

Decision of the National Commission sitting in restricted formation on

the outcome of survey no. [...] conducted with Company A

Deliberation no. 21FR/2022 of December 13, 2022

The National Commission for Data Protection sitting in restricted formation,

composed of Mrs. Tine A. Larsen, president, and Messrs. Thierry Lallemand and Alain

Herrmann, commissioners;

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

the protection of natural persons with regard to the processing of personal data

personnel and on the free movement of such data, and repealing Directive 95/46/EC;

Having regard to the law of August 1, 2018 on the organization of the National Commission for the protection

data and the general data protection regime, in particular its article 41;

Having regard to the internal rules of the National Commission for Data Protection

adopted by decision no. 3AD/2020 dated January 22, 2020, in particular its article 10.2;

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

investigation procedure adopted by decision No. 4AD/2020 dated January 22, 2020, in particular

its article 9;

Considering the following:

---

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

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

1/23

## I. Facts and procedure

1. During its deliberation session of 17 July 2020, the National Commission sitting in

plenary formation (hereafter: the “Plenary Formation”) has decided to open an investigation

with Company A 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 regime on the

data protection (hereinafter: the “Law of 1 August 2018”) and to designate Mr.

Christophe Buschmann as head of investigation.

The said decision specified that the investigation carried out by the National Commission for the

data protection (hereinafter: the “CNPD” or the “National Commission”) had

for the purpose of monitoring the application and compliance with the GDPR and the law of August 1, 2018, and

specifically compliance with Articles 12.1, 13 and 14 of the GDPR.

2. Company A is a [...] registered in the Luxembourg Trade and Companies Register

under number [...], with registered office at L-[...], [...] (hereinafter: the “controlled”).

The controlled [is active in the operation of internet portals and the provision of services via these

portals]1.

3. The decision of the National Commission sitting in restricted formation (hereafter: the

“Restricted Training”) on the outcome of the investigation will be based:

~

on the processing carried out by the controller in relation to the operation of the site

internet [...] and the mobile application [...] (hereinafter: the “website”

respectively the “mobile application”) and checked by CNPD agents;

And

~

on the legal and regulatory provisions taken into account by the head

inquiry in its Statement of Objections.

4. By letter dated August 26, 2020, the head of investigation sent a preliminary questionnaire to the

control. This moment is later referred to in this decision as "at the beginning

of the investigation ". The controller replied by letter dated September 16, 2020. After a visit

1 [...].

---

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

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

2/23

on the spot which took place on October 13, 2020, the control and the investigation service of the CNPD exchanged letters.<sup>2</sup>

5. Following this exchange, the head of investigation drew up Investigation Report No. [...] based on the deliberation of July 17, 2020 relating to compliance with Articles 12 point 1, 13 and 14 of the GDPR dated April 27, 2021 (hereinafter: the “Investigation Report”).

It appears from the investigation report<sup>3</sup> that in order to structure the investigation work, the chief investigation has defined nine control objectives, namely:

- 1) Make sure the information is available;
- 2) Ensure that the information is complete;
- 3) Ensure that the absence of information is motivated by a valid exception;
- 4) Ensure that information is transmitted by appropriate means;
- 5) Ensure that information is concise, transparent, understandable, and conveyed in clear and simple terms;
- 6) Ensure that the information is adapted to the category of persons concerned;
- 7) Ensure that information is free;
- 8) Ensure that information is easily accessible and
- 9) Ensure that the information is transmitted during the key stages of the processing.

It is specified in the investigation report that the CNPD agents did not check “the legality of the processing carried out by the controller”. In this context, it is given the following example: “in the event that the controller informs the persons concerned that their personal data are kept for a period

2 years, CNPD officials will be able to check that the controller does not not retain said data for a different period. On the other hand, the agents of the

<sup>2</sup> See Statement of Objections, point 9 for a detailed list of exchanges throughout the investigation.

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

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

3/23

CNPD will not comment on the legality of this 2-year period applied by the

controller. »4

In addition, the survey focused on users of the website and the application

mobile, and did not target other categories of data subjects such as employees

controlled.5

The investigation report is annexed to the documents collected by the investigation department of the

CNPD and on which the investigation report is based (appendix 1), as well as the

report of the on-site visit by CNPD agents of October 13, 2020 mentioned above (appendix

2) (hereinafter: the “Report”).

