

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

of survey no. [...] carried out with public transport organization A

Deliberation No. 10FR/2022 of April 22, 2022

The National Commission for Data Protection sitting in restricted formation

composed of Messrs. Thierry Lallemand and Marc Lemmer, commissioners, and Mr.

Marc Hemmerling, substitute member;

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

sections 3, 10.2 and 12;

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

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

in particular its article 9;

Considering the following:

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I. Facts and procedure

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

for data protection sitting in plenary session (hereafter: "Formation Plenary") had decided to open an investigation with the public transport organization A1 on the basis of article 37 of the law of 1 August 2018 on the organization of the Commission national data protection system and the general data protection regime. data (hereinafter: "Law of August 1, 2018") and to designate Mr. Christophe Buschmann as chief investigator.

2. According to the decision of the Plenary Formation of February 14, 2019, the investigation conducted by the National Data Protection Commission (hereinafter: "CNPD") was intended to monitor the application of and compliance with Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of persons with regard to the processing of personal data and to the free movement of this data, and repealing Directive 95/46/EC (hereinafter: "GDPR") and of the law of August 1, 2018, in particular by means of a geolocation device and a CCTV device.

3. On February 27, 2019, CNPD agents carried out a visit to the premises of the public transport organization A.2

4. The public transport organization A A, is [...] registered in the Commercial Register and Luxembourg Companies under number [...], with registered office at L-[...], [...] (hereinafter: Control "). The controlled [is active in the field of public transport]3.

5. During the aforementioned visit, the CNPD agents noted that the control uses video surveillance as well as geolocation4, and in particular that:

1 [...]

2 See Minutes no. [...] relating to the on-site fact-finding mission carried out on 27 February 2019 with the public transport organization A (hereinafter: "Minutes relating to the mission on-site investigation").

3 Cf. Article [...] of the audited articles of association [...].

4 See Minutes of the on-site fact-finding mission, point 6.

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the video surveillance system installed outside the controlled buildings was

composed of fifteen cameras (from

kind

stationary) including fourteen in working order.

operating and one out of service⁵;

- "in each of the [...] bus garage depots ([...]) are installed two

dome-type cameras whose images are transmitted in real time to the

control monitors located in the bus management center [...]. On

question, it has been confirmed that these images are not the subject of a recording

and that the main purpose of these cameras is to track buses during

their parking in the depot (optimization of the management of

car park)"⁶;

-

the CCTV cameras installed inside the buses were of the type

fixed and allowed "neither the surveillance of the public domain nor of the driver of

buses »⁷;

- some of the buses were "equipped with reversing cameras and cameras

corners intended to facilitate the maneuvering of vehicles. The captured images

by these cameras are not recorded in any way and are

only visible in real time by the driver on the information screen installed

on the dashboard of the bus »8;

-

[...] buses controlled were “equipped with a geolocation device [...]”9.

6. The controller responded to the report drawn up by the CNPD agents as well as certain additional questions raised by the Investigations Department following the site visit by letter dated May 7, 2019.

7. At the end of his investigation, the initial head of investigation notified the person inspected on the date of 6 September 2019 a statement of objections.

5 See Minutes of the on-site fact-finding mission, findings 2 and 4.

6 See Minutes of the on-site fact-finding mission, finding 11.

7 See Minutes of the on-site fact-finding mission, finding 12.

8 See Minutes of the on-site fact-finding mission, finding 14.

9 See Minutes of the on-site fact-finding mission, finding 15.

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By letter dated November 27, 2019, the controller made his observations relating to this statement of objections.

8. Following the departure of Mr. Christophe Buschmann, the Plenary Formation decided during its deliberation session of September 3, 2021 that Mr. Alain Herrmann will take on the role of chief investigator for the investigation as of today. cause.

At the end of his investigation, the new head of investigation notified the person inspected on November 9, 2021 a new Statement of Objections. There are detailed shortcomings that he considered constituted in this case, and more specifically:

- as regards video surveillance: non-compliance with the requirements prescribed by

Article 13 of the GDPR (right to information) with regard to persons

concerned, i.e. employees and non-employees, i.e.

clients,

suppliers, service providers and

visitors (hereafter:

"third parties"), non-compliance with Article 5.1.e) of the GDPR (principle of

storage limitation) and non-compliance with the requirements of Article 5.1.c)

GDPR (data minimization principle); and

- as regards geolocation: non-compliance with the requirements prescribed by

Article 13 of the GDPR (right to information) with regard to employees.

He proposed to the National Commission for Data Protection sitting in

restricted panel on the outcome of the investigation (hereinafter: "Restricted Panel") to adopt

three corrective measures and to impose on the person controlled an administrative fine of an amount of 4,000 (four thousand) euros.

