

Decision of the National Commission sitting in restricted formation

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

Deliberation no. 22FR/2021 of June 11, 2021

The National Commission for Data Protection sitting in restricted formation

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

Lemmer, commissioners;

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

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

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

95/46/EC;

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

data protection and the general data protection regime, in particular

its article 41;

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

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

article 10 point 2;

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

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

in particular its article 9;

Considering the following:

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

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

1/30

I. Facts and procedure

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

for data protection sitting in plenary session (hereafter: "Formation Plenary") had decided to open an investigation with Company A on the basis of Article 37 of the law of 1 August 2018 on the organization of the National Commission for the data protection and the general data protection regime (hereinafter "Law of August 1, 2018") and to appoint Mr. Christophe Buschmann as Chief of investigation.

2. According to the decision of the Plenary Formation, the investigation carried out by the National Commission for Data Protection (hereinafter: "CNPDP") had as its purpose of verifying compliance with the provisions of the regulations relating to the protection of natural persons with regard to the processing of personal data and to the free movement of such data, and repealing Directive 95/46/EC (hereinafter "GDPR") and the law of August 1, 2018, in particular by setting up systems for video surveillance and geolocation, if applicable, installed by Company A.

3. On March 7, 2019, CNPDP officials visited the company premises Company A. 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 CNPDP agents and carried out by Company A.

4. Company A is a [...] registered in the Trade and Companies Register of Luxembourg under number [...] and having its registered office at number [...] (hereinafter "the control "). The controlled [is active in the tertiary industry]. 1

5. During the above-mentioned visit of 7 March 2019 by CNPDP agents to the controlled premises, it was confirmed to CNPDP officials that the controlled uses a video surveillance system consisting of twenty-two cameras and that he installed a geolocation device in [...] company intervention vehicles.²

1 According to the information provided on its own website: [...].

2 See Minutes no. [...] relating to the on-site fact-finding mission carried out on March 7, 2019 to
of Company A.

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

2/30

6. By email of April 25, 2019, the controller replied to the report drawn up by
CNPD officers.

7. At the end of his investigation, the head of investigation notified the person inspected on 7
November 2019 a statement of objections detailing the shortcomings he considered
constituted in this case, and more specifically a non-compliance with the requirements prescribed
by article 13 of the GDPR with regard to the information of all persons
concerned with regard to the video surveillance system and with regard to the information of
employees with regard to the geolocation system, non-compliance with the requirements of article
5.1.c) of the GDPR with regard to the video surveillance system, as well as a non-
compliance with the requirements of articles 5.1.e) and 32.1 of the GDPR with regard to the
geolocation system.

8. On December 3, 2019, the auditee produced written observations on the
statement of objections.

9. A supplementary letter to the statement of objections was sent to the
checked on August 17, 2020. In this letter, the head of investigation offered the
Restricted Formation to adopt two different corrective measures, as well as to inflict
to the controlled an administrative fine of 7,200 euros.

10. By letter dated September 4, 2020, the controller produced written observations
on the supplementary letter to the statement of objections.

11. The president of the Restricted Formation informed the controller by letter of 19

January 2021 that his case would be registered for the session of the Restricted Panel on 26 February 2021. The controller confirmed his presence at the said meeting dated January 28 2021.

12. During the Restricted Training session of February 26, 2021, the leader of investigation and control presented their oral observations in support of their written observations and answered the questions posed by the Restricted Panel. The president consented to the control's request to be able to send to the Formation Restricted photos of the display currently in place on its site in terms of

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

3/30

video surveillance and to provide the necessary explanations in writing within a week. The controller spoke last.

