

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

of survey no.[...] conducted with the municipal administration [...]

Deliberation n°28FR/2021 of July 30, 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 the municipal administration [...] (hereinafter: the "controlled") on the basis of article 37 of the law of August 1, 2018 on organization of the National Commission for Data Protection and the regime General on Data Protection (hereinafter "Law of 1 August 2018") and to appoint Mr. Christophe Buschmann as head of investigation.

2. According to the decision of the Plenary Formation, the investigation carried out by the National Commission for Data Protection (hereinafter: "CNPD") had as its purpose of verifying the application of and compliance with the provisions of Regulation (EU) 2016/679 of European Parliament and of the Council of 27 April 2016 on the protection of persons with regard to the processing of personal data and to the free movement of this data, and repealing Directive 95/46/EC (hereinafter "GDPR") and the law of August 1, 2018, in particular the compliance of the surveillance measures implemented implemented by the controlled by means of video surveillance and geolocation systems if necessary, installed by the controller.

3. On March 27, 2019, CNPD agents carried out a visit to the inspection premises at the following address: [...].¹ The decision of the National Commission for data protection sitting in restricted formation on the outcome of the investigation (hereinafter: "Restricted Training") will be limited to processing controlled by the agents of the CNPD.

4. During the said visit, the representatives of the control confirmed to the agents of the CNPD that the controller uses a video surveillance system within the building [...], but does not use a geolocation system in its service vehicles.² The

¹ See Minutes no. [...] relating to the on-site fact-finding mission carried out on March 27 2019 with the controller, point 2.

² See Minutes no. [...] relating to the on-site fact-finding mission carried out on March 27

2019 with the controller, point 6.

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CNPD officials noted that the video surveillance system is made up of 4 cameras of which 2 cameras are off.³

5. In his response letter of July 24, 2019 to the minutes drawn up by the CNPD agents, the control specified that "the agents and persons concerned by the presence of a video surveillance system were informed orally. In addition, each place equipped with a video surveillance system has signs with the mention "Video surveillance, this object is electronically monitored" and old thumbnails of the CNPD".

6. At the end of his investigation, the head of investigation notified the person inspected on August 31, 2020 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 with regard to the data subjects (employees and customers), non-compliance with the requirements of Article 5.1.e) of the GDPR, and non-compliance compliance with the requirements of article 37.1.a) of the GDPR.

7. By letter dated September 30, 2020, the auditee made his observations on the statement of objections.

8. The president of the Restricted Formation informed the controller by mail of the December 18, 2020 that his case would be registered for the Restricted Panel session of February 5, 2021. The controller confirmed his presence at the said meeting by mail email dated January 19, 2021.

9. During this session, the head of investigation and the controller presented their

oral submissions in support of their written submissions and responded to questions posed by the Restricted Panel. The controller spoke last.

10. By e-mail of January 13, 2021, the auditee formulated additional observations to his letter of September 30, 2020.

3 See Minutes no. [...] relating to the on-site fact-finding mission carried out on March 27 2019 with the auditee, point 8, finding 2.

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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

11. 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. »

12. 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

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(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

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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. »

13. 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.⁴ Said obligations have been explained by the Article 29 Working Party in its guidelines on the transparency within the meaning of Regulation (EU) 2016/679, the revised version of which has been adopted April 11, 2018 (hereinafter: "WP 260 rev.01").

14. 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, such as the aforementioned guidelines on transparency⁵.

2. In this case

15. With regard to the information of third parties, as well as of civil servants, employees and municipal employees with regard to the video surveillance system, the head of investigation notes in the statement of objections that "during the on-site visit, he it was found that the CCTV is signaled to the persons concerned (civil servants and municipal employees, employees and customers) through panels information sheet with the inscription "Video surveillance, this object is monitored

⁴ See in particular Articles 5.1.a) and 12 of the GDPR, see also recital (39) of the GDPR.

