

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

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

Deliberation No. 3FR/2022 of February 2, 2022

The National Commission for Data Protection sitting in restricted formation

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

Lemmer, commissioners;

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

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

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

95/46/EC;

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

data protection and the general data protection regime, in particular

its article 41;

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

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

article 10 point 2;

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

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

in particular its article 9;

Considering the following:

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

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

1/29

I. Facts and procedure

1. During its deliberation session on January 14, 2020, the National Commission

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

2. According to the decision of the Plenary Formation, the investigation carried out by the National Commission for Data Protection (hereinafter: "CNPD") was to purpose of monitoring the application of and compliance with Regulation (EU) 2016/679 of the Parliament European Parliament and of the Council of 27 April 2016 relating to the protection of natural persons with regard to the processing of personal data and the free movement of such data, and repealing Directive 95/46/EC (hereinafter: "GDPR") and the law of 1 August 2018, and more specifically the installation of surveillance cameras.

3. On January 29, 2020, CNPD agents carried out a visit to the Company premises A.1 The decision of the National Commission for the Protection of data sitting in restricted training on the outcome of the investigation (hereinafter: "Training Restricted") will be limited to processing controlled by CNPD agents.

4. Company A, is a limited liability company entered in the Register of Commerce et des Sociétés de Luxembourg under number [...], with registered office at L- [...], [...] (hereinafter: "the controlled"). The controlled "aims at the exploitation of a flow of alcoholic and non-alcoholic beverages with snacks [...]"²

5. During the said visit, the CNPD agents observed that the system of video surveillance is made up of eleven cameras of the "fixed" type, of which ten cameras are installed inside the establishment and a camera is installed outside in front coffee.³ The controller explained to them that the video surveillance system was installed

1 See Minutes no. [...] relating to the on-site visit carried out on January 29, 2020 to

Company A (hereinafter “Minutes no. [...]”).

2 Cf. Deed of incorporation of [...], Article 2.

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

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

2/29

the end of December 2019⁴. CNPD officials also noted that

cameras of other types than those forming part of the system set up by the

controlled were installed inside and outside the establishment; the controlled has them

explained that these cameras had been installed by the previous owners of

the establishment, would be out of service and would have the purpose of having a dissuasive effect

additional compared to the cameras in operation.⁵ The control specified by e-mail

of January 29, 2020 that a camera on the garden side has not yet been connected.

6. The control provided additional information to the head of investigation by three

e-mails of January 29, 2020. In addition, he replied to the minutes

drawn up by CNPD officials as well as certain additional questions

raised by the CNPD following the site visit by e-mail of February 7

2020, February 23, 2021 and March 10, 2021.

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

March 29, 2021 a Statement of Objections (hereinafter: “Statement of Objections”)

detailing the shortcomings that 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

persons concerned (right to information), i.e. employees and persons not

employees, namely customers, suppliers, service providers and visitors (hereafter

after: “third parties”) and non-compliance with the requirements of Article 5.1.c) of the

GDPR (data minimization principle).

8. By letter dated April 26, 2021, the inspector made his observations relating to the statement of objections.

9. The president of the Restricted Formation informed the controller by mail of the June 10, 2021 that his case would be registered for the Restricted Panel session of the July 21, 2021. The controller confirmed his presence at the said session by mail email dated June 16, 2021.

10. During this session, the head of investigation and the controller presented their oral submissions in support of their written submissions and responded to questions posed by the Restricted Panel. The president asked the controller to send

4 See Minutes no. [...] point 8, finding 8.

5 See Minutes no. [...] point 8, finding 15.

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

3/29

additional information concerning the processing covered by the CNPD's investigation to Restricted Training. The controller spoke last.

11. By email dated July 28, 2021, the auditee provided information complementary to Restricted Training.

II. Place

II. 1. As to the reasons for the decision

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

1. On the principles

12. According to Article 12.1 of the GDPR, the “controller shall take appropriate measures to provide any information referred to in Articles 13 and 14 as well as

to carry out any communication under Articles 15 to 22 and Article 34 in which relates to the processing to the data subject in a concise, transparent, understandable easily accessible, in clear and simple terms [...]. The information is provided in writing or by other means including, when it is appropriate, electronically. When the data subject so requests, the information may be provided orally, provided that the identity of the person concerned is demonstrated by other means. »

13. 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;

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

4/29

- d) where the processing is based on Article 6(1)(f), the legitimate interests sued by the controller or by a third party;

- e) the recipients or categories of recipients of the personal data, if they exist; and

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

international community, and the existence or absence of an adequacy decision issued by the Commission or, in the case of transfers referred to in Article 46 or 47, or Article 49, paragraph 1, second subparagraph, the reference to the appropriate or suitable safeguards and the means of obtaining a copy or where they have been made available;

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

- a) the retention period of the personal data or, where this is not possible, the criteria used to determine this duration;
- b) the existence of the right to request from the controller access to the data to personal character, the rectification or erasure of these, or a limitation of the processing relating to the data subject, or the right to oppose the processing and right to data portability;
- c) where the processing is based on point (a) of Article 6(1) or on Article 9, paragraph 2(a), the existence of the right to withdraw consent at any time, 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

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. »

14. 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.⁶ 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”).