II. Place

II. 1. As to the reasons for the decision

II.1.1. About the CCTV system

A. On the breach related to the principle of data minimization

1. On the principles

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

14. The principle of data minimization in video surveillance implies that only what appears strictly necessary to achieve the purpose(s) pursued and that the processing operations must not be disproportionate.³

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

16. Before installing a video surveillance system, the person in charge of the
processing must precisely define the purpose(s) it wishes to achieve by
using such a system, and will not then be able to use the personal data
personal information collected for other purposes.⁴

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

4 See Guidelines for
[themes/videosurveillance/necessite-proportionnalite.html](https://cnpd.public.lu/fr/dossiers-themes/videosurveillance/necessite-proportionnalite.html).

under: [---

Decision of the National Commission sitting in restricted formation on the outcome of
Survey no. \[...\] conducted with Company A.](https://cnpd.public.lu/fr/dossiers-the CNPD, available</p></div><div data-bbox=)

4/30

17. The necessity and proportionality of video surveillance is analyzed on a case-by-case basis.
case and, in particular, with regard to criteria such as the nature of the place to be placed under
video surveillance, its location, configuration or attendance.⁵

2. In this case

18. During the on-site visit, it was explained to CNPD officials that the
purposes of setting up the video surveillance system are the protection of property,
securing access to private places, as well as the safety of users and the
accident prevention.⁶

19. During the said visit, the CNPD agents noted that the field of vision of the "camera called "[...]" allows permanent monitoring of the workstation of the person busy at the reception" and that the field of vision of the "camera called "[...]" allows the monitoring of the staff entry area. In this area is also fitted out the smoking area. Employees taking their break are therefore permanently monitored there. » 7

20. The head of investigation was of the opinion that even if the aforementioned purposes “may find one or more bases of lawfulness under article 6, permanent monitoring employees at their workplace (welcome area) and during their break (smoking area) is to be considered disproportionate. (statement of objections, Ad. A.2. and A.3.).

21. The controlled on his side explained in his response email to the lawsuit-report of April 25, 2019 that the camera called "[...]" was oriented in such a way as to no longer have a view of the counter and that while waiting for the implementation of new surveillance cameras, the smoking area has been moved a few meters outside of the field of view of the camera called "[...]". By noting the will of the controller to remedy the problem in question in order to comply with the requirements of the GDPR, the

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

6 See finding 6 of minutes no. [...] relating to the on-site fact-finding mission carried out on March 7 2019 with Company A.

7 See findings 7 and 8 of Minutes no. [...] relating to the on-site fact-finding mission carried out on 7 March 2019 with Company A.

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

head of investigation therefore concluded that the non-compliance with Article 5.1.c) of the GDPR was acquired on the day of the site visit.

22. La Formation Restreinte would like to remind you that employees have the right not to be subject to continuous and permanent supervision in the workplace. To reach the purposes pursued, it may seem necessary for a data controller installing a CCTV system in the workplace. On the other hand, respecting the principle of proportionality, the controller must use the means of most protective of the employee's private sphere and, for example, limit the fields of vision of the cameras to the only surface necessary to reach the purpose(s) pursued.

23. When it comes to places reserved for employees in the workplace for a private use, such as a canteen where employees can meet around of a meal, surveillance cameras are in principle considered as disproportionate to the aims sought. The same goes for places such as, for example, changing rooms, toilets, smoking areas, rest, the kitchenette or any other place reserved for employees for private use. In these cases, the fundamental rights and freedoms of employees must prevail over the interests lawsuits pursued by the employer.

24. In his letter of December 3, 2019, the controller specified that for technical reasons, it was impossible for him to move the workstation to Reception which is was in the field of vision of the surveillance camera, but that he chose the option mask the camera's field of vision so that the workstations at Home are no longer visible. In addition, the controlled reiterated the content of his email of April 25, 2019 that the smoking area has been moved a few meters out of the field vision of the camera called "[...]". He attached to the said letter photos attesting to the aforesaid remarks.⁸

8 See appendix 2 and 3 of the letter of December 3, 2019.

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

6/30

25. In view of the foregoing, the Restricted Panel concurs with the finding⁹ of Chief
of investigation according to which the non-compliance with Article 5.1.c) of the GDPR was acquired on the day
the on-site visit by CNPD agents.