6. It also emerges from the investigation report that the auditee “acts both as a subcontractor

of [customers] by providing them with an [...] online service and by processing personal data

on their behalf, and as data controller in the context of the management of

data relating to [customers] having a user account on the website [...]. » 6

Given that the CNPD agents only analyzed the processing carried out

implemented by the controller as controller “for [customers] who create

an account on the site or mobile application, solely for account data

[...]”7, the decision of the Restricted Panel will be limited to said processing. THE

processing implemented by the controller as a subcontractor of [customers] in the

framework of the [...] online service are therefore not analyzed in this Decision.

7. During its deliberation session of July 23, 2021, the Plenary Formation appointed

Mr. Marc Lemmer, commissioner, as head of investigation replacing

Mr. Christophe Buschmann, resigned.

8. At the end of his investigation, the head of investigation notified the person inspected on 13 January 2022 a Statement of Objections (hereinafter: "Statement of Objections") detailing the shortcomings that he considered constituted in this case in relation to the requirements prescribed by Article 12.1 of the GDPR (transparency obligation).

4 Investigation report, page 7, point "2.3 Reservations".

5 Investigation report, page 6, point "2.2 Scope".

6 Investigation report, pages 9, point "4.2 Description of the audit".

7 Same.

---

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

4/23

The head of investigation proposed to the Restricted Panel to adopt four measures different corrective measures, as well as to impose on the person controlled an administrative fine of one amount of 3,700 euros.

9. The audited replied to the statement of objections by email dated February 10, 2022.

10. By letter dated May 20, 2022, the president of the Restricted Formation informed the controlled that his case would be registered for the Restricted Panel session of July 6, 2022 and that he could attend this meeting. The controller has confirmed his presence at the said meeting as of May 31, 2022.

11. During this session the head of investigation, Mr. Marc Lemmer, was present. Control was represented by [...] and by [...]. The head of investigation and the representatives of the control presented their oral observations in support of their written observations and replied to the questions asked by the Restricted Panel. The Restricted Formation gave the checked the possibility of sending additional information within a week

requested during that session. The controller spoke last.

12. By email of July 7, 2022, the controller sent the additional information requested by the Restricted Panel during the meeting of July 6, 2022.

## II. Place

### II. 1. On the reasons for the decision

On the breach of the obligation of transparency

#### 1. On the principles

13. According to Article 12.1 of the GDPR, the “controller shall take measures appropriate to provide any information referred to in Articles 13 and 14 as well as to carry out any communication under Articles 15 to 22 and Article 34 with regard to concerns processing to the data subject in a concise, transparent, understandable easily accessible, in clear and simple terms, in particular for any information intended specifically for a child. The information is provided by in writing or by other means including, where appropriate, electronically. When the data subject so requests, the information may be provided orally, provided that the identity of the data subject is demonstrated by other means. »

---

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

5/23

14. Transparency is a fundamental aspect of the principles relating to the treatment of personal data.<sup>8</sup> The obligations in this area have been clarified by the Article 29 Working Party in its guidelines on transparency within the meaning of the Regulation (EU) 2016/679, the revised version of which was adopted on April 11, 2018 (hereinafter: “WP 260 rev.01” or the “transparency guidelines”).

These guidelines explain in particular the general rules of transparency established by Article 12 of the GDPR, and which are applicable to the communication of information to data subjects (Articles 13 and 14 of the GDPR), to communications addressed to data subjects regarding the exercise of their rights (Articles 15 to 22 of the GDPR), and communications regarding data breaches (Article 34 of the GDPR).<sup>9</sup>

They underline that a “primary aspect of the principle of transparency highlighted in these provisions is that the data subject should be able to determine at in advance what the scope and consequences of the processing encompass in order not to be taken unawares at a later stage as to how his personal data personnel were used”.<sup>10</sup>

15. It should be noted that the European Data Protection Board (hereafter: the “EDPS”), which succeeded the Article 29 Working Party on 25 May 2018, took over and reapproved the documents adopted by the said Group between May 25, 2016 and May 25, 2018, as specifically the aforementioned guidelines on transparency<sup>11</sup>.

2. In this case

2.1. Regarding the requirement to provide information in a “concise and transparent” way

16. In the context of objective 212 the head of investigation expected, among other things, that “the following information is accessible through the data protection policy, in accordance with the appendix to the guidance of the Article 29 Working Party on

<sup>8</sup> See in particular Articles 5.1.a) and 12 of the GDPR, see also recitals (39), (58) to (60) of the GDPR.