It appears from the new statement of objections that the new head of investigation "has

interpreted the scope of the investigation in such a way as to focus on the monitoring of

employees as well as third parties in what is considered to be the workplace. Thereby

emphasis was placed on the video surveillance systems installed at the headquarters [of the organization of public transport A] and not inside the buses"¹⁰.

¹⁰ See Statement of Objections of 9 November 2021, page 2, "Preliminary remarks/General" under 6.

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Moreover, the new head of investigation did not retain in the statement of objections of the November 9, 2021, nor non-compliance with the requirements prescribed by section 30.1 of the GDPR (obligation to keep a record of processing activities), nor non-compliance with requirements prescribed by Article 37.1.a) of the GDPR (obligation to appoint a data protection officer) that the former head of investigation had retained in the communication of the initial grievances of September 6, 2019, because he considered that these treatments did not fall within the scope of the investigation in question.¹¹

By letter dated December 6, 2021, the controller made his observations relating to the statement of objections of 9 November 2021.

9. The president of the Restricted Formation informed the controller by mail of the January 17, 2022 that his case would be registered at the session of the Restricted Panel of February 24, 2022. By letter dated February 3, 2022, the controller informed that he will not appear not at this session.

10. During this session, the head of investigation presented his oral observations to the support of his written observations and answered the questions posed by the Panel Restraint.

11. The Restricted Panel in its decision will be limited to controlled processing by CNPD officials and the legal and regulatory provisions taken into account by the head of investigation in his statement of objections of 9 November 2021 (hereinafter: the "statement of objections").

11 Indeed, during the Restricted Panel hearing of February 24, 2022, the new chief of investigation explained that he believed that the said obligations were not the subject of the investigation.

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II. Place

II. 1. As to the reasons for the decision

II. 1.1. As for the video surveillance system outside the buildings of the control

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

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

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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.¹² 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 transparency¹³.

2. In this case

16. With regard to the information of third parties about the system of video surveillance installed outside the buildings on the controlled operating site, the head of investigation noted in the statement of objections that "during the on-site visit, it was found that the presence of video surveillance measures is reported to the

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

¹³ See EDPS Endorsement Decision 1/2018 of 25 May 2018, available

https://edpb.europa.eu/sites/edpb/files/files/news/endorsement_of_wp29_documents_en_0.pdf.

under :

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data subjects (employees and third parties) by means of communication panels signage affixed to [...] entrances to the operating site"¹⁴.

According to the head of the investigation "while some information is provided by the controlled to signal the presence of video surveillance, it must be noted that in view of the requirements of the aforementioned article 13, this information is incomplete"¹⁵.

Moreover, in his opinion "no element of the documentation submitted to the CNPD by the letter of May 7, 2019 mentioned above does not contain evidence to demonstrate the compliance with the requirements of Article 13 of the GDPR"¹⁶.

Thus, the head of investigation held that "non-compliance with the provisions of Article 13 aforesaid was nevertheless established on the day of the on-site visit"¹⁷.

17. The controller for his part attached to his letter of May 7, 2019 "the photos of the CCTV information panels installed at [...] entrances and out of our establishment.

18. In addition, he explained in the position paper annexed to his letter of November 27, 2019¹⁸ that "specific information panels (see appendix) have been installed at any potential entrance to the site, and are thus visible to anyone accessing the site before entering the video-monitored area". He attached a copy of the new information panel and photos showing the "positioning of the panels warning sign at any potential entrance to [public transport agency A] site".

He specified that "the panels were designed according to the principle of the" first layer information" mentioned in the document "Guidelines 3/2019 on processing of personal data through video devices" published by the European Data Protection Board. The exhaustive information according to the provisions of article 13 paragraphs (1) and (2) of the Regulation (EU) 2016/679 of April 27, 2018 (hereinafter abbreviated as "GDPR") are available in the form of a specific information notice published on the website [of the organization

¹⁴ See Statement of Objections, page 4, Ad.B.1), point 16.

¹⁵ See Statement of Objections, page 4, Ad.B.1), point 17.

¹⁶ See Statement of Objections, page 4, Ad.B.1), point 18.

¹⁷ See Statement of Objections, page 4, Ad.B.1), point 19.

¹⁸ Cf. Statement of position of the controlled, point 2.1.1. [...].

public transport A] ("second layer information"). He provided the link to the notice information on its website.

19. Regarding

informing employees about the system of

video surveillance installed outside the buildings on the controlled operating site,

the head of investigation made the same observations as for third parties (see point 16 of this decision).

