

Procedure relating to complaints before

the National Commission for the Protection

data (CNPD)

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Art. 1 General provisions

Complaints made under Articles 77 and 80 of the GDPR as well as Articles 44 and 46

of the law of 1 August 2018 on the protection of natural persons with regard to the processing

personal data in criminal matters as well as in matters of national security

are instructed by the services of the National Commission for Data Protection (see below).

after “CNPd” or “National Commission”) according to the procedures described below.

During the complaint procedure, the CNPD first examines whether a complaint is

justified, i.e. it verifies whether the facts alleged by the claimant relating to treatment of

personal data may or may not constitute a violation of the

applicable data protection legislation. When the CNPD considers that the

processing of disputed data would actually be contrary to the law, it will endeavor to

remedy the situation without having to resort to the binding measures available to it in within the framework of its powers conferred on it by law.

#### Art. 2 Terms of referral

The CNPD can receive a complaint electronically or by post.

In order to facilitate the lodging of a complaint and in accordance with article 9 of the law of the 1st August 2018 on the organization of the National Commission for Data Protection and the general data protection regime, the CNPD provides a complaint form which is available online on the National Commission's website.

An acknowledgment of receipt, indicating a reference assigned to the complaint, is delivered to the complaining within 10 working days. The acknowledgment of receipt does not take a position on the competence of the CNPD, nor on the admissibility of the complaint.

#### Art. 3 Opportunity for action

The CNPD benefits from the opportunity for action<sup>1</sup>. It thus has a discretionary power to assess whether it investigates a claim or not. Depending on the specific characteristics of each complaint, the CNPD may decide not to investigate a complaint, taking into account

<sup>1</sup> cf. opinion of the Council of State of June 26, 2018; doc. speak. No. 7184/28

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in particular the degree of seriousness of the alleged facts or the alleged violation, the degree of impact on fundamental rights and freedoms, the degree of priority in relation to the number of complaints and available resources. In these cases, it proceeds in accordance with Article 9 (1) of this proceeding.

#### Art. 4 Prior steps by the claimant

If the purpose of the request is to exercise the rights of the data subject conferred on him by the articles 12 to 22 of the GDPR as well as by articles 11 to 15 of the law of 1 August 2018 on the protection of natural persons with regard to the processing of personal data in criminal matters as well as in matters of national security and that the claimant did not seek

himself to exercise his rights directly with the data controller in question, the CNPD  
send him an e-mail or post informing him of the steps he is responsible for  
to commit, prior to any referral to the CNPD.

#### Art. 5 Jurisdiction of the CNPD

The CNPD's Complaints department examines, with regard to legal texts on protection  
data, if the CNPD is materially and territorially competent to process the  
complaint.

When a complaint relates to the processing of personal data carried out  
by the courts of the judicial order, including the public prosecutor, and of the administrative order  
in the exercise of their jurisdictional functions, the complaint is transmitted for jurisdiction  
to the judicial control authority, pursuant to article 44 paragraph (4) of the law of 1 August 2018  
on the protection of individuals with regard to the processing of personal data  
personnel in criminal matters as well as in matters of national security. The claimant is  
informed.

#### Art. 6 Admissibility of a complaint and jurisdiction of the CNPD

The CNPD's Complaints department examines whether the complaint is admissible.

A claim is only admissible when the following cumulative criteria are met, namely  
when :

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The complaint is lodged by a natural person concerned, in accordance with

Article 77 of the GDPR, or by a non-profit body, organization or association

profit-making under the conditions of Article 80 of the GDPR, or in accordance with Articles 44 and 46

of the law of 1 August 2018 on the protection of natural persons with regard to the

processing of personal data in criminal matters as well as in matters of

national security;

the complaint is written in Luxembourgish, French, German, (including

including the documents attached and attesting to the facts described in the complaint);

the complaint makes it possible to identify its author, namely that it contains at least his name

and first name or company name and postal address;

the complaint makes it possible to identify the data controller or the subcontractor

cause ;

the complaint contains sufficient information (including copies of any documents

attesting to the facts alleged in the complaint) to identify the data processing

contentious, likely to constitute a breach of data protection rules;

the very subject of the complaint is not simultaneously the subject of proceedings before

a court or procedure referred to in Article 47 paragraphs (5) and (6) of the law of the 1st

August 2018 on the protection of natural persons with regard to the processing of

personal data in criminal matters as well as in security matters

national.

The CNPD may ask the claimant, within a time limit that it sets, to provide it with any documents or

additional information it deems useful to examine whether the complaint is admissible. Whether

the complainant does not respond within the time limit, the CNPD informs him that it will not follow up

his claim.