<sup>9</sup> WP 260 rev.01, point 7.

<sup>10</sup> WP 260 rev.01, point 10.

<sup>11</sup> See

[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).

<sup>12</sup> “Objective 2 - Ensure information is complete”; Investigation report, page 14 et seq.

Endorsement decision

of the EDPS

available

May 25

1/2018

2018,

of

below :

---

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

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

6/23

information to be communicated to a data subject under Article 13

or Article 14 of the GDPR:

[...] The categories of data processed (cf. Tests 5 and 16) [...]”<sup>13</sup>.

CNPD officials therefore inspected “the register of processing activities to

identify whether, for each category of data listed in the register and for which

users of the website or platform are identified as a category of

persons concerned, mention is made in the policy. » <sup>14</sup>

17. From the statement of objections it is apparent in this context that “[i]n the context of

the analysis of the processing carried out by the Controlee and the information provided by the

controller to the data subjects on said processing, it has been

found that the data protection policy did not mention the processing of

location data, although mentioned in the processing register. »

Thus, the head of the investigation held that “the conditions of article 12.1 of the GDPR with regard to the

principles of fairness and transparency have not been fully respected”.<sup>15</sup>



18. The Restricted Committee recalls that Article 12.1 of the GDPR requires, among other things, that required information is provided in a transparent manner.

She notes that the Transparency Guidelines state that “an aspect of the principle of transparency highlighted in these provisions is that the data subject should be able to determine in advance what the scope and the consequences of the processing include so as not to be caught unawares at a later stage as to how his personal data has been used. 16 It follows that the data controller must provide data subjects concerned accurate and complete information on all processing performed on their personal data.

19. The Restricted Committee notes that according to the register of processing activities that the controlled sent by email dated September 19, 2020<sup>17</sup> to the head of investigation (hereinafter: the 13 Investigation report, page 14, Ad Objective 2, point 4.4.2.1.

14 Investigation report, page 22, point “4.4.2.2.16 Test 16: Reconciliation with register (data category)”.

15 Statement of Objections, points 14 and 17.

16 WP 260 rev.01, point 10.

17 See Exhibit 9 attached to the investigation report.

---

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

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

7/23

“register”), location data could indeed be collected as part of of three different treatments called “[...]”, “[...]” and “[...]”. On the other hand, the policy of confidentiality extracted by the head of investigation from the website of the audited dated 19 August 2020<sup>18</sup> (hereinafter: the “Privacy Policy”) only mentioned that the monitored may collect “traffic information for each call or session

Internet”<sup>19</sup> without indicating the collection of location data.

20. Nevertheless, it results from a combined reading of the “[...]” and “[...]” tabs of the register of the controlled only the persons concerned by one of the three processing operations in the context of which location data is collected are not users of the site or

the controlled’s mobile application, but its employees<sup>20</sup>, while for the other two

processing in question, the controller acts solely as a subcontractor [of clients] .<sup>21</sup>

Based on the aforementioned limitations of the scope of the investigation in question<sup>22</sup>, that is to say

say that the survey focused on users of the website and the application

mobile and did not target other categories of data subjects such as employees

of the controlled, on the one hand, and that the CNPD agents only analyzed the

processing implemented by the controller as controller, on the other

hand, the Restricted Panel, after analysis, does not consider this breach of Article

12.1 GDPR in this specific context.

2.2. As to the requirement to provide information in an "easily accessible" way

2.2.1. Regarding updates to the privacy policy

21. In the context of objective 4<sup>23</sup> the head of investigation expected, among other things, that

“that all substantial updates to the data protection policy

are the subject of active communication (informative e-mail, pop-up on the website,

etc.) with a summary of the (main) modifications (cf. Test 5). »<sup>24</sup>

In this context, it emerges from the investigation report that according to the explanations of the controller

“in the event of a substantial modification of the data protection policy, only the

18 See Exhibits 1 to 4 annexed to the investigation report for the versions in French, English, German and Dutch.

19 Privacy Policy, p. 5. This traffic information contains “[...]” “.”.

20 See the processing referred to as “[...]”.

21 See the processing referred to as “[...]” and “[...]”.

22 See points 5 and 6 of this decision.

23 “Objective 4 - Ensure that information is transmitted by appropriate means; Investigation report, page 32 et seq.

