcome of survey no.[...] conducted with companies A and B

14/26

f) impose a temporary or permanent restriction, including prohibition, of processing;

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

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

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

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

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

45. 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;
- 

Decision of the National Commission sitting in restricted formation on the outcome of survey no.[...] conducted with companies A and B

15/26

- d) the degree of responsibility of the controller or processor, account given the technical and organizational measures they have implemented under the sections 25 and 32;
- e) any relevant breach previously committed by the controller or the subcontractor ;
- f) the degree of cooperation established with the supervisory authority with a view to remedying the breach and to mitigate any negative effects;
- g) the categories of personal data affected by the breach;
- h) the manner in which the supervisory authority became aware of the breach, in particular whether, and to what extent the controller or processor notified the breach;
- (i) where measures referred to in Article 58(2) have previously been

ordered against the controller or processor concerned for the

same purpose, compliance with these measures;

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

certification mechanisms approved under Article 42; and

k) any other aggravating or mitigating circumstance applicable to the circumstances of the species, such as the financial advantages obtained or the losses avoided, directly or indirectly, as a result of the violation. »

46. 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.

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.

---

Decision of the National Commission sitting in restricted formation on the outcome of survey no.[...] conducted with companies A and B

16/26

2. In this case

2.1 Regarding the imposition of an administrative fine

48. In the additional letter, the head of investigation proposes to the Panel Restricted to impose an administrative fine of 3,100 euros on both investigated companies at issue in this decision.

49. In his response letter of September 4, 2020, the controller asked the Restricted Training “to disregard an administrative fine against our businesses, otherwise to revise the proposed fine to a lower amount”. The amount proposed would be disproportionate in view of the significant efforts and resources at the level human and financial resources deployed to ensure compliance with the GDPR and the Luxembourg regulations applicable to data protection, and the responsiveness with which the points raised during the CNPD investigation would have been rectified.

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

- As to the nature and seriousness of the breach (Article 83.2.a) of the GDPR), with regard to concerns the breach of the obligation to inform the persons concerned in accordance with article 13 of the GDPR, it recalls that the information and the transparency relating to the processing of personal data are essential obligations incumbent on data controllers so that data people are fully aware of the use that will be made of their personal data, once collected. A failure to

Article 13 of the GDPR thus constitutes an infringement of the rights of individuals concerned. This right to information has also been reinforced under the terms of the GDPR, which demonstrates their particular importance.

It should be noted that at the time of the on-site visit, the persons concerned were not informed of the presence of video surveillance only by means of pictograms and a sticker with a pictogram and the words “Site under Video Surveillance [...]”, and which did not contain all the elements

---

Decision of the National Commission sitting in restricted formation on the outcome of survey no.[...] conducted with companies A and B

17/26

required by Article 13.1 and 13.2 of the GDPR, and no information notice informing CCTV could not be shown to CNPD agents. Thus, neither the third parties, nor the employees were informed of the video surveillance in accordance with Article 13 of the GDPR.

- As for the duration criterion (article 83.2.a) of the GDPR), the Restricted Training notes that this failure has lasted over time, at least since the 25

May 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. Moreover, a comparable information obligation already existed in application of articles 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, and guidance available on the CNPD website.

- As for the number of data subjects (Article 83.2.a) of the GDPR), the Restricted Training finds that these are all employees working on the site of production, as well as all third parties visiting said site.

- As to whether the breaches were committed deliberately or not (by negligence) (article 83.2.b) of the GDPR), the Restricted Panel reminds that “not deliberately” means that there was no intention to commit the breach, although the controller or processor has not

complied with the duty of care incumbent upon it under the law.

In the present case, it is of the opinion that the facts and breaches found do not do not reflect a deliberate intention to violate the GDPR on the part of the controller.

- 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

---

Decision of the National Commission sitting in restricted formation on the outcome of survey no.[...] conducted with companies A and B

18/26

that the co-operation of the person audited throughout the investigation was good<sup>29</sup>, as well as its willingness to comply with the law as soon as possible.

- 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.

51. 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.

52. 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 46 of this Decision).

53. 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 Article 13 of the GDPR.

54. With regard to the amount of the administrative fine, insofar as a



breach of Article 13 of the GDPR is alleged against the controller, the maximum amount of the fine that can be withheld amounts to 20 million euros or 4% of turnover global annual.

55. In view of the relevant criteria of Article 83.2 of the GDPR mentioned above, and taking into account that this Decision is limited to processing operations supervised by the CNPD officers and carried out by the controller in connection with the video surveillance of around the operating site, the Restricted Panel considers that the pronouncement of a fine of one thousand five hundred and fifty (1,550) euros appears both effective, proportionate and dissuasive, in accordance with the requirements of Article 83.1 of the GDPR.