In addition, he took note of "the mitigation elements presented by the person in charge of the treatment regarding the information of employees in its letter of November 20, 2019[19], notably

the documents

entitled "Warning sign and

information

video surveillance of the site [of public transport organization A]", "Positioning of

warning signs at any potential entrance to the site [of the transport agency

public A]", "Memo to staff: information on data processing

personal » »20.

"Notwithstanding these mitigating elements", the head of the investigation noted that "the non-compliance with the provisions of the aforementioned article 13 was nevertheless acquired on the day of the on-site visit"21.

20. The auditee for his part indicated in his letter of May 7, 2019 that the

CCTV system would have been discussed during a meeting between the management and the

staff delegation in 2008, but that he was not "in possession of a written report

of the session with the 2008 delegation". He also reproduced an exchange of

messages on this subject between [a director] and the chairman of the staff delegation.

21. In addition, the inspected party explained in the statement annexed to his letter of November 27, 2019²² that a “memorandum concerning the video surveillance of the site, (...) and the geolocation of bus drivers (see appendix) has been brought to the attention of staff by the following means:

19 This is the letter from the controller dated 27 November 2019 which was received by the CNPD on November 29, 2019.

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

21 Same.

22 Cf. Statement of position of the controlled, point 2.2. [...].

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- Delivery of the memo to all staff members by hand,
 - Publication of the memorandum on the Intranet accessible to all employees
- and
- Establishment of a procedure which provides for the delivery of the memorandum to any new staff member. »

The control pointed out that “the memorandum covers exhaustive information according to Article 13 GDPR”. He attached the copy of the memo.

22. In addition, in his letter of December 6, 2021 to the head of the investigation, the controlled underlined that “by the predicted letter of November 27, 2019, [the transport organization public], informed you, with supporting documents, that he had proceeded to full compliance with all points and facts (grievances) raised during your investigation”.

It would also have taken steps to comply “as soon as it is published to the Memorial of Legislation in this Matter”. For these purposes, he would have hired a consultant to

namely Company B. He attached, among other things, a copy of the estimate of this company dated October 24, 2018.

However, the audit recognized that "the duties envisaged for compliance were not fully accomplished and that the grievances noted during your investigation did not not been the subject of disputes concerning the principle of the breaches observed".

23. 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.). »²³

24. She also believes that a multi-level approach to communicating transparency information to data subjects can be used in a

²³ See WP 260 rev.01, point 33.

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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 subjects²⁴, as well as a reference to the more detailed information of the second level (e.g. via QR code or website address)²⁵. the second level of information, i.e. all the information required under of Article 13 of the GDPR, could be provided or made available by other means, such as a copy of the privacy policy emailed to employees or a link on the website to an information notice with regard to the third parties.²⁶

2.1. Information from third parties

25. The Restricted Committee notes that at the time of the on-site visit by the security officers the CNPD third parties were only informed of the presence of the security system video surveillance outside the buildings on the operating site of the controlled only at the means of information panels affixed to [...] “entrances and exits”²⁷, showing the pictogram of a camera and indicating "SITE MONITORED BY VIDEO CAMERA, [...]”²⁸.

26. The Restricted Committee wishes first of all to point out that the former CNPD authorizations for video surveillance have become obsolete, because they were issued by the CNPD under the former authorization regime of the amended law

24 See WP260 rev.01, point 38.

25 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.

26 See WP260 rev.01, point 38.

27 See Minutes of the on-site fact-finding mission, finding 1.

28 Cf. Three photos attached to the letter from the inspector dated May 7, 2019. La Formation Restrictée assumes that reference is made to “Deliberation No. [...] of [...] of the National Commission for the protection of data relating to the request for prior authorization submitted by [the organization of public transport A] in terms of video surveillance” whereas [...].

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of 2 August 2002 on the protection of individuals with regard to the processing of personal data of a personal nature which was repealed by the law of August 1, 2018.

27. Then, she notices that the information panels in place during the visit on site by CNPD agents, did not contain the elements required by the first level of information. In particular, it lacks details of the purpose of the processing, the identity of the data controller and the existence of the rights of data subjects.

28. With regard to the second level of information, the Restricted Formation notes that such information intended for third parties did not exist at the time of the on-site visit by CNPD officials.

29. In addition, the auditee acknowledged that compliance with legislation applicable had not been completed at the time of the on-site visit by CNPD officials (see point 22 of this decision).

30. 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.

31. As for the measures taken by the control after the on-site visit of the agents of the CNPD, Restricted Training refers to point 72 as well as to Chapter II.2. Section 2.2. of this decision for the related explanations.