24 Investigation report, page 32, Ad Objective 4, point 4.4.4.1.

---

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

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

8/23

[customers] were

actively informed. Company A does not inform

systematically users [...]. »25

22. For this reason, the head of the investigation held that the "conditions of article 12, paragraph 1 of the GDPR regarding the accessibility of information (at the level of updates) have not been respected. »26

23. Restricted Training refers in this context to the guidelines on the transparency indicating that the "controller should respect the same principles when communicating the initial opinion or declaration on the protection of life privacy and any subsequent material changes to this notice or this declaration" and "that a change notification should always be communicated by a suitable means (for example, e-mail, postal mail, pop-up window on a web page or other means that effectively captures the attention of the data subject) specifically devoted to modification (for example, separate from a content of direct marketing), and this communication must comply with the requirements of Article 12 [...]. The information contained in the privacy notice or statement stating that the data subject should regularly check the notice or statement on privacy in order to find out about any changes or updates are

considered not only insufficient. »<sup>27</sup>

24. It further notes that the obligation to inform data subjects in the event of substantial changes to the privacy policy was the responsibility of the controlled only with regard to users who have created an account on its website or through the mobile app. Indeed, during the Restricted Training session of July 6 2022, the control explained that the [customers] assume the function of responsible for the processing concerning the personal data of users who do not have account and that it would therefore be incumbent, if necessary, on the said [clients] to inform these users in the event of substantial changes to the privacy policy.

25. Said policy mentioned in this context that [if we change the policy in such a way important, a notice will be posted on our site with the update].<sup>28</sup> In addition, the Restricted Training takes into account the affirmation of the controlled only in the event of changes

<sup>25</sup> Investigation report, page 36, point 4.4.4.3.2.

<sup>26</sup> Statement of Objections, point 26.

<sup>27</sup> WP 260 rev.01, point 29.

<sup>28</sup> See exhibits 1 to 4 appended to the investigation report.

---

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

9/23

major incompatible with the purpose for which the data was collected, it would require a renewal of consent.<sup>29</sup>

26. It nevertheless considers that these findings do not negate the fact that users with created an account with the auditee were not systematically informed in a manner active of a substantial modification of the privacy policy and that therefore the inspected breached the obligation of transparency at the start of the CNPD investigation

arising from Article 12.1 of the GDPR, and more specifically from the requirement to provide the information required in an easily accessible manner.

2.2.2. At the level of the links to the collection points in the mobile application

27. In the context of objective 830 the head of investigation expected, among other things, that on "the mobile application, the information relating to the protection of privacy must be easily accessible, before and after downloading the application (see Tests 3 and 4).»<sup>31</sup>

The CNPD agents therefore "inspected Company A's mobile application to assess the ease of access to information relating to the protection of privacy, a once the mobile application has been downloaded. »

28. According to the statement of objections "it was found that certain collection points of data on the mobile app contained broken links. <sup>32</sup> More concretely, the "redirection link to the contact form as well as the link to the [...] were broken. »<sup>33</sup>

Thus, the head of investigation held that the conditions of article 12.1 of the GDPR "as to the accessibility of information (in terms of communications) have not been respected. »<sup>34</sup>

29. The Restricted Committee recalls that Article 12.1 of the GDPR requires, among other things, that required information must be provided in an easily accessible manner.

29 Investigation report, page 5, point 4.4.4.2.5.2.

30 "Objective 8 - Ensure that information is easily accessible; Investigation report, page 43 et seq.

31 Investigation report, page 43, Ad Objective 8, point 4.4.8.2.3.

32 Statement of Objections, point 27.

33 Statement of Objections, paragraph 32.

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

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

10/23

She notes that the Transparency Guidelines state that “the criterion

"easily accessible" means that the data subject should not have to

search for information but should be able to access it immediately: for example, these

information could be communicated to the persons concerned directly or to the

means of a link that would be addressed to them”<sup>35</sup> and that they recommend for a context in

line that a "link to the privacy statement or notice is provided

at the point of collection of the personal data, or that this information is

can be viewed on the same page where the personal data is

collected”<sup>36</sup>.

30. The Restricted Panel wishes to specify that it is not called into question once

the user connected to the mobile application after downloading it, a section

"Privacy Policy" appears clearly in the main menu on the left, even

if the user does not have a user account.<sup>37</sup> However, it notes that it was

indeed documented by screenshots taken by CNPD officials<sup>38</sup> only after

the download of said application, the links to the “Contact us” pages and to

the [...] were broken.