15. It should be noted that the European Data Protection Board (hereinafter: “EDPS”), which has replaced the Article 29 Working Party since 25 May 2018, took over and reapproved the documents adopted by the said Group between May 25, 2016 and May 25 2018, such as the aforementioned guidelines on transparency⁷.

2. In this case

16. Regarding the information of third parties, as well as employees as for the video surveillance system, the head of investigation noted in the communication

grievances that "during the on-site visit, it was noted that the presence of

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

7 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

6/29

video surveillance is reported to the persons concerned by means of a small plate
sticker affixed next to the front door of the café. This

plate represents the pictogram of a video surveillance camera, as well as the

text mention "Video-überwachung".⁸ and that "in his e-mail of

February 7, 2020, the controller declares having affixed signs including the text "For

your safety, the establishment is under video surveillance, art 13 of the GDPR" in places

following: the door of the apron cupboard for the Staff, the games room, the living room, the

hall, the bowling alley and the outdoor terrace. It is specified that these signs were not

not existing at the time of the site visit. »⁹

17. According to the head of investigation "while some information is provided by the

controller to signal the presence of video surveillance, it is necessary to

find that in view of the requirements of the aforementioned article 13, this information is incomplete"¹⁰.

He noted in particular that neither the sticker,¹¹ nor the signs affixed after

the on-site visit by CNPD officials,¹² did not meet all the conditions for

GDPR Article 13. It took into account the controlee's desire to comply,

but he nevertheless noted that the non-conformity remained established even after the date

of the on-site visit.¹³

18. Thus, he was of the opinion that the controller had failed in his obligation to inform the data subjects arising from Article 13.1 and 2 of the GDPR.¹⁴

19. The controller on his side explained in his letter of April 26, 2021 that he had during the installation of the video surveillance system, and after an initial contact with the CNPD in order to find out about the necessary information measures, “put [...] this information at the entrance to his establishment”. He also informed the CNPD that following “your correspondence, we have produced several pieces of information that we have placed in each room in full view of staff and customers. We have specified this information with A5 posters, where we specified the identity and the contact details of the controller, the legitimate interests pursued, destination,

⁸ See Statement of Objections, page 4, Ad.B.1.), point 18.

⁹ See Statement of Objections, page 4, Ad.B.1.), point 19.

¹⁰ See Statement of Objections, page 4, Ad.B.1.), point 20.

¹¹ See Statement of Objections, page 5, Ad.B.1.), point 21.

¹² See Statement of Objections, page 5, Ad.B.1.), point 22.

¹³ See Statement of Objections, page 5, Ad.B.1.), point 22.

¹⁴ See Statement of Objections, page 5, Ad.B.1.), point 23.

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

7/29

retention period and the right of access, rectification and erasure. ". He already had attached a screenshot ("[...]") of a sign including the text "For your security, the establishment is under video surveillance, art 13 of the GDPR" to his letter email of February 7, 2020.

20. During the meeting of July 21, 2021, the auditee reiterated these comments. He has by

elsewhere annexed four "pictures of the different signboards" displayed within its establishment to its email of July 28, 2021 ("..."). Pictures show that these signs include the text "FOR YOUR SAFETY, THE ESTABLISHMENT IS UNDER VIDEO-SURVEILLANCE Art 13 of the GDPR" and are displayed in four different places within the establishment of the control.

21. 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.). »¹⁵

22. She also believes that a multi-level approach to communicating transparency information to data subjects can be used in a offline or non-digital context, i.e. in a real environment like for example personal data collected by means of a system of video surveillance. The first level of information (warning sign, note information, etc.) should generally include the most important information essential, namely the details of the purpose of the processing, the identity of the person responsible for the processing and the existence of the rights of data subjects, the information having the greater impact on the treatment or any treatment likely to surprise the data subjects¹⁶, as well as a reference to the more detailed information of the

second level (e.g. via QR code or website address)¹⁷. the

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

¹⁵ See WP 260 rev.01, point 33.

¹⁶ See WP260 rev.01, point 38.

¹⁷ EDPS Guidelines 3/2019 on the processing of personal data by third parties

video devices, version 2.0, adopted on January 29, 2020 points 114 and 117.