2.2. Employee information

32. The Restricted Committee has already noted that information panels in place during the on-site visit by CNPD agents did not contain the elements

required by the first level of information (see points 25 to 27 of this decision). She considers that this observation is also applicable with regard to the information of employees.

33. With regard to the second level of information, the Restricted Formation notes that such information intended for employees did not exist at the time of the on-site visit by CNPD officers.

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34. It notes in particular that none of the documentation submitted by the audit contains proof attesting that the staff delegation was informed of the presence video surveillance during a meeting between management and the staff delegation in 2008. It also considers that information from the staff delegation does not ensure that the controlled employees have been individually informed about the precise elements of article 13 of the GDPR.

35. In addition, the auditee acknowledged that compliance with legislation applicable had not been completed at the time of the on-site visit by CNPD officials (see point 22 of this decision).

36. 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.

37. As for the measures taken by the control after the on-site visit of the agents of the CNPD, Restricted Training refers to point 72 as well as to Chapter II.2. Section 2.2. of this decision for the related explanations.

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

1. On the principles

38. 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 [...] (retention limitation)".

39. 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 [...]. "

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2. In this case

40. During the on-site visit, it was explained to CNPD officials that the purposes

video surveillance outside the buildings on the site of the controlled are

"the protection of the property of [public transport organization A] and the securing of access"²⁹.

41. The Head of Investigation noted in the Statement of Objections that "during the visit

on site, a shelf life of 1(one) month and 11 (eleven) days was observed for

the images recorded by the video surveillance cameras installed on the site. This

retention period exceeds that which is necessary for the achievement of the purposes of

protection of property and securing access for which the system was set up

in place »³⁰.

It also noted that “the CNPD takes note of the mitigation elements presented on

this subject by the controller in his letter of November 29, 2019^[31] to

within paragraph 3. “Respect for the principle of limiting the storage of

data » »³².

Thus, it held that “notwithstanding these mitigating elements, it follows from the foregoing

that non-compliance with the provisions of article 5, paragraph 1., letter e) cited above was

nevertheless acquired on the day of the on-site visit”.³³

42. For its part, the auditee specified in the position paper annexed to its

letter of November 27, 2019³⁴ that “the retention period of images recorded

has been set at 30 days (....) for the video surveillance practiced on the site (...)”, and that it

considered that this conversation duration was in accordance with the purposes of the

processing, in particular because “incidents that have occurred (...) on the site (...) are

often reported or detected several weeks after their occurrence”.

²⁹ See Minutes of the on-site fact-finding mission, finding 7.

³⁰ See Statement of Objections, pages 5 to 6, Ad.B.3), point 27.

³¹ This is the letter from the controller dated 27 November 2019 which was received by the CNPD on November 29, 2019.

³² See Statement of Objections, page 6, Ad.B.3), point 28

³³ Same.

³⁴ Cf. Statement of position of the controlled, point 3.1. [...].

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43. The Restricted Committee recalls that it is the responsibility of the controller to determine, according to each specific purpose, a retention period for the personal data appropriate and necessary to achieve this purpose.

As mentioned above, the reviewer felt that a 30 day shelf life is necessary in order to achieve the aims pursued, i.e. the protection of property and securing access.

44. With regard to video surveillance, the Restricted Committee considers that the images can be retained in principle for up to 8 days under the principle aforesaid of Article 5.1.e) of the GDPR. The controller can exceptionally, for duly justified reasons, keep the images for a duration of 30 days. A shelf life longer than 30 days is generally considered to be disproportionate. In the event of an incident or violation, the Training Restreinte is of the opinion that the images can be kept beyond this period and, where appropriate, be communicated to the competent judicial authorities and to the authorities law enforcement authorities competent to establish or prosecute criminal offences.³⁵ All the more, an obligation to respect the principle of the limitation of the conservation already existed pursuant to Article 4.1.d) of the repealed law of 2 August 2002 relating to the protection of individuals with regard to the processing of personal data. Of guidance on the principles and obligations provided for in the said repealed law was available with the CNPD, in particular through mandatory prior authorizations in video surveillance, and guidance was available on the CNPD website.

45. While the Restricted Formation may understand the need for controlled to keep the images from the video surveillance outside the buildings on the operating site of the audited for 30 days, it nevertheless notes that in the minutes relating to the on-site visit of February 27, 2019 CNPD officials have noted that the shelf life was “1(one) month and 11 (eleven) days” for the

images recorded by the video surveillance system installed outside the buildings on the operating site which exceeded the time necessary to achieve the purposes pursued.