In the event that a complaint is inadmissible, the CNPD services inform the complainant.

specifying the criterion(s) of inadmissibility.

When a complaint is manifestly unfounded or excessive, the CNPD may refuse to give

upon request, in accordance with Article 57.4 of the GDPR.

Anonymous complaints are in principle dismissed. Exceptionally, depending on the seriousness and impact on the persons concerned of the facts reported, the CNPD Board may choose to review items reported anonymously.

#### Art. 7 Analysis of the merits of a complaint

When a complaint is admissible, the CNPD's Complaints department analyzes whether the subject of the complaint is likely to be resolved without the initiation of an investigation procedure.

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The facts alleged in the complaint are then communicated to the controller implicated, so that he provides all the explanations he deems useful. These exchanges can take place by any means.

By way of derogation from the preceding paragraph, the subject of the complaint may not be communicated to the controller or processor if the CNPD Board has decided to carry out an investigation and more particularly to an on-site investigation, not announced beforehand for directly record the facts reported, in accordance with the rules established in the rules of the CNPD relating to the investigation procedure.

The identity of the complainant is not communicated to the controller or the subcontractor, unless it is essential to the processing of the complaint.

Throughout the analysis of the file, the Complaints department of the CNPD may ask the controller, processor or claimant to provide it with information, additional documents or explanations and to take a position on the facts and opinions of the other party or on the advice of the CNPD.

Any letter sent to the controller, processor or claimant indicates the time within which the response is due.

When, after analysis, the CNPD comes to the conclusion that the complaint is in whole or in part founded, it invites the data controller or the processor, either to take the measures

that it indicates to comply with the legal provisions within a period that it fixed, or to inform him within the same time limit of the reasons for which he does not intend implement the indicated measures. The CNPD informs the data controller or the data processor processor that it may initiate a formal investigation procedure against it if the measures are not implemented within the time allowed.

The CNPD informs the claimant of the outcome of their claim.

When, after analysis, the CNPD comes to the conclusion that the complaint is unfounded, it informs the parties by letter containing the reasons for its position.

#### Art. 8 Initiation of an investigation procedure following the investigation of a complaint

The CNPD Board may, at any time during the complaint investigation procedure, decide to open a formal investigation procedure in accordance with articles 37 to 41 of the law of 1 August 2018 on the organization of the National Commission for Data Protection and the general data protection regime and the rules established in the CNPD regulations relating to the investigation process.

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In such a case, in accordance with article 8 point 2 of the CNPD regulations relating to the procedure of investigation, the head of investigation and the authorized agents take into account the retroactions of investigation of the complaint. Thus, the information, documents and positions of the claimant and the person checked are part of the investigation file.

#### Art. 9 Closing or closing a case

The CNPD can decide:

- (1) to close a case on the basis of Article 3 of these proceedings,
- (2) to close a file at the end of the instruction of the complaint carried out according to article 7 of this procedure

In these cases, the CNPD notifies its decision to classify or close the claimant and informs him that he may, as the case may be, pursuant to Article 78 of the GDPR, Article 55 of the Law of 1 August 2018

on the organization of the National Commission for Data Protection and the regime  
general on data protection or article 45 paragraph (2) of the law of 1 August 2018  
on the protection of individuals with regard to the processing of personal data  
personnel in criminal matters as well as in matters of national security, lodge an appeal in  
reformation before the administrative court within 3 months following the notification of the  
decision.

#### Art. 10 Time limit for examining a complaint

The CNPD strives to process complaints as soon as possible. The processing time of a  
claim may however vary depending on:

- the complexity of the complaint,
- the cross-border nature of the complaint involving the cooperation mechanism and  
of European coherence,
- answers provided by the data controller, the subcontractor or the claimant,
- actions undertaken by the National Commission within the framework of the investigation of the  
complaint,
- the number of complaints lodged with the CNPD and the resources available.

If the person concerned wishes to be informed of the progress of his complaint in  
course with the National Commission, it can contact the CNPD electronically or  
mentioning the reference assigned by the CNPD to his complaint. The CNPD reserves the right

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the right not to provide a response to a request for the status of a complaint  
which would be formulated within a period of two months from the date of introduction of the  
complaint.

Thus decided unanimously by vote in Belvaux, on October 16, 2020

The National Data Protection Commission

Tine A. Larsen

President

Thierry Lallemand

Commissioner

Christopher Buschman

Commissioner

Marc Lemmer

Commissioner

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