It therefore considers that the unavailability of its two links does not meet the requirement of

GDPR Article 12.1 to provide the required information in an easily

accessible.

31. In view of the foregoing, the Restricted Panel concurs with the opinion of the head of investigation and

concludes that at the start of the CNPD's investigation, the control failed in the obligation to

transparency arising from Article 12.1 of the GDPR, and more specifically from the requirement of provide the required information in an easily accessible manner.

32. As for the measures taken by control after the on-site visit by CNPD agents, the Restricted Panel comes back to this in point 44, as well as in Chapter II.2. Section 2.2. of this decision.

35 WP 260 rev.01, point 11.

36 Same.

37 See Exhibit 26 attached to the investigation report.

38 See exhibits 32 and 33 appended to the investigation report.

---

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

11/23

2.3. As for the requirements to provide information in a way that is "understandable" and "in clear and simple terms" in terms of information on cookies

33. In the context of objective 539 the head of investigation expected, among other things, in "what concerns cookies and other tracers [...] that specific information such as defined in objective 2 are also understandable, specific and precise for each type of cookie present on the site (cf. Test 4)."40

He noted in this context the following: "In the privacy policy there is amalgamation between [service A] and [service B] which are 2 different services and not "a service [...]" (PIECE 1 p.13) which implies that one cannot use one without the other (cf. Test 4).

There is an incomprehensible sentence in the privacy policy (PIECE 1 p.13) "  
[...]"41

34. Based on these findings, the head of investigation therefore concluded in the communication of the

objections that “the conditions of Article 12(1) of the GDPR as to the nature

comprehensible information have not been complied with. »<sup>42</sup>

35. The Restricted Committee recalls that if the use of cookies leads, in addition to the deposit or

reading information on the user's terminal equipment regulated by law

of May 30, 2005 relating to the specific provisions for the protection of the person

with regard to the processing of personal data in the sector of

electronic communications, the collection (or any other processing) of personal data

personal nature (for example, when cookies are used to collect

data on the purchasing preferences of a specific user), all the rules of the

GDPR will also have to be respected, which implies that information in accordance with articles

12 to 14 of the GDPR will have to be provided to data subjects.<sup>43</sup>

39 “Objective 5 - Ensure that information is concise, transparent, understandable, and transmitted in

clear and simple terms”; Investigation report, page 37 et seq.

40 Investigation report, page 38, Ad Objective 5, point 4.4.5.1.

41 Investigation report, page 40, Ad Objective 5, point 4.4.5.3.1.

42 Statement of Objections, point 39.

43 CNPD guidelines on cookies and other trackers, point 2., available at:

<https://cnpd.public.lu/fr/dossiers-thematiques/cookies/legal-context.html>.

---

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

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

12/23

Indeed, the case law of the Court of Justice of the European Union<sup>44</sup> has confirmed that it is

possible that the processing falls both within the material scope of the Directive

“privacy and electronic communications”<sup>45</sup> and that of the GDPR.<sup>46</sup>

36. Thus, Article 12.1 of the GDPR requires, among other things, that the required information must be



provided in an understandable way. The Restricted Committee notes that the lines  
Transparency Guidelines state that “the requirement that such information be  
“understandable” means that they should be able to be understood by the majority of the  
targeted audience. Comprehensibility is closely linked to the requirement to use terms  
clear and simple. A data controller knows the persons about whom  
it collects information and can use this knowledge to determine what  
that this audience would be likely to understand. »47

Furthermore, “the requirement for clear and simple terms means that the information should  
be provided in the simplest way possible, avoiding phrases and structures  
complex linguistics. The information should be concrete and reliable; they don't  
should not be formulated in abstract or ambiguous terms or leave room for  
different interpretations. More specifically, the purposes and legal bases of the  
processing of personal data should be clear. »48

37. The Restricted Committee notes that the two points criticized by the head of investigation, i.e.  
say the amalgam between the services "[A]" and "[B]", as well as the presence of a sentence  
incomprehensible, were found in the same paragraph of the policy of  
confidentiality of the control. The wording of the said paragraph, found in section  
“Cookies and other technologies” of said policy, was the following: “[...]”

38. She considers that this information is not provided in the simplest way possible  
and that they include complex linguistic sentences and structures. From reading the  
two paragraphs involved, it is not clear to the person concerned how the  
personal data collected by means of a cookie (IP address, time

44 “Planet 49” case, CJEU, C-673/17, 1 October 2019, points 42 and 65.