35 See CNPD guidelines, point 4.7, available at: <https://cnpd.public.lu/fr/dossiers-themes/videosurveillance/necessite-proportionnalite.html>.

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46. Based on all of these elements, the Restricted Panel agrees with the opinion of the head of investigation and concludes that non-compliance with article 5.1.e) of the GDPR was acquired on the day of the site visit by CNPD officials.

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

1. On the principles

47. 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)”.

48. 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.³⁶

49. 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)”.

50. 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 collected for other purposes.³⁷

51. 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.³⁸

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

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

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

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2. In this case

52. During the on-site visit, it was explained to CNPD officials that the purposes video surveillance outside the buildings on the site of the controlled are “the protection of the property [of public transport organization A] and the securing of access”³⁹.

53. The Head of Investigation noted in the Statement of Objections that “during the visit on site it was found that the fields of vision of the cameras called: [...] allow the surveillance of part of the public thoroughfare”⁴⁰.

In his opinion, “while the purposes indicated by the data controller may find one or more bases of lawfulness under Article 6 of the GDPR, monitoring the

public road and

neighboring land should however be considered as

disproportionate. Indeed, in view of

purposes for

which is operated

the

video surveillance, it is not necessary to encompass parts of the public road and

surrounding land within the fields of view of the cameras in question”⁴¹.

It also noted that “the CNPD takes note of the mitigation elements presented on

this subject by the controller in his letter of November 29, 2019^[42] in

in particular the document illustrating the angles of the video surveillance cameras of the site [of

public transport organization A] before and after adjustment”⁴³.

“Notwithstanding these mitigating elements”, the head of investigation noted that the non-

compliance with the provisions of Article 5.1.c) of the GDPR was nevertheless acquired on the day

of the on-site visit.⁴⁴

54. The auditee for his part informed in the position paper annexed to his

letter of November 27, 2019⁴⁵ that “the angles of the cameras have been adjusted in order to

39 See Minutes of the on-site fact-finding mission, finding 7.

40 See Statement of Objections, page 6, Ad.B.4), point 31.

41 See Statement of Objections, page 6, Ad.B.4), point 32.

42 This is the letter from the controller dated 27 November 2019 which was received by the CNPD on November 29, 2019.

43 See Statement of Objections, page 6, Ad.B.4), point 33.

44 See Statement of Objections, page 6, Ad.B.4), point 34.

45 Cf. Statement of position of the controlled, point 4.1. [...].

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exclusively cover the land [of public transport organization A]". He appended photos showing the "camera perspectives before and after adjustment".

Furthermore, a procedure

internal would have been put in place "to ensure

a quarterly verification of camera angles, with an adjustment if necessary ".

55. The Restricted Committee would like to point out that the 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 area strictly necessary to view people

preparing to access it; those who film exterior accesses must not mark

the entire width of a sidewalk along, where applicable, the building or public roads

adjacent. Outdoor cameras installed near or around a building

must be configured in such a way as not to capture the public thoroughfare, nor the surroundings, entrances,

access and interiors of other neighboring buildings possibly returning to their

field of vision.⁴⁶

56. She notes that the photos taken by the CNPD agents during the visit

on site show that the fields of vision of the cameras called [...] made it possible to

monitor the public highway⁴⁷, so that the person being controlled did not respect the principle of proportionality.

57. In view of the foregoing, the Restricted Panel agrees with the opinion of Chief

investigation and concludes that non-compliance with Article 5.1.c) of the GDPR was established on the day the on-site visit by CNPD agents.

58. As for the measures taken by the control after the on-site visit of the agents of

the CNPD, Restricted Training refers to point 72 as well as to Chapter II.2. Section

2.2. of this decision for the related explanations.

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

47 Cf. Minutes of the on-site fact-finding mission, finding 8 (camera called [...]; photo [...]), report 9 (camera named [...]; photo [...]) and report 10 (camera named [...]; Photo [...]).

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II. 1.2. As for the geolocation device

On the breach of the obligation to inform the persons concerned

1. On the principles

59. With regard to the principles to be observed with regard to the obligation to inform data subjects in accordance with Article 13 of the GDPR, the Restricted Training refers to points 12 to 15 of this decision.

2. In this case

60. The Head of Investigation noted in the Statement of Objections that “during the visit on site, it was noted that the employees were not properly informed of the installation of the geolocation device in the buses of the manager of the treatment. Indeed, it was explained to the agents that the bus drivers are informed orally of the implementation of the geolocation device in the buses in the part of their training.

He held that the control “does not respect its obligation to inform the people concerned”⁴⁹, and that “no element of the documentation submitted to the CNPD by the

letter of May 7, 2019 mentioned above does not contain evidence to demonstrate the compliance with the requirements of Article 13 of the GDPR”⁵⁰.