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

1. On the principles

26. According to paragraph 1 of Article 12 of the GDPR, the “controller
take appropriate measures to provide any information referred to in Articles 13 and 14
as well as to carry out any communication under Articles 15 to 22 and Article
34 with regard to the treatment to the data subject in a concise manner,
transparent, understandable easily accessible, in clear and simple terms [...]. »

27. 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;

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

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

7/30

e) the recipients or categories of recipients of the personal data,

if they exist; and

(f) where applicable, the fact that the controller intends to carry out a

transfer of personal data to a third country or to an organization

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

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

paragraph 1, second subparagraph, the reference to the appropriate or suitable safeguards and the

means of obtaining a copy or where they have been made available;

2. In addition to the information referred to in paragraph 1, the controller shall provide

to the data subject, at the time the personal data is

obtained, the following additional information which is necessary to guarantee

fair and transparent treatment:

a) the retention period of the personal data or, where this is not

possible, the criteria used to determine this duration;

b) the existence of the right to request from the controller access to the data to

personal character, the rectification or erasure of these, or a limitation of the

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

right to data portability;

c) where the processing is based on point (a) of Article 6(1) or on Article 9,

paragraph 2(a), the existence of the right to withdraw consent at any time,

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

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

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

8/30

personal character, as well as on the possible consequences of the non-provision of

those data;

f) the existence of automated decision-making, including profiling, referred to in Article

22, paragraphs 1 and 4, and, at least in such cases, useful information concerning the

underlying logic, as well as the significance and intended consequences of such processing

for the person concerned.

3. When he intends to carry out further processing of personal data

personal data for a purpose other than that for which the personal data

have been collected, the data controller provides the data subject beforehand

concerned information about this other purpose and any other information

relevant referred to in paragraph 2.

4. Paragraphs 1, 2 and 3 do not apply where and to the extent that the person

concerned already has this information. »

28. 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.¹⁰ 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").

29. 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.¹¹

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

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

under :

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

9/30

2. In this case

30. With regard to the information of customers, suppliers, service providers services and visitors (hereinafter: "third parties") regarding the system of video surveillance, the CNPD agents noted during their visit to the site that they are informed by a panel consisting of a pictogram representing a video-camera and the mention "Establishment under video surveillance", as well as by a old CNPD sticker displayed at the company's main entrance. Furthermore, the chief of investigation considered that the additional photos attached to the email of the controlled of April 25, 2019 show a poster identical to that referenced by the agents of the CNPD during their on-site visit and that therefore the latter was still not of a nature to fulfill the conditions of Article 13 of the GDPR.

31. With regard to informing employees about the system of

video surveillance, the head of investigation found that they were informed by the same panel consisting of a pictogram representing a video camera and a statement "Establishment under video surveillance", as well as by an old thumbnail of the CNPD. In addition, the head of investigation notes that an ethics charter has been put in place. place in 2016 by the auditee and that the latter is trying to demonstrate its desire to comply with the regulations by invoking the provisions of the said charter. However, the head of the investigation considered that while "that the said charter includes some of the mentions provided for in the aforementioned article 13, it must be noted that its article 11 entitled "processing personal data" deals with all data processed by the company, all the legal bases applicable to all of the different processing operations carried out by the company and all the purposes invoked for this processing, without differentiate by targeted treatment. This information is therefore provided by diffuse manner and do not respect the principle of transparency to which each controller. According to this principle, the information addressed to the person concerned must be concise and easily understandable. Note also that said charter includes information in direct opposition to the findings made during the site visit. Indeed, the charter informs employees that the images from CCTV are backed up for 2 weeks before they are deleted, so that the observed storage period is 22 days. (statement of objections, Ad. A.1.).

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

10/30

32. For the above reasons, the head of investigation considered that the conditions of article 13 of the RGPD have not been respected and that it is necessary to retain against the

checked for non-compliance with the requirements of Article 13 of the GDPR with regard to the persons concerned (statement of objections, Ad.A.1).

33. By email of April 25, 2019, the controller clarified that points 9 and 10 of the report of the joint committee of [...] 2013 would be proof of the information to the CCTV installation staff representatives.

34. By letter dated December 3, 2019, the auditee responded to the communication from the grievances of the chief of investigation by specifying that the old posters were removed and replaced by a new poster.¹² Furthermore, following the hearing of the Panel Restricted from February 26, 2021, the controlled emailed a new poster that he plans to put in place and which would seem to him more complete and compliant, but that he would await the return of the Restricted Formation before implementation and modifications possible.¹³

35. 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.). (WP260 rev. 01. paragraph 33).