45 Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 on the processing of  
personal data and the protection of privacy in the electronic communications sector,  
as amended.

46 EDPS, Opinion 5/2019 on the interactions between the “Privacy and Electronic Communications” Directive and the GDPR, in particular with regard to the competence, tasks and powers of data protection authorities of data, adopted on March 12, 2019, point 30. et seq.

47 WP 260 rev.01, point 9.

48 WP 260 rev.01, point 12.

---

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

13/23

access, access duration) via [services A and B] are processed for the purpose of analyzing access to websites and improving the Internet presence of the controlled. It does not come out for example not from the privacy notice if the data is automatically collected by controlled and transmitted [to a third country], if the person concerned must give his prior consent to this data collection and subsequent transfer or if it must proactively disable tracking by services [A and B] in its browser.

Furthermore, this part of the privacy policy specifically mentions incomprehensible that this follow-up by departments [A and B] "[...]" All the more so, as the mentions the head of investigation in his statement of objections, there “was amalgam between “[Service A]” and “[Service B]” in the Privacy Policy. These are two different services and not of a single service [...] as indicated in the policy of

Data protection. The wording used implies that one cannot use a service without

the other. 49 In addition,

THE

term "[...]" is immediately

incomprehensible.

39. In view of the foregoing, the Restricted Panel concurs with the opinion of the head of investigation and concludes that at the start of the CNPD's investigation, the control failed in the obligation to transparency arising from Article 12.1 of the GDPR, and more specifically from the requirements of provide the required information in a way that is understandable and in terms that are clear and simple.

## II. 2. On the fine and corrective measures

### 1. On the principles

40. In accordance with article 12 of the law of 1 August 2018, the National Commission has the powers 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;

49 Statement of Objections, paragraph 38.

---

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

14/23

(c) order the controller or processor to comply with requests submitted by the data subject with a view to exercising their rights under this this Regulation;

(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 the 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(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. »

41. In accordance with article 48 of the law of 1 August 2018, the CNPD may impose fines

administrative as provided for in Article 83 of the GDPR, except against the State or

of the municipalities.

42. Article 83 of the GDPR provides that each supervisory authority shall ensure that fines

administrative measures imposed are, in each case, effective, proportionate and

deterrents, before specifying the elements that must be taken into account to decide

whether an administrative fine should be imposed and to decide on the amount of this

fine :

---

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

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

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

b) whether the breach was committed willfully or negligently;

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

d) the degree of responsibility of the controller or processor, account given the technical and organizational measures they have implemented under the sections 25 and 32;

e) any relevant breach previously committed by the controller or the subcontractor ;

f) the degree of cooperation established with the supervisory authority with a view to remedying the breach and to mitigate any negative effects;

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

h) the manner in which the supervisory authority became aware of the breach, in particular whether, and the extent to which the controller or processor notified the breach ;

(i) where measures referred to in Article 58(2) have previously been ordered against the controller or processor concerned for the same purpose, compliance with these measures;

(j) the application of codes of conduct approved pursuant to Article 40 or certification mechanisms approved under Article 42; And

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

43. The Restricted Committee would like to point out that the facts taken into account in the context of the

this Decision are those found at the start of the investigation. The possible changes relating to the data processing under investigation

---

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

16/23

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.

44. Nevertheless, the steps taken by the control to comply with the the GDPR during the investigation procedure or to remedy the shortcomings identified by the head of investigation in the statement of objections, are taken into account by the Restricted training as part of any corrective measures to be taken and/or setting the amount of any administrative fine to be imposed.

2. In this case

2.1 Regarding the imposition of an administrative fine

45. In the statement of objections, the head of investigation proposes to the Restricted Panel to pronounce against the controlled an administrative fine relating to the amount of 3,700 euro.

46. In order to decide whether to impose an administrative fine and to decide, if applicable, of the amount of this fine, the Restricted Panel analyzes the criteria set by article 83.2 of the GDPR:

- As for the nature and seriousness of the violation (article 83.2 a) of the GDPR), it recalls in with regard to the breach of Article 12 of the GDPR, that the applicable transparency to the processing of personal data is an essential obligation weighing on data controllers so that people are fully aware of the use that will be made of their personal data, a

once collected. A breach of this article of the GDPR is thus constitutive of an infringement of the rights of the persons concerned. The right to transparency and the right to information have also been strengthened under the GDPR, which testifies of their particular importance.