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

8/29

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 regarding the
third parties.¹⁸

2.1. Information from third parties

23. The Restricted Panel notes that neither the small self-adhesive plate in place
during the on-site visit by CNPD agents, nor the signs installed one after the
others after said visit do not contain all the elements required by article 13.1 and 2 of the
GDPR.

24. In view of the foregoing, the Restricted Panel concurs with the opinion of Chief
of investigation and concludes that at the time of the on-site visit by CNPD agents, the
has breached its obligation to inform third parties arising from Article 13 of the
GDPR.

2.2. Employee information

25. The Restricted Panel finds that neither the small self-adhesive plate in place
during the on-site visit by CNPD agents, nor the signs installed one after the

others after said visit do not contain all the elements required by article 13.1 and 2 of the GDPR.

26. In addition, the installation of a small self-adhesive plate next to the door of entry as well as the display of signs in the establishment of the controlled and, in particular the posting of a sign on "the door of the apron cabinet for Staff" mentioned by the auditee in his email of February 7, 2020, could at most be qualified as collective information, but not as information individual employees.

27. In view of the foregoing, the Restricted Panel concurs with the opinion of Chief of investigation and concludes that at the time of the on-site visit by CNPD agents, the has breached its obligation to inform employees arising from Article 13 of the GDPR.

18 See WP260 rev.01, point 38.

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

9/29

B. On the breach related to the principle of data minimization and lawfulness

1. On the principles

28. 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)".

29. 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.¹⁹

30. 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)”.

31. 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.²⁰

32. 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.²¹

2. In this case

33. During the on-site visit, it was explained to CNPD officials that the purposes of the implementation of the video surveillance system are "the protection of the property of

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

20 See CNPD guidelines, point 2., available at: <https://cnpd.public.lu/fr/dossiers-thematiques/videosurveillance/purpose.html>.

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

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

10/29

the company, the securing of access, the security of places which present a risk by their geographical location [...], the safety of users as well as the safety and health employees. »²²

2.1 Permanent monitoring of employees

34. The head of investigation noted that “during the on-site visit, it was found that the fields of vision of two cameras allow the permanent monitoring of workstations work, especially employees working behind the counter. In fact, based on screenshots “...” provided as an appendix to the e-mail from the manager of the treatment of January 29, 2020, it was found that these cameras allow the surveillance permanent workstations, in particular employees working behind the counter. »²³

35. In this context, he considered that the aforementioned purposes “may find one or more bases of lawfulness under Article 6 of the GDPR, monitoring in permanence of employees on their workstations is to be considered as disproportionate. Indeed, such permanent monitoring can create pressure significant psychological impact for employees who feel and know they are being observed, all the more so since the monitoring measures last over time. The fact that the employees concerned do not have a means of avoiding from time to time this monitoring is also likely to aggravate this pressure. Such a permanent surveillance is considered disproportionate to the purposes sought and constitutes an excessive interference with the private sphere of the employees employed at their workstations. In this case, the fundamental rights and freedoms of employees must prevail over the interests pursued by the employer. »²⁴

36. He noted that the conditions of article 5.1.c) of the GDPR were not respected. He was of the opinion that the auditee had breached his obligation arising from Article 5.1.c) of the GDPR.²⁵

²² See Minutes no. [...] point 8, finding 7.

²³ See Statement of Objections, page 5, Ad.B.2.), point 25.

24 See Statement of Objections, page 5, Ad.B.2.), point 26.

25 See Statement of Objections, page 6, Ad.B.2.), point 27.

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

11/29

37. In his letter of April 26, 2021 and during the hearing of July 21, 2021, the
controlled underlined that the establishment would be “family-run, the leaders as well as the
employees” and that the objective of the video surveillance system would be “the protection of our
staff, customers and real estate and movable property entrusted to us by the
brewery [...] and the national lottery. »

38. La Formation Restreinte would like to point out that employees, regardless of whether they
whether they are members of the manager's family or not, have the right not to be subject to
continuous and permanent monitoring in the workplace. To achieve the goals
pursued, it may seem necessary for a data controller to install a
CCTV system in the workplace. On the other hand, respecting the principle
of proportionality, the data controller must use the means of surveillance
the most protective of the employee's private sphere and, for example, limiting the fields of
vision of the cameras to the only surface necessary to achieve the purpose(s)
continued.

39. Even if a certain risk of theft or vandalism may exist, this does not make
however, video surveillance is not automatically necessary. Still need to check
the proportionality of the projected video surveillance. For example, monitoring
by camera of a cafe/bar/restaurant checkout may have the purpose of protecting the
property of the data controller against acts of theft and to ensure the security of his
personal. However, in order not to infringe the privacy of customers or

employees, the camera must be configured so that it does not target customers in the consumption/catering room or seated in front of the counter, nor a permanent work of one or more employees behind the counter and their field of vision should be limited to the cash register itself.