It also took note of the mitigation elements presented by the auditee "in its letter of November 29, 2019[⁵¹], in particular the document entitled “Memo to the personnel: information processing personal data” as well as paragraph 7.

“Additional note concerning the geolocation of bus drivers [...]”⁵².

48 See Statement of Objections, page 5, Ad.B.2), point 21.

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

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

51 This is the letter from the controller dated 27 November 2019 which was received by the CNPD on November 29, 2019.

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

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“Notwithstanding these mitigating elements”, the head of investigation noted that the non-compliance with the provisions of Article 13 of the GDPR was nevertheless acquired on the day of the site visit.⁵³

Thus, he is of the opinion that the controller had failed in his "obligation to inform the persons concerned about the presence of a geolocation device in vehicles, arising from Article 13 of the GDPR”⁵⁴.

61. The auditee for his part indicated in his letter of May 7, 2019 that the staff delegation, because of its representation in the technical committee which decides on the equipment to be installed in the controlled vehicles, would have been "involved and informed [...]”.

Bus drivers would be informed about the geolocation system as soon as they compulsory initial training. The controller attached an email [...] of April 25, 2019. This the latter indicated, among other things, that the employees would receive explanations [...], without them would be informed specifically of the geolocation. They would be aware of the geolocation of buses to display timetables at bus stops and on the control center screen⁵⁵.

62. In addition, the inspected party explained in the statement annexed to his letter of November 27, 2019⁵⁶ that a “memorandum concerning the video surveillance of the site, (...) and the geolocation of bus drivers (see appendix) has been brought to the attention staff by the following means:

- Delivery of the memo to all staff members by hand,
 - Publication of the memorandum on the Intranet accessible to all employees
- and
- Establishment of a procedure which provides for the delivery of the memorandum to any new staff member. »

53 Same.

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

55 Translation of the original text: [...].

56 Cf. Statement of position of the controlled, point 2.2. [...].

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The control pointed out that "the memorandum covers exhaustive information according to Article 13 GDPR". He attached the copy of the memo.

In addition, he informed in the statement appended to his letter of the

27 November 2019 cited above⁵⁷ that steps [...] would be underway with regard to the geolocation of controlled bus drivers and the processing of their data of a personal nature. The documentation of the control should be updated according to results [...].

63. The Restricted Panel would first like to refer to its clarifications set out in points 23 and 24 of this Decision relating to the obligation imposed on the controller processing to “provide” all the obligations mentioned in Article 13 of the GDPR and the tiered approach to communicating the information required to persons concerned.

64. Next, it wishes to clarify that Article 12 of the GDPR does not de facto exclude that the information provided for in Articles 13 and 14 of the GDPR may be provided orally by the controller to the data subject. However, the working group Article 29 insists that in this case, the data controller should take care “to keep a written record, and ensure that he is able to prove it (for the purposes of the compliance with the responsibility requirement), of: i) requesting information orally, (ii) the method by which the identity of the data subject was verified (if applicable, see point 20 above), and (iii) the fact that the information was transmitted to the person concerned. »⁵⁸

65. The Restricted Panel notes that no documentation submitted by the checked does not contain evidence that:

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the staff delegation was informed of the presence of a device to geolocation [...], as indicated by the controller in his letter of May 7, 2019.

The Restricted Committee also considers that information from the delegation staff does not ensure that the employees of the control have been informed individually regarding the specific elements of Article 13 of the GDPR;

57 Cf. Position of the auditee, point 7. [...].

58 WP 260 rev.01, point 21.

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the employees have been duly informed, before the on-site visit, orally
in accordance with Article 13 of the GDPR.

66. In view of the foregoing, the Restricted Panel agrees with the opinion of Chief
investigation and concludes that on the day of the site visit by CNPD agents, the person inspected
breached its obligation to inform employees arising from Article 13 of the GDPR.

67. As for the measures taken by the control after the on-site visit of the agents of
the CNPD, Restricted Training refers to point 72 as well as to Chapter II.2. Section 2.2.
of this decision for the related explanations.

II. 2. On the fine and corrective measures

1. Principles

68. 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;
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- 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. »

69. 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.

70. 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;

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- 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”.

71. 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.

72. 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

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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

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

Restricted to impose an administrative fine on the control in the amount of 4,000 (four

thousand) euros.⁵⁹

74. 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 Articles 5.1.c) and e) of the GDPR, they are constituting breaches of the fundamental principles of the GDPR (and the right to data protection in general), namely the principles of data minimization data and limitation of storage set out in 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 breaches have lasted over time, at least since May 25, 2018 and until the day of the visit of the CNPD agents. She recalls that guidance

⁵⁹ See Statement of Objections, page 9, Ad.C., point 39.