36. The Restricted Committee notes that during the on-site visit by the agents of the CNPD, third parties were informed of the presence of the video surveillance by a panel composed of a pictogram representing a video-camera and the mention “Establishment under video surveillance”, as well as by a old stamp of the CNPD.

¹² See Annex 1 of the audit letter of December 3, 2019.

¹³ See audit email of February 26, 2021 and its appendix.

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

11/30

37. The Restricted Committee notes, however, that the panel, the pictogram and the old CNPD sticker did not contain the information required within the meaning of article 13 of the GDPR and no other information notice was available during the visit on site, to third parties.

38. With regard to the employees, the Restricted Training noted that during the visit on site by CNPD agents, they were informed of the presence of the video surveillance by the panel, the pictogram and the old CNPD sticker as mentioned above, as well as by a part entitled "Processing of personal data personnel" contained in the ethical charter dated [...] 2016.

39. The Restricted Committee considers first of all that a report by the joint committee on the information of staff representatives does not ensure that the employees of the company have been validly informed in accordance with article 13.1 and 2 of the GDPR.

40. 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.¹⁴ The second level of information, i.e. all of the information required under

of Article 13 of the GDPR, could be provided or made available by other means, such as a copy of the privacy policy emailed to employees or a link on the website to an information notice with regard to non-salaried third parties.¹⁵

41. The Restricted Committee notes, however, that the panel, the pictogram and the old CNPD sticker in place during the on-site visit did not contain the

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

15 See WP260 rev. 01 (item 38).

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

12/30

required elements of the first level of information whether for employees or non-salaried third parties.

42. With regard to the part entitled "Processing of personal data staff" contained in the ethics charter, Restricted Training agrees with the observation of the head of investigation that said part of the ethics charter includes some of the mentions provided for in the aforementioned article 13, but that it concerns all the data processed by the company, all the legal bases applicable to all the different processing carried out by the company and all the purposes invoked for this processing, without making a differentiation by targeted treatment. This information does not therefore do not comply with the principle of transparency to which each manager is bound of the treatment. According to this principle, the information must be addressed to the person concerned "in a concise, transparent, comprehensible and easily accessible manner, clear and simple terms".¹⁶ Moreover, as the head of the investigation noted, the said

charter includes information in direct opposition to the findings made during of the site visit. Indeed, the charter informs the employees that the images resulting from the video surveillance are saved for two weeks before they are deleted, while the retention period noted by CNPD officials was 21 days¹⁷ and that the control even specified in his email of April 25, 2019 that the duration of Retention of CCTV images has been set at eight days.

43. In view of the foregoing, the Restricted Panel concludes that at the time of the on-site visit by CNPD agents, article 13 of the GDPR was not respected by the control.

II.1.2. As for the geolocation system

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

¹⁶ See Article 12.1. of the GDPR.

¹⁷ See finding 9 of minutes no. [...] relating to the on-site fact-finding mission carried out on March 7 2019 with Company A.

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

13/30

1. On the principles

44. 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 [...]".

45. 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 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

46. During the on-site investigation, it was explained to CNPD officers that the purposes of geolocation are as follows: “geographic location, management optimization of the fleet as well as the response to customer complaints. »¹⁸

47. With regard to the retention period of data from the device of geolocation, it appears from the observations of the CNPD agents that the most old data was dated July 18, 2018, i.e. the retention period of data was 246 days, or more or less 8 months.¹⁹

48. According to the head of the investigation, the said retention period for the data of geolocation of 8 months exceeded that which was necessary for the achievement of the purposes mentioned above and for which the geolocation system had been put in place. For

¹⁸ See finding 16 of minutes no. [...] relating to the on-site fact-finding mission carried out on March 7 2019 with Company A.

¹⁹ See finding 18 of minutes no. [...] relating to the on-site fact-finding mission carried out on March 7 2019 with Company A.

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

14/30

For this reason, he was of the opinion that a non-compliance with the requirements of Article 5.1.e) of the GDPR was upheld (see statement of objections, Ad.A.5).

49. By letter dated December 3, 2019, the inspector informed the head of investigation of his decision to stop the processing of personal data carried out by the system of geolocation installed in its service cars and that negotiations to stop the contract with the provider would be in progress and that the latter will definitively end on January 1, 2020.