⁵ 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.

under :

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electronically” and old CNPD vignettes. 6 Nevertheless the leader

investigation finds “that in view of the requirements of the aforementioned article 13, this information is

incomplete”⁷ and that “the information panels affixed on site bearing the wording

mentioned above, as well as the old CNPD vignettes are not sufficient to fulfill

the conditions set out in the aforementioned article 13. »⁸

16. The head of investigation also notes that in his aforementioned letter of

July 24, 2019 the control argued that “the information of employees (civil servants and

municipal employees, employees, etc.) [...] was carried out orally and that therefore the obligation

to inform has been respected”. However, the head of the investigation notes that such an observation, without

presentation of supporting evidence, is not likely to upset the finding that the

conditions set out in Article 13 of the GDPR have not been met.⁹

17. Thus, the head of investigation is of the opinion that the control failed in its obligation

to inform “the persons concerned (employees and customers)” arising from Article 13.1 and

2 GDPR.¹⁰

18. 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.). »¹¹

19. Furthermore, it would like to point out that Article 12 of the GDPR does not de facto exclude

that the information provided for in Articles 13 and 14 of the GDPR can be provided

orally by the controller to the data subject. However, the group

of Labor Article 29 insists that in this case, the data controller should ensure

“to keep a written record, and ensure that he is able to prove it (for the purposes of

6 See Statement of Objections, page 4, Ad.B.1.), point 16.

7 See Statement of Objections, page 4, Ad.B.1.), point 17.

8 See Statement of Objections, page 5, Ad.B.1.), point 18.

9 See Statement of Objections, page 5, Ad.B.1.), point 19.

10 See Statement of Objections, page 5, Ad.B.1.), point 20.

11 See WP 260 rev.01, point 33.

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compliance with the accountability requirement), of: i) the request for information by
oral, ii) the method by which the identity of the data subject was verified (if
applicable, see point 20 above), and (iii) the fact that the information was transmitted to
the person concerned. »¹²

20. With regard to the “information panels [...] and the old vignettes
of the CNPD”¹³ displayed at the time of the site visit to inform people
third parties, as well as civil servants, employees and municipal employees, the Training
Restricted considers that they do not contain all the elements required by the article
13.1 and 2 GDPR.¹⁴

21. With regard to the information provided orally, she notes that no
documentation submitted by the auditee does not contain evidence that the persons
third parties, as well as civil servants, employees and municipal employees have been validly
informed, before the on-site visit, orally in accordance with Article 13 of the GDPR.

22. The Restricted Committee also considers that a multi-level approach

to communicate transparency information to data subjects may be used in an offline or non-digital context, i.e. in a real environment such as personal data collected through a CCTV system. The first level of information should generally include the most essential information, namely the details of the purpose of the processing, the identity of the controller and the existence of the rights of data subjects, as well as the information having the greatest impact on the processing or any processing that may surprise data subjects.¹⁵ The second level of information, i.e. all the information required under of Article 13 of the GDPR, could be provided or made available by other means, such as a copy of the privacy policy emailed to

12 WP 260 rev.01, point 21.

13 See Statement of Objections, page 5, Ad.B.1.), point 18.

14 These stickers, which have become obsolete, were issued by the CNPD under the old regime of authorization of the amended law of 2 August 2002 relating to the protection of persons with regard to processing of personal data which was repealed by the law of August 1, 2018.

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

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employees or a link on the website to an information notice regarding non-salaried third parties.¹⁶

23. It notes, however, that “the information panels [...] and the old CNPD vignettes”¹⁷ in place during the on-site visit do not contain the elements

required of the first level of information whether for third parties or

civil servants, employees and municipal employees.

24. During the session of February 5, 2021, the auditee confirmed having installed on the

doors giving access to areas under video surveillance of the new panels

information containing the information required by Article 13 of the GDPR. Training

Restricted notes, however, that no documentation submitted by the control to the

time of the hearing contains evidence that these information boards were

been installed, and are appropriate to inform data subjects validly

in accordance with Article 13 of the GDPR.

25. 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 controller.

B. On the breach linked to the principle of limitation of storage

1. On the principles

26. In accordance with Article 5.1.e) of the GDPR, personal data

must be kept "in a form which permits the identification of the persons

concerned for a period not exceeding that necessary with regard to the purposes

for which they are processed [...]".

27. According to recital (39) of the GDPR "personal data

should be adequate, relevant and limited to what is necessary for the purposes

for which they are processed. This requires, in particular, ensuring that the duration of

retention of data is kept to a strict minimum. Character data

16 See WP260 rev.01, point 38.

17 See Statement of Objections, page 5, Ad.B.1.), point 18.

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personal should only be processed if the purpose of the processing cannot be reasonably achieved by other means. In order to ensure that the data is not not kept longer than necessary, time limits should be set by the controller for erasure or for periodic review [...]. "

2. In this case

28. With regard to the retention period of the images recorded by the CCTV cameras, it appears from the statement of objections that "during the on-site visit, it was found that the retention period of the images recorded by CCTV cameras is 4 (four) years 7 (seven) months and 14 (fourteen) weeks. »¹⁸