40. The Restricted Panel notes the photograph “...” taken by the officers of the CNPD during the on-site visit²⁶ and notes that it shows that the field of vision of the camera documented by this photograph, allowed permanent surveillance of the workstations of the people occupied behind the counter. She also notes the screenshots “...” and “...” appended to the e-mail from the controller of the January 29, 2020 and notes that these confirm this observation. She believes that the

²⁶ See Minutes no. [...] point 8, finding 12.

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

12/29

permanent video surveillance of employees behind the counter should be considered as disproportionate to the aims sought.

41. The family nature of the establishment cannot undermine this observation. In this case, the CCTV system is operated in a professional setting. As he does is not a domestic activity, the person controlled cannot benefit from the exemption in the context of a domestic activity (article 2.2.c) of the GDPR). Especially since the video surveillance extended to all visitors to the establishment (employees, customers, suppliers, etc.) and to public roads.

42. In view of the foregoing, the Restricted Panel concurs with the opinion of Chief of investigation and concludes that at the time of the on-site visit by CNPD agents, the has breached its obligation arising from Article 5.1.c) of the GDPR, with regard to the

employees.

2.2 Permanent monitoring of third parties

43. It is also important to note that “during the on-site visit, it was found that the fields of vision of six cameras installed inside the café allow the monitoring consumption areas respectively relaxation and play areas.

These findings were confirmed by the screenshots provided in the appendix to the letter email from the controller dated 29 January 2020 (“...”). »²⁷

44. The head of investigation recalled in this respect that “the National Commission considers that the monitoring of customers in consumption and gaming areas is proving disproportionate, since the customers present will be permanently subject to on CCTV as they choose a bar as a meeting place to spend a good time, to communicate, have fun or relax. However, the customers who remain in this type of place for a more or less long period of time, must be able to legitimately expect not to be filmed during these private moments. Cameras in consumption and play areas are likely to film the behavior of each customer and can create discomfort or even psychological pressure for customers

²⁷ See Statement of Objections, page 6, Ad.B.2.), point 28.

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

13/29

who feel observed throughout their presence in the establishment. Such a permanent monitoring constitutes an invasion of the privacy of customers. »²⁸

45. He noted that the conditions of article 5.1.c) of the GDPR were not respected. He was of the opinion that the auditee had breached his obligation arising from Article 5.1.c) of the GDPR.

46. In his letter of April 26, 2021, the auditee pointed out that the securing of the establishment by means of video surveillance would be necessary for several reasons, know the size of the establishment that would not allow staff to monitor all of them the rooms, and its isolated geographical location [...]. Thus, in the past, the CCTV would have allowed staff to detect suspicious behavior and/or dangerous of certain visitors to the establishment, to dissuade "bad customers intent" and to arbitrate disputes. During the hearing of July 21, 2021 the controlled reiterated these words. On the question of Restricted Training, it was specified that even whether a representative of the control has made a courtesy visit to the police station [...] on the occasion of the opening of the establishment, the police would not have been called afterwards in the event of an incident.

47. Restricted Training refers to the principles set out in the lines guidelines of the CNPD²⁹ recalled by the head of investigation in the statement of objections (see point 44. of this decision).

48. The Restricted Panel notes the photographs "... " taken by the security guards the CNPD during the on-site visit³⁰ and notes that these show that the fields of vision of the cameras documented by these photographs, allowed surveillance in permanence of third parties present in areas of consumption and/or relaxation and/or play. She also notes the screenshots "...", and "... " appended to the emails of the control of January 29, 2020 which confirm this observation. She considers that the permanent video surveillance of third parties in the areas of

28 See Statement of Objections, page 6, Ad.B.2.), point 29.

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

30 See Minutes no. [...] point 8, findings 12 and 13.

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

14/29

consumption and/or relaxation and/or gambling is to be considered disproportionate to the desired purposes.

49. It further notes that none of the documentation submitted by the auditee contains evidence that would confirm the real and current nature of the security incidents mentioned by the controller.

50. In view of the foregoing, she concurs with the opinion of the head of investigation and concludes that at time of the on-site visit by CNPD agents the control failed in its obligation arising from Article 5.1.c) of the GDPR, with regard to third parties.