50. During the hearing of the Restricted Panel on February 26, 2021, the controlled clarified that he considers that a retention period of 6 months was justified, among other things, by the fact that sometimes customers dispute invoices and in this case, the data from geolocation would have been checked.

51. 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. Thus, as the system of geolocation set up by the control has several purposes, the durations of conservation are to be individualized for each specific purpose.

52. As mentioned above, during the hearing of the Restricted Panel, the controlled clarified that the geolocation data also have the purpose of verifying the invoicing customers for services provided by its employees.

53. With regard to the geolocation of employee vehicles, the Training Restricted considers that personal data obtained by the geolocation can in principle only be kept for a period maximum of two months under the aforementioned principle of Article 5.1.e) of the GDPR. However, it considers that if said data is used by the person responsible for the processing for the purposes of proof for the invoicing of the services carried out for its customers, the data necessary for such invoicing may be kept for a

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

15/30

duration of one year, provided that it is not possible to provide proof of the services
by other means.²⁰

54. In the event of an incident, the Restricted Committee is of the opinion that the data may
be kept beyond the time limits mentioned above in the context of the transmission of
given to competent judicial authorities and competent law enforcement authorities
to ascertain or prosecute criminal offences.

55. She would also like to point out that the data obtained by geolocation
may also be kept beyond the aforementioned durations, if these have
been previously made anonymous, i.e. it is no longer possible to make a link
– direct or indirect – between this data and a specific employee.

56. The Restricted Panel notes that the CNPD officials observed during the
their on-site visit of March 9, 2019 that at that time, the retention period of the
data from the geolocation system was 8 months, while according to the charter
Ethics of Control and Claims of Control During the Training Hearing
Restricted from February 26, 2021, the duration would have been set at 6 months.

57. Considering that the audit ethics charter indicated that the data to be
personal character obtained by geolocation are kept for 6 months,²¹
but that it appears from the findings of CNPD officials that the retention period
data from geolocation was 8 months²², the Restricted Panel concludes
that Article 5.1.e) of the GDPR has been violated by the controlled.

²⁰ See in this context the article of the National Commission for Computing and Liberties (CNIL): “La
geolocation of employee vehicles”, available at: <https://www.cnil.fr/fr/la-geolocalisation-des->

employee-vehicles. »

21 See audit ethics charter of [...] 2016, p.7, as confirmed by the audit during the hearing of the restricted training of February 26, 2021.

22 See finding 18 of minutes no. [...] relating to the on-site fact-finding mission carried out on March 7 2019 with Company A.

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

16/30

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

1. On the principles

58. With regard to the principles to be observed with regard to the obligation to inform the persons concerned in accordance with Article 13 of the GDPR, the Restricted Training refers to points 26 to 29 of this decision.

2. In this case

59. With regard to informing employees about the system of geolocation, the head of the investigation considered that the information contained in the document entitled "provision of service vehicle", provided in appendix 3 of the email of the control of April 25, 2019, as well as the mentions relating to the geolocation contained in the "ethical charter" were not sufficient with regard to the prescriptions of GDPR Article 13. Therefore, he considered that non-compliance with Article 13 of the GDPR was acquired on the day of the site visit.

60. By letter dated April 25, 2019, the inspector specified that points 9 and 10 of the report of the joint committee of [...] 2013 would be proof of the information to the staff representatives for the implementation of the geolocation system.

61. By letter dated December 3, 2019, the controller responded to the communication from

grievances of the head of investigation by informing him of his decision to stop the data processing of a personal nature operated by the geolocation system installed in its cars of service and that negotiations to end the contract with the provider would be in progress. course and that the latter will definitively end on January 1, 2020.

62. 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.). (WP260 rev. 01. paragraph 33).

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

17/30

63. The Restricted Committee notes that during the on-site visit by the agents of the CNPD, employees were informed of the implementation of the geolocation system by the document entitled "provision of service vehicle", provided in appendix 3 of the email of the audit of April 25, 2019, as well as by the mentions relating to the geolocation contained in the ethical charter.

64. The Restricted Committee considers first of all that a report by the joint committee on the information of staff representatives does not ensure that the employees of the company have been duly informed in accordance with Article 13.1 and 2 of the GDPR.