29. According to

the head of investigation

said retention period "exceeds

substantially that which is necessary for the achievement of the purposes of protecting the property, user safety and accident prevention for which the system has been put in place".¹⁹

30. Thus, the head of investigation holds that the conditions of article 5.1.e) of the GDPR have not been respected. He is of the opinion that the auditee failed to respect the principle of the limitation of data retention arising from Article 5.1.e) of the GDPR.²⁰

31. By letter dated September 30, 2020, the controller explained that the duration of retention of images recorded by CCTV cameras has been reduced

30 days by his "IT Department" manager in the presence of the agents of the

CNPD during the on-site visit of March 27, 2019. The annexes to the letter from the

September 30, 2020 of the control contain a photograph showing that the

parameters of the video surveillance system have been modified accordingly.

32. During the hearing of February 5, 2021, the controller specified that the duration of retention of 30 days would be justified by the fact that the images recorded by the CCTV cameras in server rooms are not checked every

18 See Statement of Objections, page 5, Ad.B.2.), point 22.

19 See Statement of Objections, page 5, Ad.B.2.), point 23.

20 See Statement of Objections, page 5, Ad.B.2.), point 24.

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days. The controller also explained that the images are not viewed live, but only for evidentiary purposes in the event of an incident.

33. The Restricted Committee recalls that it is the responsibility of the controller to determine, according to each specific purpose, a retention period appropriate and necessary to achieve that purpose. As mentioned above, the controlled considers that a 30-day retention period is necessary in order to achieve the purposes pursued, i.e. the protection of property and the safety of users.

34. With regard to video surveillance, the CNPD considers that the images can be kept in principle for up to 8 days under the aforementioned principle of Article 5.1.e) of the GDPR. The data controller may exceptionally, for duly justified reasons, keep the images for a period of 30 days. A duration of storage longer than 30 days is generally considered to be disproportionate.²¹

35. In the event of an incident or violation, the Restricted Panel is of the opinion that the images may be kept beyond this period and, if necessary, be

communicated to the competent judicial authorities and law enforcement authorities

competent to establish or prosecute criminal offences.

36. While she can understand the need for the controlled to keep the

images from video surveillance of server rooms, [...], for 30 days, it

nevertheless notes that in the minutes of March 27, 2019 relating to the on-site visit

CNPD officials noted that the duration was “4 (four) years 7 (seven) months and

14 (fourteen) weeks” which greatly exceeded the time needed to achieve

the aims pursued.

37. On the basis of all of these elements, the Restricted Panel agrees with the opinion

of the head of investigation and concludes that at the time of the on-site visit by CNPD agents,

article 5.1.e) of the GDPR was not respected by the controlled.

21 See CNPD Guidelines, point 4.7., available at: <https://cnpd.public.lu/fr/dossiers->

themes/videosurveillance/necessite-proportionnalite.html.

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C. On the breach of the obligation to appoint a delegate for the protection of

data

1. On the principles

38. In accordance with Article 37.1.a) of the GDPR, the controller designates

in any case a data protection officer when "the processing is

carried out by a public authority or a public body, with the exception of the courts

acting in the exercise of their judicial function. »

39. According to recital (97) of the GDPR “where the processing is carried out by

a public authority, with the exception of courts or judicial authorities

independent bodies acting in the exercise of their judicial function, [...] a person

with specialist knowledge of the law and practices relating to

data protection should help the controller or processor to

verify internal compliance with this Regulation. »

40. These obligations have been clarified by the Article 29 Working Party in

its guidelines for Data Protection Officers (DPOs), including the

revised version was adopted on 5 April 2017 and taken over and re-approved by the EDPS who

replaced the Article 29 Working Party, as explained above in point 14.

2. In this case

41. In the statement of objections, the head of the investigation noted that the control

as a municipal administration is to be considered as a public body of

so that he falls under the obligation to appoint a data protection officer

in accordance with the provisions of Article 37.1.a) of the GDPR.²²

42. In this context, the head of the investigation explains that the person inspected explained during the

site visit that "the appointment of a data protection officer was not

effectively". The head of investigation also indicates that the person checked provided explanations

additional information by its aforementioned letter of July 24, 2019, namely "in view of the refusal of the

[...] to carry out the mission of protection delegate for [...], the municipality [...] would have

²² See Statement of Objections, page 6, Ad.B.3.), point 25.