- As for the duration criterion (article 83.2.a) of the GDPR), the Restricted Panel finds that these shortcomings have lasted over time, at least since the beginning of the investigation and until, if necessary, a possible modification of the policy of Data protection. It recalls that guidance relating to the principles and obligations provided for in the GDPR was available from the CNPD, in particular on its website.

---

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

17/23

- As for the number of data subjects (article 83.2. a) of the GDPR), the Training Restricted finds that these are the [...] users who are registered on [...].<sup>50</sup> Durant the Restricted Training session of July 6, 2022, the controller specified that by “users” are only referred to [...]. The Luxembourg platform is by elsewhere “used by more than [...] [clients]. »<sup>51</sup>

- As to whether the breaches were committed deliberately or not (by negligence) (article 83.2.b) of the GDPR), the Restricted Panel recalls that “no deliberately” means that there was no intention to commit the violation, although the controller or the processor has not complied with the obligation to due diligence required by law.

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

control.

- As to the degree of cooperation established with the supervisory authority (Article 83.2. f) of the GDPR), the Restricted Panel takes into account the statement of the head of investigation according to which the auditee has shown constructive participation throughout investigation.<sup>52</sup>

- As for the categories of personal data concerned (article 83.2.g) of the GDPR), it should be taken into account that, even if the control does not store any document [...], it nevertheless processes data [...].<sup>53</sup>

- 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.

47. The Restricted Committee notes that the other criteria of Article 83.2 of the GDPR are not neither relevant nor likely to influence its decision on the imposition of a fine administrative and its amount.

50 See report of the visit of October 13, 2020, page 5: “[...] »

51 See investigation report, page 10.

52 Statement of Objections, point 42.d).

53 See investigation report, page 10.

---

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

18/23

48. 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 were only adopted following the launch of the investigation by CNPD agents on August 26, 2020



(see also point 43 of this decision).

49. Therefore, the Restricted Panel considers that the imposition of an administrative fine is justified with regard to the criteria set out in Article 83.2 of the GDPR for breach of GDPR article 12.1.

50. With regard to the amount of the administrative fine, the Restricted Panel recalls that Article 83.5 of the GDPR provides that violations of the rights enjoyed by individuals concerned under Articles 12 to 22 of the GDPR may be subject to fines administrative costs of up to EUR 20,000,000 or, in the case of a company, up to 4% of the total worldwide annual turnover of the preceding financial year, the amount higher being retained.

51. With regard to the relevant criteria of Article 83.2 of the GDPR mentioned above, the Training Restricted considers that the imposition of a fine of two thousand five hundred (2,500) euros appears to be both effective, proportionate and dissuasive, in accordance with the requirements of GDPR Article 83.1.

## 2.2 Regarding the taking of corrective measures

52. In the statement of objections, the head of investigation proposes to the Restricted Panel to adopt the following corrective measures: “within a period of 1 month from the notification to Control of the decision taken by the Restricted Training:

Order, pursuant to Article 58 (2) d) of the GDPR, the Controlled to comply with Article 12 (1) of the GDPR by making the following changes:

To. Update the data protection policy by including the information regarding the processing of location data;

b. Review the methods used to communicate to the persons concerned the update of the data protection policy in order to ensure that the modifications can be read by most recipients with the use of a suitable medium and specifically devoted to said modifications;

---

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

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

19/23

vs. Add redirect link to data protection policy to points

collecting information in the mobile application;

d. Clarify the information relating to cookies contained in the policy of

data protection by correcting the incomprehensible sentence on cookies and by

distinguishing between “[service A]” and “[service B]”<sup>54</sup>.

53. As to the corrective measures proposed by the head of investigation and with reference to point

44 of this decision, the Restricted Panel takes into account the procedures

carried out by the controller in order to comply with the provisions of article 12.1 of the GDPR,

as detailed in his emails of February 10, 2022 and July 7, 2022. More

in particular, it takes note of the following facts:

- As for the corrective measure proposed by the head of investigation mentioned under a) of point

52 of this decision concerning the update of the data protection policy

data including information on the processing of data from

location, the Restricted Panel refers to point 20 of this decision

concerning the limitations of the scope of the survey in question to users of the site

internet and the mobile application, as well as to the processing implemented by the controller

as controller. For these reasons, it does not rule on the

corrective measure proposed by the head of investigation in this regard and repeated in point 52 of

this Decision under (a).