65. The Restricted Committee subsequently 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 using a geolocation 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.²³ The second level of information, i.e. all of the information required under of Article 13 of the GDPR, may be provided or made available by other means, such as a copy of the privacy policy sent by e-mail to employees or a link on the website to an information notice for what concerns non-salaried third parties.²⁴

66. The Restricted Committee notes, however, that the document entitled "update service vehicle layout" did not contain the required elements of the first level of information and that the part entitled "Processing of personal data staff" contained in the ethics charter did not contain all of the elements required by article 13.1 and 2 of the GDPR.

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

24 See WP260 rev. 01 (item 38).

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

18/30

67. With reference to point 41 of this decision, the Restricted Panel considers that even if the said part of the ethical charter includes some of the mentions provided for in the aforementioned article 13, it concerns all the data processed by the company,

all the legal bases applicable to all of the different processing operations carried out by the company and all the purposes invoked for this processing, without differentiate by targeted treatment. This information therefore does not respect not the principle of transparency to which each data controller is bound. According this principle, the information must be sent to the data subject "in a manner concise, transparent, understandable and easily accessible, in clear and simple".²⁵

68. In view of the foregoing, the Restricted Panel concludes that at the time of the on-site visit by CNPD agents, article 13 of the GDPR was not respected by the control.

C. On the breach of the obligation to guarantee appropriate security

1. On the principles

69. Pursuant to Article 32.1 of the GDPR and "taking into account the state of knowledge, the costs of implementation and the nature, scope, context and purposes of the treatment as well as risks, the degree of likelihood and severity of which vary, for the rights and freedoms of natural persons, the controller and the processor implement the appropriate technical and organizational measures in order to guarantee a level of security appropriate to the risk including, among other things, as required:

a) pseudonymization and encryption of personal data;

b) the means to guarantee the confidentiality, integrity, availability and ongoing resilience of processing systems and services;

c) means to restore the availability of personal data

and access to them within appropriate timeframes in the event of a physical or technical incident;

²⁵ See Article 12.1 of the GDPR.

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

19/30

(d) a procedure for regularly testing, analyzing and evaluating the effectiveness of technical and organizational measures to ensure the security of the processing. »

2. In this case

70. The head of investigation examined the aspect related to the security of access to data listed in the geolocation system. As access to the operating software of the geolocation device was only secured by means of an identification unique, i.e. a unique user name and password, which is used by all persons authorized to access said software, he held against the controlled non-compliance with the measures prescribed by GDPR Article 32.1 (see statement of objections, Ad.A.6).

71. The controlled clarified during the hearing of the Restricted Panel of February 26 2021 that even if access to the GPS software was only protected by an identifier unique, the need to badger to enter the software room should be considered as an additional check.

72. The Restricted Committee nevertheless notes that on the day of the visit by the CNPD agents in the premises of the control, the policies for access to the software of geolocation did not meet the minimum necessary requirements in terms of security, i.e. having in place individual accounts by means of an identifier and a password for persons authorized to access it within the framework of the accomplishment of their missions.

73. In view of the foregoing, the Restricted Panel concludes that Article 32.1 of the GDPR has not been respected by the controller.

II. 2. On corrective measures and fines

1. Principles

74. 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:

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

20/30

"(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;

(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;

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

21/30

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

75. 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.

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

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

b) whether the breach was committed willfully or negligently;

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

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

given the technical and organizational measures they have implemented under the

sections 25 and 32;

e) any relevant breach previously committed by the controller or

the subcontractor ;

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

and to mitigate any negative effects;

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

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

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

22/30

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 breach”.

77. 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.

78. 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

2.1. Regarding the imposition of an administrative fine

79. In its supplementary letter to the statement of objections of 17 August 2020, the head of investigation proposed to the Restricted Panel to impose a fine administrative audit relating to the amount of 7,200 euros.

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

23/30

80. In his response to said additional letter of September 7, 2020, the controlled asked the Restricted Formation to disregard a fine administrative action against him, if not to revise the proposed fine to a lower amount, whereas the amount proposed would seem to him disproportionate in view of the efforts and means deployed to comply with the GDPR, and the responsiveness with which the points raised during the investigation conducted by the CNPD would have been corrected.