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then directed to the Data Protection Commissioner, who when checking the

CNPD, had not yet been officially appointed. »²³

43. Thus, the head of investigation, after noting that on the day of publication of the

statement of objections the control had not appointed a delegate for the protection of data,²⁴ concludes that the conditions of Article 37.1.a) of the GDPR have not been respected. He is of the opinion that the audit failed to comply with the obligation to appoint a data protection officer arising from Article 37.1.a) of the GDPR.²⁵

44. By letters dated 22 and 30 September 2020, the controller informed the CNPD that a Data Protection Officer had been appointed "on [...]." This appointment is evidenced by a copy of the corresponding deliberation of the College of Mayor and Aldermen of [...] annexed thereto. It is also mentioned in this document that a working group on data protection had been created as early as [...].

45. During the hearing of February 5, 2021, the auditee reiterated his comments contained in her letters of July 24, 2019, September 22 and 30, 2020. When the President asked the controlled why he did not appoint as delegate for the protection of data the government commissioner for data protection in the state, as envisaged, the controller specified that he preferred to hire another person. Leaving the Restricted Training finds that during the on-site visit the controller did not name a data protection officer.

46. In view of the foregoing, the Restricted Panel agrees with the opinion of Chief of investigation and concludes that at the time of the on-site visit by CNPD agents, the article 37.1.a) of the GDPR was not respected by the controlled.

23 See Statement of Objections, page 6, Ad.B.3.), point 26.

24 See Statement of Objections, page 6, Ad.B.3.), point 27.

25 See Statement of Objections, page 6, Ad.B.3.), point 28.

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II. 2. On corrective measures

1. Principles

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

- "(a) notify a controller or processor of the fact that the operations of the envisaged processing are likely to violate the provisions of this regulation;
 - (b) call a controller or processor to order when the processing operations have resulted in a breach of the provisions of this Regulation;
 - (c) order the controller or processor to comply with requests submitted by the data subject with a view to exercising their rights under this these regulations;
 - d) order the controller or the processor to put the operations of processing in accordance with the provisions of this Regulation, where applicable, of specific manner and within a specified time;
 - (e) order the controller to communicate to the data subject a personal data breach;
 - f) impose a temporary or permanent restriction, including prohibition, of processing;
 - g) order the rectification or erasure of personal data or the limitation of processing pursuant to Articles 16, 17 and 18 and the notification of these measures to the recipients to whom the personal data have been disclosed pursuant to Article 17, paragraph 2, and Article 19;
 - (h) withdraw a certification or order the certification body to withdraw a certification issued pursuant to Articles 42 and 43, or order the body to certification not to issue certification if the requirements applicable to the certification are not or no longer satisfied;
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(i) impose an administrative penalty under section 83, in addition to or in addition to instead of the measures referred to in this paragraph, depending on the characteristics specific to each case;

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

48. 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.

49. 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.

50. 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 to pronounce.

2. In this case

51. The adoption of the corrective measures was proposed by the head of investigation to the Restricted training in the statement of objections of August 31, 2020:

" has. 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 by adding in particular the identity of the data controller, the contact details of the data protection officer data, the purposes of the processing and its legal basis, the categories of data processed, the legitimate interests pursued by the controller, the recipients, the duration of storage of data as well as the indication of the rights of the person and the manner to exercise them;

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b. Order the controller to remove or cause to be removed

two cameras that are out of order;

vs. Order the data controller to implement a retention period policy

retention of personal data in accordance with the provisions of e) of

Article 5 of the GDPR, not exceeding the duration necessary for the purposes for which they are collected, and in particular by not keeping the recordings of the images of the video surveillance device beyond one week;

d. Order the controller to appoint a data protection officer

data protection in accordance with the provisions of Article 37, paragraph (1), letter (a) GDPR;

e. To issue a call to order against the controller for cause violation of the provisions of the GDPR. »26

52. The head of investigation proposes to the Restricted Panel that the measures aforementioned fixes “should be implemented within 1 month. »27

53. As for the corrective measures proposed by the head of investigation and by reference to point 50 of this decision, the Restricted Formation takes into account

the steps taken by the control, following the visit of the CNPD agents, in order to comply with the provisions of Articles 5.1.e), 13 and 37.1.a) of the GDPR, as detailed in his letters of September 22 and 30, 2020 as well as his letter email of January 13, 2021. More specifically, it takes note of the following facts, which were confirmed by the controller during the meeting of February 5, 2021:

- As regards the information measures intended for the persons concerned by the CCTV, the controlled claims to have installed on the doors giving access to areas under video surveillance new information panels containing the information required by Article 13 of the GDPR. The annexes of e-mail from the control of January 13, 2021 contain the new panel and 3 photographs showing its display on the doors in question.