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relating to the principles and obligations provided for by the GDPR was available from the CNPD, in particular on its website. She recalls here that two years separated the entrance into force of the GDPR from its entry into force to allow those responsible processing to comply with their obligations. All the more, a obligation to respect the principles of minimizing and limiting the custody, as well as a comparable information obligation already existed in application of articles 4.1.b) and d), 10.2 and 26 of the repealed law of 2 August 2002 relating the protection of individuals with regard to the processing of personal data personal. Guidance relating to the principles and obligations provided for in the said law repealed was available from the CNPD, in particular through authorizations mandatory prerequisites in terms of video surveillance and geolocation, and the guidance available on the CNPD website.

- As for the number of data subjects (article 83.2.a) of the GDPR), the Training Restreinte notes that for video surveillance, it is about [...] employees of the controlled⁶⁰, as well as all third parties, i.e. customers, suppliers, service providers and visitors, visiting the site operation of the controlled.

With regard to the geolocation system, these are the various employees who used buses 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 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, the Restricted Committee is of the opinion that the facts and breaches observed do not reflect a deliberate intention to violate the GDPR on the part of the control.

60 See Minutes of the on-site fact-finding mission, finding 20.

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- 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 that the co-operation of the auditee throughout the investigation was good, as well as its willingness to comply with the law as soon as possible⁶¹.

- As for the measures taken by the inspected party to mitigate the damage suffered by the data subjects (article 83.2.c) of the GDPR), the Restricted Training takes into account of the measures taken by the auditee and refers to Chapter II.2. Section 2.2. of this decision for the related explanations.

75. 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.

76. 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 February 27, 2019 (see also point 71 of this decision).

77. 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), e) and 13 of the GDPR.

78. 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.

79. With regard to the relevant criteria of Article 83.2 of the GDPR mentioned above, the Restricted Panel considers that the pronouncement of a fine of 3,500 (three thousand five

61 See Statement of Objections, page 9, Ad.C., point 38.e.

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cents) euros appears to be both effective, proportionate and dissuasive, in accordance with the requirements of Article 83.1 of the GDPR.

2.2 Regarding the taking of corrective measures

80. In the Statement of Objections, the Head of Investigation proposed to the Panel

Restricted to adopt the following corrective measures:

" has. Order the controller to complete the information measures

intended for people concerned by video surveillance and geolocation,

in accordance with the provisions of Article 13, paragraphs (1) and (2) of the GDPR in

informing in particular:

- the identity of the data controller and the contact details of the data protection officer

data, if any;

- the purposes of the processing for which the personal data are intended as well as

the legal basis for the processing;

- the legitimate interests pursued by the controller;

- the recipients or categories of recipients of the personal data;

- the length of the conversation ;

- the existence of the right to request from the data controller access to the data to be

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

processing relating to the data subject; and

- the right to lodge a complaint with a supervisory authority.

b. Order the data controller to limit the retention of data to a

duration not exceeding that necessary with regard to the purposes for which the data are

collected and processed, and in particular by not keeping the recordings of the images

of the video surveillance device beyond one month, in accordance with the provisions of

Article 5, paragraph (1) letter (e) of the GDPR;

vs. Order the controller to process only relevant data,

adequate and limited to what is necessary with regard to the purposes of protecting the

property and securing access, in accordance with the provisions of article 5,

paragraph (1) letter (c) of the GDPR, and, in particular:

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- to adapt the field of vision or to proceed with the removal of the cameras allowing the

surveillance of public roads; »62.

81. As for the corrective measures proposed by the head of investigation and by

reference to point 72 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), e) and 13 of the GDPR, as detailed in his letters of May 7, 2019, November 27, 2019 and December 6, 2021. More in particular, it takes note of the following facts:

1. As for the corrective measure proposed by the head of investigation listed under a. from point 80 of this Decision concerning the introduction of measures information for people third parties affected by the video surveillance in accordance with the provisions of article 13.1 and 2 of the GDPR, the controller explained in the statement attached to his letter of November 27, 2019 that he opted for a multi-tiered approach to communicate transparency information to third parties concerned by information panels with pictograms and by a note information available on its website. He provided a copy of the new information board, photos showing that it was affixed to five places external access to its operating site, and the link to the information notice on its website⁶³ with its aforementioned letter.

The Restricted Committee considers that the new information panels contain the information of the first level of information, and that the second level of information, i.e. the information note currently available on the website of the controller, contains all the information required at the under Article 13 of the GDPR.