2.3 Cameras filming the access and surroundings of the establishment

51. The head of investigation finally noted that “during the on-site visit, it was noted that the field of vision of the camera installed on the front facade of the establishment captures part of the public thoroughfare, in particular the sidewalk in front of the café [...]. This observation was confirmed by the screenshots “...” provided in the appendix to the email from the controller dated February 7, 2020.”³¹

52. In this context, he considered that “in view of the purposes for which the video surveillance it is not necessary to include parts of the public road in the camera’s fields of view. »³²

53. He held that the non-compliance with Article 5.1.c) of the GDPR was acquired on the day of the on-site visit, and that the emails of the control of January 29, 2020 and of February 7, 2020 did not contain evidence to the contrary, nor an explanation as to the need for monitoring measures or mitigation elements.³³

54. Thus, the head of investigation was of the opinion that the control had failed in its obligation arising from Article 5.1.c) of the GDPR.³⁴

55. The controlled on his side provided screenshots “from outside” of his establishment, namely a screenshot called “...” that he attached to his email

31 See Statement of Objections, page 6, Ad.B.2.), point 30.

32 See Statement of Objections, page 6, Ad.B.2.), point 31.

33 See Statement of Objections, page 6, Ad.B.2.), point 32.

34 See Statement of Objections, page 7, Ad.B.2.), point 33.

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

15/29

of January 29, 2020, and two screenshots called “...” which he attached to his email dated February 7, 2020. Also, he mentioned in his email dated April 26, 2021 that he would have asked a technician to reduce the field of vision of the camera and to ensure that it will not be moved by the wind.

56. The Restricted Committee would like to point out that the CNPD considers that cameras intended to monitor a place of access (entrance and exit, threshold, porch, door, awning, hall, etc.) must have a field of vision limited to the surface strictly necessary to visualize the people preparing to access it; those who film exterior accesses must not mark out the entire width of a sidewalk along the applicable, the building or adjacent public roads. Also, cameras installed near or around a building must be configured in such a way as to so as not to capture the public road, nor the surroundings, entrances, accesses and interiors of other neighboring buildings possibly falling within their field of vision. In terms of configuration of the premises, it is sometimes impossible to install a camera that does not would not include in his field of vision a part of the public road, surroundings, entrances, accesses and interiors of other buildings. In such a case, the CNPD considers that the

controller must implement techniques for masking or

blurring in order to limit the field of vision to its property.³⁵

57. Photographs taken by CNPD officials during the on-site visit

("...")³⁶ as well as the screenshots provided with the e-mails of the

controlled on January 29, 2020 and February 7, 2020 ("...") show that the field of vision of

the camera installed on the front facade of the establishment covered the public thoroughfare, and

in particular the sidewalk and the parking strip in front of the controlled establishment, although

that the field of vision was reduced after the site visit. Furthermore, none

documentation submitted by the inspected contains evidence that the field of vision of

the camera has been adjusted so that it no longer covers public roads, as mentioned

by the controller in his letter of April 26, 2021.

58. It should also be noted that in his aforementioned letter of April 26, 2021, the auditee

specified that the camera installed in the front facade of the establishment would have "above all

³⁵ See CNPD Guidelines, point 4.1, available at: [https://cnpd.public.lu/fr/dossiers-](https://cnpd.public.lu/fr/dossiers-themes/videosurveillance/necessite-proportionnalite.html)

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

³⁶ See Minutes no. [...] point 8, finding 10.

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

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

16/29

for the purpose of monitoring the entrance to the establishment in the event of attempted intrusions

during closing hours. » However, during the on-site visit it was explained to the

CNPD officers only even if the video surveillance system only records images

that in case of detection of a movement, it works 24 hours a day.³⁷

59. In view of the foregoing, the Restricted Panel concurs with the opinion of Chief

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

breached its obligation arising from Article 5.1.c) of the GDPR, in that it filmed the way public.

II. 2. On the fine and corrective measures

1. Principles

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

"(a) notify a controller or processor of the fact that the operations of the envisaged processing are likely to violate the provisions of this Regulation;

(b) call a controller or processor to order when the processing operations have resulted in a breach of the provisions of this Regulation;

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

d) order the controller or the processor to put the operations of processing in accordance with the provisions of this Regulation, where applicable, of specific manner and within a specified time;

(e) order the controller to communicate to the data subject a personal data breach;

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

37 See Minutes no. 4587 point 8, finding 9.

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

17/29

g) order the rectification or erasure of personal data or the limitation of processing pursuant to Articles 16, 17 and 18 and the notification of these

measures to the recipients to whom the personal data have been disclosed

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

(h) withdraw a certification or order the certification body to withdraw a

certification issued pursuant to Articles 42 and 43, or order the body to

certification not to issue certification if the requirements applicable to the certification

are not or no longer satisfied;

(i) impose an administrative penalty under section 83, in addition to or in addition to

instead of the measures referred to in this paragraph, depending on the characteristics

specific to each case;

j) order the suspension of data flows addressed to a recipient located in a

third country or an international organisation. »

61. 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.