26 Cf. Statement of Objections, pages 7 to 8, Ad.C., point 31.

27 See Statement of Objections, page 7, Ad.C., point 31.

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The Restricted Panel considers that the new information panel is intended for the attention of all visitors to the site (officials and employees councils, employees and third parties). She notes, however, that although the new information panel installed by the controlled contains more information that “the information panels [...] and the old CNPD vignettes”²⁸ installed at the time of the site visit by CNPD officials, it does not contain all information required within the meaning of Article 13 of the GDPR, namely the basis of lawfulness as required by Article 13.1 c) of the GDPR.

In consideration of the compliance measures taken by the control in

case and point 50 of this decision, the Restricted Panel considers

as soon as it is necessary to pronounce the corrective measure proposed by the head

investigation in this regard.²⁹

- As for the removal of the two non-functional cameras, the non-

functional in [...] the building and the non-functional camera in the office of

[...] have been removed. This is demonstrated by photographs attached to the

letter from the control of September 30, 2020 (camera at [...] of the building) as well as to the

email from the control of January 13, 2021 (camera in the office [...]).

In consideration of the compliance measures taken by the control in

case and point 50 of this decision, the Restricted Panel considers

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

investigation in this regard.³⁰

- As for the establishment of a retention period policy for data to be

personal character in accordance with the provisions of Article 5.1.e) of the GDPR, the

controlled adapted, after the on-site visit by CNPD agents, the duration of

retention of data from the video surveillance system of "4 (four)

years 7 (seven) months and 14 (fourteen) weeks » 31 to 30 days. Mail attachments

28 See Statement of Objections, page 5, Ad.B.1.), point 18.

29 Cf. Statement of Objections, pages 7 to 8, Ad.C., point 31.a.

30 See Statement of Objections, page 8, Ad.C., point 31.b.

31 See Minutes no. [...] relating to the on-site fact-finding mission carried out on March 27

2019 with the auditee, point 8, finding 8.

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of September 30, 2020 of the audited contain a photograph showing that the settings of the video surveillance system have been modified accordingly.

In the present case, the Restricted Panel considers that the duration of 30-day retention of images from the video surveillance of the rooms of servers is proportionate. In consideration of compliance measures taken by the auditee and point 50 of this decision, it therefore considers that there is no need to pronounce the corrective measure proposed by the chief investigation in this regard.³²

- As for the obligation to appoint a data protection officer, the Restricted Training finds that the control has appointed a protection delegate data under investigation. The appointment of the delegate for the protection of data is demonstrated by a copy of the deliberation of the College of Mayor and Aldermen of [...] (meeting of [...]) for the purpose of appointing of a data protection officer attached to the letters of the control of the September 22 and 30, 2020.

In consideration of the compliance measures taken by the control in case and point 50 of this decision, the Restricted Panel considers when there is no reason to pronounce the corrective measure proposed by the chief investigation in this regard.³³

54. Under Article 58.2.b) of the GDPR, the CNPD may call to order a controller or a processor when the processing operations have resulted in a violation of the provisions of the GDPR.

³² See Statement of Objections, page 8, Ad.C., point 31.c.

³³ See Statement of Objections, page 8, Ad.C., point 31.d.

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55. Given the fact that at the time of the on-site visit by CNPD officials

- none of the documentation submitted by the controller contained proof of

that the persons concerned have been validly informed pursuant to Article 13

GDPR,

-

the retention period of the images recorded by the cameras of

video surveillance greatly exceeded the time required to reach the

purposes pursued, and

- no data protection officer had been appointed,

the Restricted Panel considers that it is justified to adopt the corrective measure

proposed by the head of investigation in this regard³⁴ and to issue a call to order to

against the control.

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.e), 13 and 37.1.a) of the GDPR;

- to pronounce against the municipal administration [...] a call to order

for violating Articles 5.1.e), 13 and 37.1.a) of the GDPR;

- to pronounce against the municipal administration [...] an injunction to

bring the processing into compliance with the provisions of Article 13 of the GDPR,

within 3 (three) months of notification of the Panel's decision

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and in particular, inform third parties, as well as officials, employees and

municipal employees in a clear and complete manner, in accordance with the provisions of

³⁴ See Statement of Objections, page 8, Ad.C., point 31.e.

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Article 13 of the GDPR by providing these persons with information relating to the database
legality resulting from article 6 of the GDPR on which the video surveillance is based.

Thus decided in Belvaux on July 30, 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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