29 See Supplementary letter, page 2.

---

Decision of the National Commission sitting in restricted formation on the outcome of survey no.[...] conducted with companies A and B

19/26

## 2.2 Regarding the taking of corrective measures

56. The adoption of the following corrective action was proposed by Chief inquiry to the Restricted Training in its additional letter:

“a) Order the controller to complete the information measures

intended for persons concerned by video surveillance in accordance with the provisions of Article 13, paragraphs (1) and (2) of the GDPR, in particular by informing the purposes of the processing and its legal basis, the legitimate interests pursued by the controller, the recipients, the retention period of the data as well as the indication of the rights of the person and the way of exercising them (concerning employees, it should be noted that the information must be provided both for new employees and for employees present in the company for some time); ".30

57. As to the corrective measure proposed by the head of investigation and by reference

in point 47 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 comply with the provisions of Article 13 of the GDPR, as detailed in its letters of April 23, 2019, September 24, 2019 and September 4, 2020. More in particular, it takes note of the following facts:

1. As regards the implementation of information measures intended for persons third parties involved in the video surveillance, in accordance with the provisions of article 13.1 and 2 of the GDPR, the controller has on one side installed a new panel information at the entrance to the production site which includes the pictogram of a camera with the mention "[...]". He attached the model of the new panel to his letter of April 23, 2019 and a photo showing the installation of the new information panel to its letter of September 24, 2019 (see points 21 and 22 of this decision).

On the other side he posted a "Notice to the attention of all our visitors (customers, suppliers, etc.) in terms of video surveillance" in three languages (French, German and English) in the building named "[...]" at the entrance to the site of production in which all visitors must register before accessing it. He annexed

30 Cf. Additional letter, page 2.

---

Decision of the National Commission sitting in restricted formation on the outcome of survey no.[...] conducted with companies A and B

20/26

the text of said notice and a photo showing the posting of it to his mail of 4 September 2020 (see point 22 of this decision).

The Restricted Committee notes that the new information panel and the new combined information notice does not contain all the information

required by Article 13 of the GDPR. The information provided does not fulfill the requirements of the first level of information, nor those of the second level information (see points 30 and 31 of this decision).

Thus, the details of the purpose of the processing and the existence of the rights of the persons concerned (first level information), are not indicated on the panel of information.

Furthermore, the information notice does not mention the right of access, the right of object to processing and the right to data portability (Article 13.2.b) of the GDPR), nor all the recipients of the filmed images (article 13.1.e) of the GDPR) (second level information).

In view of the insufficient compliance measures taken by the controlled in this case and point 47 of this decision, the Restricted Panel considers therefore that the corrective measure proposed by the head of investigation in this regard<sup>31</sup> and taken up in point 56 of this Decision under (a).

2. Regarding the implementation of information measures for employees affected by video surveillance, in accordance with the provisions of article 13.1 and 2 of the GDPR, the controller has on one side installed a new information panel at the entrance to the production site which includes the pictogram of a camera with the mention " [...] ". He attached a photo showing the installation of the new panel information in its letter of September 24, 2019 (see points 21 and 22 of the this decision).

On the other side, he twice prepared revised versions of the note information relating to the protection of group data to which CCTV information has been added. He appended

---

<sup>31</sup> See Supplementary letter, page 2.

Decision of the National Commission sitting in restricted formation on the outcome of survey no[...] conducted with companies A and B

21/26

copies of the first revised version of the information note (in languages French, German and English) to his letter of April 23, 2019 and copies of the second revised version of the information note to its letter of 24 September 2019 (in German and English languages). Restricted Training does not have the documentation that would demonstrate that the first revised version of the information notice was provided to employees (see point 38 of this decision). The controller has however attached a copy of the email with which the second revised version of the information note has been sent to all employees to its letter of 24 September 2019 (see point 39 of this decision).

The Restricted Committee notes first of all that these information notes contain a paragraph which allows the controller to have the employees date and sign the notes information indicating the following:

“Acceptance and consent (only if required)

I acknowledge that under the legislation in force, certain data personal information may be collected, used, transferred or shared without my consent and that the Company reserves the right to do so in compliance of the principles laid down in this note.

I also understand that there may be specific situations in which I will have to provide my consent and, in these situations, I have read and I expressly accept the conditions of this information notice.

Name of employee Date Signature »32 33

It should be emphasized in this context that the signing of an information sheet by the employee can at most be considered as an acknowledgment of receipt

allowing the employer to document that he has indeed provided the information under  
of article 13 of the GDPR, but cannot in any case constitute valid consent of the

32 For example: Full text of the paragraph in question in the French version of the first  
revised version of the information note.

33 For example: Full text of the paragraph in question in the English version:

“Acknowledgment & Consent (Only if Required)

I acknowledge that under applicable law, some Personal Information can be collected, used,  
transferred or disclosed without my consent and that the Company reserves the right to undertake  
that activity when appropriate.

I also understand that there may be some specific situations in which I need to provide consent  
and, for those situations, I have read and expressly agree to this Notice.