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

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

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

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

fine :

“(a) the nature, gravity and duration of the breach, taking into account the nature, scope

or the purpose of the processing concerned, as well as the number of data subjects

affected and the level of damage they suffered;

b) whether the breach was committed willfully or negligently;

c) any action taken by the controller or processor to mitigate the

damage suffered by the persons concerned;

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

18/29

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

given the technical and organizational measures they have implemented under the sections 25 and 32;

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

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

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

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

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

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

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

63. 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.

64. Nevertheless, the steps taken by the control to put itself 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

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

19/29

to pronounce and/or the setting of the amount of a possible administrative fine to be pronounce.

2. In this case

2.1 Regarding the imposition of an administrative fine

65. In the Statement of Objections, the Head of Investigation proposes to the Panel

Restricted to impose an administrative fine to the control of an amount of one thousand and five hundred (1,500) euros.³⁸

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

- As to the nature and seriousness of the violation (Article 83.2.a) of the GDPR), it is that with regard to breaches of Article 5.1.c) of the GDPR, they constitute breaches of a fundamental principle of the GDPR (and of the right to the protection of data in general), namely the principle of minimization of data dedicated to the Chapter II "Principles" of the GDPR.

As for the failure to the obligation to inform the people 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 weighing on data controllers so that people are fully aware of the use that will be made of their personal data, once collected. A failure to

Article 13 of the GDPR thus constitutes an infringement of the rights of individuals concerned. This right to information has also been reinforced under the GDPR, which testifies to 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 installation of the video surveillance system at the end of December 2019,³⁹ and until the day of

³⁸ See Statement of Objections, page 10, Ad.C., point 38.

³⁹ See Minutes no. [...], point 8, finding 8.

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

20/29

on-site visit by CNPD agents. She recalls that guidance relating to principles and obligations provided for by the GDPR was available from the CNPD, especially on its website. During the hearing on July 21, 2021, the controller confirmed that his attention would have been drawn to the CNPD guidelines in regarding video surveillance during a first telephone contact with the CNPD at the end of 2019. He would also have obtained a copy of the GDPR, but these documents would be difficult for a non-professional to understand. These assertions are not such as to irritate the observation that the shortcomings lasted in time.

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

Restricted notes that these are all employees working on the controlled site,

as well as all third parties, i.e. customers, suppliers,

service providers and visitors to this site.

- As to whether the breaches were committed deliberately or

not (by negligence) (article 83.2.b) of the GDPR), the Restricted Panel recalls that

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

although the controller or processor has not complied with the obligation

due diligence required by law.

In this case, it is of the opinion that the facts and breaches observed do not reflect

not a deliberate intention to violate the GDPR on the part of the controller.

- As to the degree of cooperation established with the supervisory authority (Article 83.2.f) of the

GDPR), the Restricted Panel takes into account the statement of the head of investigation according to

which the co-operation of the auditee's main partner throughout the investigation was

good, as well as its willingness to comply with the law as soon as possible.⁴⁰

- 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.

⁴⁰ See Statement of Objections, page 9, Ad.C., point 37.c.

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

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

21/29

67. 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.

68. It also notes that while several measures have been put in place by the control in order to remedy in whole or in part certain shortcomings, these have only been adopted only following the control of CNPD agents on January 29, 2020 (see also point 63. of this Decision).

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

70. With regard to the amount of the administrative fine, it recalls that the paragraph 3 of Article 83 of the GDPR provides that in the event of multiple infringements, such as this is the case here, the total amount of the fine may not exceed the amount set for the most serious violation. To the extent that a breach of Articles 5 and 13 of the GDPR is accused of the controlled, the maximum amount of the fine that can be withheld is €20 million or 4% of worldwide annual revenue, whichever is greater being retained.

71. In view of the relevant criteria of Article 83.2 of the GDPR mentioned above, the Restricted Formation considers that the pronouncement of a fine of one thousand (1,000) 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

72. In the Statement of Objections, the Head of Investigation proposed to the Panel Restricted to adopt the following corrective measures:

- "Order the controller to complete the information measures

intended for persons concerned by video surveillance, in accordance with the provisions of Article 13, paragraphs (1) and (2) of the GDPR by informing in particular the identity of the controller, the purposes of the processing and its legal basis,

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

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

22/29

recipients, the retention period of the data as well as the indication of the rights
of the person and the manner of exercising them;

- Order the controller to process only relevant data,

adequate and limited to what is necessary with regard to the purposes (protection of
company assets, access security, site security, user security,
safety and health of employees) and, in particular:

i.

to carry out or have carried out the removal of the cameras
referred to as “...” having the field of vision of the workstations of the
employees ;

ii.

to carry out or have carried out the removal of the cameras
referred to as [...] having as field of vision areas of
consumption of relaxation and play areas respectively;

iii.