81. 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), the Restricted Formation notes that with regard to breaches of Articles

5.1.c) and e) of the GDPR, they constitute breaches of the principles

fundamentals of the GDPR (and data protection law in general), to

know the principles of data minimization and the limitation of the

conservation devoted to Chapter II “Principles” of the GDPR.

As regards the breach of the obligation to inform the persons concerned

in accordance with article 13 of the GDPR, the Restricted Training recalls that

information and transparency relating to the processing of personal data

personnel are essential obligations incumbent on those responsible for

processing so that individuals are fully aware of the use that

will be made of their personal data, once collected. A

breach of Article 13 of the GDPR thus constitutes an infringement of the rights

of the persons concerned. This right to information has also been reinforced in

terms of the GDPR, which demonstrates their particular importance.

As to the failure to have in place the minimum requirements necessary for

terms of security in accordance with Article 32.1 of the GDPR, the Restricted Training

considers that, faced with the risks represented by data breaches at

personal nature, the European legislator intended to strengthen the obligations

data controllers in terms of processing security. So, according to

recital 83 of the GDPR and in order to “guarantee the security and prevent any

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

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

24/30

processing carried out in violation of this Regulation, it is important that the

controller or processor assesses the risks inherent in the

treatment and implements measures to mitigate them, such as

encryption. These measures should ensure an appropriate level of security, including including confidentiality, taking into account the state of knowledge and the costs of implementation in relation to the risks and the nature of the personal data personnel to be protected. [...] . However, by securing the operation of the geolocation only by means of a unique identification, i.e. a username and a unique password, which is used by all persons authorized to access said software, the Restricted Training considers that the auditee did not measure the importance of data security personal information contained in the geolocation system.

~

As for the duration criterion (article 83.2.a) of the GDPR), the Restricted Training notes that these shortcomings have persisted over time, at least since the May 25, 2018 and until the day of the on-site visit. The Restricted Formation reminds here that two years separated the entry into force of the GDPR from its entry into application to enable data controllers to comply with the obligations incumbent on them, even if an obligation to respect the principles of data minimization and retention limitation, while as a comparable information obligation already existed in application of the sections 4.1. b) and d), 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.

~

As for the number of data subjects (Article 83.2.a) of the GDPR), the Restricted Training notes that for video surveillance, it is all the employees working on the controlled site, as well as all third parties, i.e. customers, suppliers, service providers and visitors

visiting said site.

With regard to the geolocation system, considering that each vehicle has been allocated to a specific employee, Restricted Training notes that it

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

25/30

these are [...] employees corresponding to the [...] cars which were equipped with such a system.

~

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 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 of the controlled.

~

As for 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 that the co-operation of the auditee throughout the investigation was good, as well as than its desire to comply with the law as soon as possible.

82. 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.

83. The Restricted Committee also notes that while several measures have been implemented place by the auditee in order to remedy in whole or in part certain shortcomings, these were only adopted following the inspection by CNPD agents on 7 March 2019 (see also point 77 of this decision).

84. Consequently, the Restricted Committee considers that the imposition of a fine administrative is justified with regard to the criteria laid down by article 83.2 of the GDPR for breach of Articles 5.1.c), 5.1.e), 13 and 32.1 of the GDPR.

85. With regard to the amount of the administrative fine, the Restricted Panel recalls that paragraph 3 of Article 83 of the GDPR provides that in the event of breaches multiple, as is the case here, the total amount of the fine cannot exceed the amount fixed for the most serious violation. To the extent that a breach of

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

26/30

articles 5,13 and 32 of the GDPR is blamed for the controlled, the maximum amount of the fine that can be withheld amounts to 20 million euros or 4% of the annual turnover worldwide, whichever is higher.

86. With regard to the relevant criteria of Article 83.2 of the GDPR mentioned above, the Restricted Formation considers that the pronouncement of a fine of 7,200 euros appears both effective, proportionate and dissuasive, in accordance with the requirements of Article 83.1 of the GDPR.