Employee Name Date Signature »

---

Decision of the National Commission sitting in restricted formation on the outcome of  
survey no.[...] conducted with companies A and B

22/26

employee to the processing of data by his employer<sup>34</sup>. Indeed, an employee, in view of  
the imbalance in the balance of power existing within the framework of the relations of  
work, cannot freely respond to a request for consent from  
of his employer "without fear or incurring negative consequences following  
to this refusal. Consent as the basis for the lawfulness of data processing  
(article 6.1.a) of the GDPR) is therefore ineffective in this case due to the nature of  
the employer/employee relationship.

The Restricted Panel would also like to point out that "when the  
information is translated into one or more languages, the head of the  
processing must ensure that all translations are accurate and that the

phraseology and syntax make sense in the target language so that the text translated does not have to be deciphered or reinterpreted. 36. Now, concerning the versions revised information note, it should be noted that the content of the three language versions is not identical.

The Restricted Committee then notes that the new information panel and the combined revised information notices do not contain all of the information required by Article 13 of the GDPR. The information provided does not fulfill neither the conditions required for the first level of information, nor those for the second level of information (see points 30 and 31 of this decision).

Thus, the details of the purpose of the processing and the existence of the rights of the persons concerned (first level information), are not indicated on the panel of information.

Otherwise, the revised information notices intended for employees do not do not mention the identity and contact details of the controller (Art.13.1.a) of the GDPR), information relating to the rights of individuals concerned (Article 13.2.b) of the GDPR) are formulated in ambiguous terms (in the German and English versions only), and information concerning the right

34 See the definition of consent provided for in Article 4.11) of the GDPR, as well as the conditions applicable to consent provided for in Article 7 of the GDPR.

35 See Guidelines 5/2020 on consent within the meaning of Regulation (EU) 2016/679, Version 1.1, adopted on 4 May 2020, point 21, see also opinion 15/2011 on the definition of consent (WP 187), adopted July 13, 2011.

36 See WP 260 rev.01, point 13.

survey no.[...] conducted with companies A and B

23/26

lodge a complaint with a supervisory authority (Art. 13.2.d) of the GDPR) are imprecise (second level information).

Indeed, the description of the rights of data subjects is not written in “clear and simple terms”<sup>37</sup> and partly leaves room for different interpretations.

As regards the right to lodge a complaint with an authority of control, WP 260 rev.01 indicates that the information to be communicated to a data subject “should explain that, in accordance with Article 77 [of the GDPR] a data subject has the right to lodge a complaint with a supervisory authority, in particular in the Member State of his residence habitual or place of work, or in the event of an alleged violation of the GDPR”<sup>38</sup>.

However, in the first revised version of the information note in French, it is indicated that “the competent supervisory authority differs depending on the location of the Company in which you carry out your professional activity: [...]”, and in the German and English versions, reference is only made to “an authority supervisory authority responsible for your country or region”<sup>39</sup>.

In view of the insufficient compliance measures taken by the controlled in this case and point 47 of this decision, the Restricted Panel considers therefore that the corrective measure proposed by the head of investigation in this respect<sup>40</sup> and repeated in point (a) of point 56 of this decision.

Furthermore, the Restricted Committee considers that it is necessary to clarify the mention relative to the actual retention period of the images in the different versions revised information note for employees. During the site visit, he it has been found that the retention period of the images is 7 days<sup>41</sup>, period

of time also mentioned in the information notice intended for

third persons. However, in the additional paragraph relating to the

37 See WP 260 rev.01, point 12.

38 See WP 260 rev.01, “Annex Information to be communicated to a data subject

under section 13 or section 14”.

39 French translation of the original English text: “supervisory authority competent for your country or region”; French translation of the original text in German: “einer Aufsichtsbehörde, die für ihr Land oder Ihre Region zuständig ist »

40 Cf. Additional letter, page 2.

41 See Minutes no. [...], point 8, finding 5.

---

Decision of the National Commission sitting in restricted formation on the outcome of survey no.[...] conducted with companies A and B

24/26

video surveillance which has been added in the various revised versions of the note information intended for employees, it is mentioned that they will be deleted after a period of eight days.

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

- to uphold the breach of Article 13 of the GDPR;
- to pronounce against Company A an administrative fine of the amount of one thousand five hundred and fifty (1,550) euros, with regard to the breach constituted in Article 13 of the GDPR;
- issue an injunction against Company A to bring it into compliance processing with the obligations resulting from Article 13 of the GDPR, in a two-month period following notification of the decision of the Restricted Panel,



and especially :

1.

inform

the people

third parties in a clear and precise manner on

the

video surveillance by providing them with information relating to all the

recipients of the images filmed and to all the rights of the persons

relevant to the case;

2.

individually inform employees in a clear and precise manner on the

video surveillance by providing them with information relating to the identity and

contact details of the data controller, the rights of individuals

concerned and the right to lodge a complaint with a competent authority.

control;

3. ensure that the content of the different language versions of the note

information intended for employees is identical;

4. specify the actual retention period of the images in the information note

intended for employees.

---

Decision of the National Commission sitting in restricted formation on the outcome of  
survey no.[...] conducted with companies A and B

25/26

Thus decided in Belvaux on February 16, 2022.

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 companies A and B

26/26