to carry out or have carried out the removal of the cameras
referred to as [...] (see photos "..." of the report) with a field of vision
part of the public thoroughfare, in particular the sidewalk in front of the café and a
part [of the street]. »⁴¹

73. As for the corrective measures proposed by the head of investigation and by
reference to point 64. of this decision, the Restricted Formation takes into account

the steps taken by the control, following the visit of the CNPD agents, in order to comply with the provisions of Articles 5.1.c) and 13 of the GDPR, as detailed in his letters of January 29, 2020, February 7, 2020, April 26, 2021 and July 28, 2021 and thematized during the meeting of July 21, 2021. More specifically, it takes note of the following facts:

1. Regarding the information measures intended for third parties concerned by video surveillance, the controlled affirmed the installation in different places within its establishment of signs containing the required information by article 13 of the GDPR. The attachments to his e-mail of February 7, 2020 include a screenshot (“...”) of a first sign

41 See Statement of Objections, page 8, Ad.C., point 35.

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

23/29

including the text "For your safety, the establishment is under video surveillance, Art 13 GDPR". The annexes to his e-mail of 28 July 2021 contain four photographs that show the posting of signs which include the text "FOR YOUR SAFETY, THE ESTABLISHMENT IS UNDER VIDEO SURVEILLANCE, Art 13 of the GDPR" (“...”).

The Restricted Panel finds that the small self-adhesive plate in place during the on-site visit (documented by the “...” of CNPD42 agents) showing the pictogram of a video surveillance camera and the mention textual "Videoüberwachung" combined with the signs described above, do not contain all the information required by Article 13 of the GDPR.

Thus, the information to be provided under Article 13 of the GDPR, as in

particular the identity and contact details of the controller (Article 13.1.a) of the GDPR), the purposes as well as the basis of lawfulness (Article 13.1.c) of the GDPR), the recipients or categories of recipients of the data to personal data collected by the video surveillance system (article 13.1.e) of the GDPR), the retention period of this data (article 13.2.a) of the GDPR), the rights of the data subject (Article 13.2.b) of the GDPR) as well as the right to lodge a complaint with the CNPD (article 13.2.d) of the GDPR), are not mentioned.

Furthermore, it is noted that the information provided by the controller does not fulfill neither the conditions required for the first level of information, nor those the second level of information (see point 22. of this decision).

2. As regards the information measures intended for the employees affected by the video surveillance, the controlled affirmed the installation in different places within of its establishment of signs containing the information required by article 13 GDPR. He attached photographs of the various signs to his emails of February 7, 2020 and July 28, 2021 (see point 1. below above). In his email of February 7, 2020, he specifically

42 See Minutes no. [...] point 8, finding 1.

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

24/29

highlighted the posting of a sign on "the door of the apron cabinet for the Personal ".

The Restricted Panel finds that the small self-adhesive plate in place during the on-site visit (documented by the “...” of CNPD43 agents)

showing the pictogram of a video surveillance camera and the mention textual "Videoüberwachung" combined with the signs described above, do not contain all the information required by Article 13 of the GDPR. Thus, the information to be provided under Article 13 of the GDPR, as in particular the identity and contact details of the controller (Article 13.1.a) of the GDPR), the purposes as well as the basis of lawfulness (Article 13.1.c) of the GDPR), the recipients or categories of recipients of the data to personal data collected by the video surveillance system (article 13.1.e) of the GDPR), the retention period of this data (article 13.2.a) of the GDPR), the rights of the data subject (Article 13.2.b) of the GDPR) as well as the right to lodge a complaint with the CNPD (article 13.2.d) of the GDPR), are not mentioned.

Furthermore, it is noted that the information provided by the controller does not fulfill neither the conditions required for the first level of information, nor those the second level of information (see point 22. of this decision).

In conclusion, considering the compliance measures insufficient taken by the controlled in this case and point 64. of this decision, the Restricted Panel therefore considers that it is necessary to pronounce the corrective measure proposed by the head of the investigation in this regard⁴⁴ and repeated in point 72. of this Decision under the first indent as regards informing third parties and employees about the system of video surveillance.

3. With regard to "the removal of the cameras referred to as "..."⁴⁵, the Panel Restricted finds that the two screenshots that the controlled sent to the

⁴³ See Minutes no. [...] point 8, finding 1.

⁴⁴ Cf. Statement of Objections, page 8, Ad.C., point 35, first indent.

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

25/29

CNPD by email of January 29, 2020, show that their fields of vision covered the permanent workstation of one or more employees behind the desk. In addition, the fields of vision of said cameras also covered customer consumption areas in front of the counter, consumption and/or relaxation tables.