2.2. About taking corrective action

87. The adoption of the following corrective measures was proposed by Chief investigation to the Restricted Training in its additional letter to the communication grievances:

“a) Order the controller to complete the measures

information intended for the persons concerned (employees and customers) by the video surveillance, in accordance with the provisions of Article 13, paragraphs (1) and (2) of the GDPR by providing in particular the identity of the data controller, the purposes of the processing and its legal basis, the categories of data processed, the legitimate interests pursued by the controlled, the recipients, the duration of retention of data as well as the indication of the rights of the person and the how to exercise them;

b) Order the controller not to process within the framework of the video surveillance only data that is relevant, adequate and limited to what is necessary with regard to the purposes of protecting property and securing access and, in particular, adapt the video system so as not to film the employees on their workstation, for example by deleting or reorienting the cameras "[...]" and "[...]".

Note: For geolocation, no corrective measure is proposed due to the fact that the processing has been stopped as confirmed in the letter of December 10 2019.”

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

27/30

88. As for the corrective measures proposed by the head of investigation and by reference to point 78 of this decision, the Restricted Panel 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.c) and 13 of the GDPR, as detailed in his letters of April 25, 2019, December 3, 2019, September 7, 2020, as well as

February 26, 2021. More specifically, it takes note of the following facts:

~

With regard to the implementation of information measures intended for persons affected by video surveillance, in accordance with the provisions of Article 13.1 and 2 of the GDPR, the controller maintains in his letters of December 3, 2019 and of September 4, 2020 having developed and posted a new information poster. Furthermore, following the hearing of the Restricted Panel on February 26, 2021, the controlled sent a new version of said information poster that he would like to put in place, believing that it would be more complete and more compliant.

The Restricted Panel notes that the latest version of the poster sent by email of February 26, 2021 is intended for the attention of employees, as well as visitors to the site. However, the Restricted Panel considers that the said poster does not contain all the rights enjoyed by data subjects under the GDPR, in particular the right of access pursuant to Article 15 of the GDPR.

In consideration of the compliance measures taken by the control in case and point 78 of this decision, the Restricted Panel considers as soon as it is necessary to pronounce the corrective measure proposed by the head investigation under a).

~

As for the obligation to only process data that is relevant, adequate and limited to what is necessary with regard to the purposes of protecting property and securing access and, in particular, adapting the video device so as not to not film the employees on their workstation, the control has annexed in its letter of December 3, 2019 photos showing that the field of vision of the

camera “[...]” has been masked so that the workstations on it
are no longer visible and that the smoking area has been moved a few meters in

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

28/30

outside the field of vision of the camera called “[...]”. In consideration of
compliance measures taken by the audited in this case and point 78 of
this decision, the Restricted Panel therefore considers that there is no
appropriate to pronounce the corrective measure proposed by the head of investigation under b).

As for any corrective measures concerning
the system of

geolocation, the Restricted Training agrees with the proposal of the head of investigation
not to adopt a corrective measure in this regard due to the fact that the processing
was arrested as confirmed in the letter of the control of December 3, 2019.

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

- to retain the breaches of Articles 5.1.c) and e), 13 and 32.1 of the GDPR;
- to impose an administrative fine on the company in the amount of seven
one thousand two hundred euros (7,200 euros), with regard to breaches of articles
5.1.c) and e), 13 and 32.1 of the GDPR;
- issue an injunction against the company to bring the
processing with the provisions of Article 13 of the GDPR, within two months
following notification of the decision of the Restricted Committee, the supporting documents
in compliance, to be sent to the Restricted Training, at the latest, within this period;

and especially :

1. inform non-employee third parties in a clearer and more precise manner,
in accordance with the provisions of Article 13 of the GDPR, in particular by providing
third parties information relating to the existence of the right of access;
2. individually inform employees in a clear and more precise manner, in accordance with
the provisions of Article 13 of the GDPR, in particular by providing employees with a
information relating to the existence of the right of access.

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

29/30

Thus decided in Belvaux on June 11, 2021.

For the National Data Protection Commission sitting in formation
restraint

Tine A. Larsen

Thierry Lallemand

Marc Lemmer

President

Commissioner

Commissioner

Indication of remedies

This administrative decision may be the subject of an appeal for review in the
three months following its notification. This appeal is to be brought before the administrative court.
and must be introduced through a lawyer at the Court of one of the Orders of
lawyers.

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

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

30/30