Considering the sufficient compliance measures taken by the controlled in this case and point 72 of this decision, the Panel Restricted therefore considers that there is no need to pronounce the measure

corrective action proposed by the head of investigation in this respect as set out in point

62 See Statement of Objections, page 7, Ad.C., point 36.

63 "Direct link: [...]".

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80 of this decision under a. with regard to the information of
third parties with regard to video surveillance.

2. As for the corrective measure proposed by the head of investigation listed under a. from
point 80 of this Decision concerning the introduction of measures
information intended for employees concerned by video surveillance and/or
geolocation in accordance with the provisions of article 13.1 and 2 of the GDPR, the
controlled explained in the position paper attached to his letter of
November 27, 2019 that the transparency information would have been
communicated to employees by means of a memorandum⁶⁴ of which he annexed
a copy.

The Restricted Committee notes that the said note, which not only targets the
video surveillance of the operating site, but also the geolocation of
bus, contains all the information required under article 13 of the
GDPR.

However, none of the documentation submitted by the auditee contains evidence
certifying that the memorandum has been delivered to all staff members
in person and/or published on the Intranet of the auditee, or that a
procedure has been put in place to ensure delivery of the memorandum to
any new employee.

In view of the insufficient compliance measures taken by the
controlled in this case and point 72 of this decision, the Panel
Restreinte therefore considers that there is reason to pronounce the corrective measure
proposed by the head of investigation in this regard and repeated in point 80 of this
decision under a. with regard to informing employees about the
video surveillance and geolocation.

3. As for the corrective measure proposed by the head of investigation listed under b. from
point 80 of this Decision concerning the obligation to limit the storage
video surveillance data in accordance with the provisions of Article
5.1.e) of the GDPR, the controller in the position statement attached to its letter of
64 “Memo, Information to staff regarding data processing”, “Version:
[...].”

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November 27, 2019 explained that the retention period of images
recorded would have been reduced to 30 days, which was recorded in the extract from the
register of processing activities that the controller has attached to his letter
aforementioned. He believed that this retention period was in accordance with the
purposes of the processing, which is not disputed by the Restricted Panel in
the species.

However, none of the documentation submitted by the auditee contains evidence
certifying that the retention period of the recorded images has effectively
been reduced to 30 days.

In view of the insufficient compliance measures taken by the

controlled in this case and point 72 of this decision, the Panel

Restreinte therefore considers that there is reason to pronounce the corrective measure proposed by the head of investigation in this regard and repeated in point 80 of this decision under b.

4. As for the corrective measure proposed by the head of investigation listed under c. from point 80 of this Decision concerning the obligation to deal only with relevant, adequate and limited to what is necessary for the purposes protecting property and securing access, in accordance with the provisions of Article 5.1.c) of the GDPR, the audit confirmed in the taking of position appended to his letter of November 27, 2019 that he had adjusted the fields of vision of the cameras in order to exclusively cover its site operating. He attached to this letter photos showing the fields of vision of the cameras called [...] before and after this adjustment.

The Restricted Panel considers that the fields of vision of these cameras have been adjusted in order to, and as far as possible, no longer film public roads.

Considering the sufficient compliance measures taken by the controlled in this case and point 72 of this decision, the Panel

Restricted therefore considers that there is no need to pronounce the measure corrective action proposed by the head of investigation in this respect as set out in point 80 of this decision under c.

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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), e) and 13 of the GDPR;
 - to pronounce against the public transport organization A a fine administrative in the amount of 3,500 (three thousand five hundred) euros, with regard to the breaches of Articles 5.1.c), e) and 13 of the GDPR;
 - to pronounce against the public transport organization A an injunction to bring processing into compliance with the obligations resulting from Article 13 of the GDPR, within 2 months of notification of the Panel's decision
- Restricted, and, in particular, individually inform employees in a clear manner and complete video surveillance of the operating site and the geolocation of buses, in accordance with the provisions of Article 13 of the GDPR;
- to pronounce against the public transport organization A an injunction to bring processing into compliance with the provisions of Article 5.1.e) of the GDPR, within 2 months of notification of the Panel's decision
- Restricted, and, in particular, limit the retention of data to a period not exceeding that necessary with regard to the purposes for which the data are collected and processed, and in particular by not keeping records of images from the CCTV device beyond one month.

Thus decided in Belvaux on April 22, 2022.

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For the National Data Protection Commission sitting in formation
restraint

Thierry Lallemand

Commissioner

Marc Lemmer

Commissioner

Marc Hemmerling

Substitute member

Indication of remedies

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

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