No documentation submitted by the controlled (for example a capture screen reproducing the field of vision) demonstrates the modification of the fields of view of these cameras after the site visit. Training

Restreinte therefore considers that there is reason to pronounce the corrective measure proposed by the head of investigation in this regard⁴⁶ and repeated in point 72. of the this Decision under the second indent in point i.

4. As for “the removal of the cameras named “...”,⁴⁷ the Panel

Restricted finds that the six screenshots that the controlled sent to the CNPD by e-mails of January 29, 2020, show that the fields of vision of these cameras extended to areas of consumption and/or relaxation and/or play.

No documentation submitted by the controlled (for example a capture screen reproducing the field of vision) demonstrates the modification of the fields of view of these cameras after the site visit. Training

Restreinte therefore considers that there is reason to pronounce the corrective measure proposed by the head of investigation in this regard⁴⁸ and repeated in point 72. of the

this Decision under the second indent in point ii.

5. As for the “removal of the cameras named “...” (cf. photos “...” of the PV)”⁴⁹, the Restricted Committee notes that during the on-site visit, the security officers the CNPD noted that only one camera was installed outside on the facade of the establishment⁵⁰. She believes that the two screenshots that the controlled has provided to the CNPD by email dated February 7, 2020 (“...” and “...”),

46 Same.

47 See Statement of Objections, page 8, Ad.C., point 35, second indent, point ii.

48 Same.

49 Cf. Statement of Objections, page 8, Ad.C., point 35, second indent, point iii.

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

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

26/29

as well as the screenshot that the controlled provided to the CNPD by mail email dated January 29, 2020 (“...”), come solely from this camera and show that the field of view of this camera covered the track public, and in particular the sidewalk and the parking strip in front the establishment.

It also notes that the controller indicated in its letter of April 26, 2021 that “naturally the square meter in front of the entrance is on the public domain. This place is very windy. We asked our technician to reduce the fields and to ensure that the camera does not move. » However, no documentation submitted by the controlled (e.g. a screenshot reproducing the field of vision) only demonstrates the field of vision of the

camera has been changed again.

The Restricted Panel therefore considers that it is necessary to mitigate the measure correction proposed by the head of investigation⁵¹ and repeated in point 72. of this decision under the second indent in point iii., and to order the controlled to remove the camera installed outside in front of the establishment, or reconfigure this camera so that the field of view is limited to the surface strictly necessary to visualize the people preparing to enter to access.

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

- to retain the breaches of Articles 5.1.c) and 13 of the GDPR;

⁵¹ Cf. Statement of Objections, page 8, Ad.C., point 35, second indent, point iii.

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

27/29

- impose an administrative fine on Company A in the amount of one thousand (1,000) euros, with regard to the breaches constituted in articles 5.1.c) and 13 GDPR;

- issue against Company A an injunction to bring the processing with the obligations resulting from Article 5.1.c) of the GDPR, within a period of 2 (two) months following the notification of the decision of the restricted formation, and especially

- o proceed with the removal of the cameras named “...” and “...” having for field of vision the workstations of the employees;

- o to proceed with the removal of the cameras called “...” whose

fields of vision of consumption and/or relaxation and/or play areas;

o to proceed with the removal of the camera called “...” (see photos “...”

of the PV)” installed outside in front of the establishment, or

reconfiguration of the field of vision of this camera so that the

field of vision is limited to the area strictly necessary to visualize

the people preparing to access it;

- issue against Company A an injunction to bring the

processing with the obligations resulting from Article 13 of the GDPR, within 2

(two) months following the notification of the decision of the restricted formation,

and especially

oh

inform non-employee third parties in a clear and precise manner about

the video surveillance system

their

providing a

information

in accordance with the provisions of article 13.1 and 2. of the GDPR, of which a

information relating to the identity and contact details of the person responsible for the

processing, the purposes as well as the basis of lawfulness, the recipients or

categories of recipients of personal data collected by

the video surveillance system, the retention period of this data,

the rights of the data subject as well as the right to submit a

complaint to the CNPD;

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

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

oh

individually inform employees in a clear and precise manner about the

CCTV system in

their

providing a

information

in accordance with the provisions of article 13.1 and 2. of the GDPR, of which a

information relating to the identity and contact details of the person responsible for the

processing, the purposes as well as the basis of lawfulness, the recipients or

categories of recipients of personal data collected by

the video surveillance system, the retention period of this data,

the rights of the data subject as well as the right to submit a

complaint to the CNPD.

Thus decided in Belvaux on February 2, 2022.

For the National Data Protection Commission sitting in formation

restraint

Tine A. Larsen Thierry Lallemand

Marc Lemmer

President

Commissioner

Commissioner

Indication of remedies

This administrative decision may be the subject of an appeal for review in the

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

and must be introduced through a lawyer at the Court of one of the Orders of

lawyers.

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

29/29