- As for the corrective measure proposed by the head of investigation mentioned under b) of point

52 of this Decision concerning the procedures used to communicate to

data subjects the updating of the data protection policy in order to

ensure that changes can be read by most recipients with the use of a means adapted and specifically dedicated to the said modifications, the Restricted Formation would first like to reiterate (see point 24 of this decision) that the obligation to inform the persons concerned in the event of changes substantial portions of the Privacy Policy rests with the Controller solely insofar as which concerns users who have created an account on its website or via the mobile application, whereas [clients] should inform users without account.

54 Statement of Objections, point 40.

---

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

20/23

In his email of February 20, 2022 addressed to the CNPD investigation department, the controlled specified that it had developed a procedure to ensure that users having created an account would be informed by e-mail in the event of modifications to the processing related to their account. To this end, the amendments would be clearly marked to guarantee transparent and easily accessible information, allowing users to respond to such changes. The controlled there is by elsewhere indicated that it intends to notify its users in the coming weeks on adjustments made to the privacy policy.<sup>55</sup>

Following the request of the Restricted Panel during the hearing of July 6, 2022, the controlled emailed July 7, 2022 evidence that an email with a link to the new privacy policy was sent dated [...] 2022 to the users with an account.

However, by reading the said email, the Restricted Panel finds that, even if it is

specifically devoted to updating the privacy policy, it mentions only with respect to the content of the changes that [the auditee revises its privacy policy for the sole purpose of improving the distinction between its activities commercial and the services and products offered to its customers], but that the concrete changes compared to the previous version of the policy of confidentiality are not further specified. By opening the link to the news privacy policy included, changes are also not specifically highlighted. This notification of modification therefore does not respect not all the requirements of Article 12 of the GDPR, i.e. it is not addressed to users in an easily accessible manner. However, the Restricted Formation considers that users must be informed, at each update, of the changes from the previous version of the data protection policy data.

In view of the insufficient compliance measures taken by the control in this case and point 44 of this decision, the Restricted Panel considers as soon as it is necessary to pronounce the corrective measure proposed by the head of investigation in this respect and taken up in point 52 of this decision under b).

55 [...].

---

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

21/23

- As for the corrective measure proposed by the head of investigation mentioned under c) of point 52 of this decision concerning the addition of a redirect link to the policy of data protection at information collection points in the app mobile, the controller has already indicated in his email of February 20, 2022 addressed to the

CNPD investigation service have immediately modified the broken links

concerned, stating that it was an "IT bug".

The Restricted Panel finds that the links in question now work.

In consideration of the sufficient compliance measures taken by the control

in this case and point 44 of this decision, the Restricted Panel considers

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

investigation in this respect and taken up in point 52 of this decision under c).

- As for the corrective measure proposed by the head of investigation mentioned under d) of point

52 of this decision concerning the clarification of information relating to

cookies contained in the data protection policy by correcting the sentence

incomprehensible about cookies and making a distinction between [service A]" and

"[service B]", the controlled indicated in his email of February 20, 2022 addressed to the

CNPD investigation department have adjusted these two points in its policy of

privacy.

By reading the version of the privacy policy emailed to him on July 7

2022, the Restricted Panel finds that the incomprehensible sentence mentioning

a "[...]" no longer appears there, while parts 10.1, 10.2 and 12.2 of said policy

separately specify the processing implemented by the different services used

of [...].

In consideration of the sufficient compliance measures taken by the control

in this case and point 44 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 and taken up in point 52 of this decision under d).

---

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

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

In view of the foregoing developments, the National Commission sitting

in restricted formation, after having deliberated, decides:

- to retain a breach of Article 12.1 of the GDPR;

- impose an administrative fine on Company A in the amount of

two thousand five hundred (2,500) euros, with regard to the breaches constituted in article 12.1

GDPR;

- issue against Company A an injunction to bring the

processing with the obligations resulting from article 12.1 of the GDPR, within a period of 2

(two) months following the notification of the decision of the Restricted Panel, and, in

particular,

- o send a new communication to the persons concerned on the

concrete changes to the data protection policy compared to

the previous version of said policy.

Belvaux, December 13, 2022.

For the National Commission for Data Protection sitting in restricted formation

Tine A. Larsen Thierry Lallemand

President

Commissioner

Alain Hermann

Commissioner

Indication of remedies

This administrative decision may be subject to an appeal for review within three

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

must be introduced through a lawyer at the Court of one of the Bar Associations.

---

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

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

23/23