CNPD Course: Data Protection Basics

Presentation of Luxembourg's data protection authority

CNPD
COMMISSION NATIONALE POUR LA PROTECTION DES DONNÉES

Esch-sur-Alzette

7-8 February 2018

Dani Jeitz

Service juridique

Programme

1. Introduction
2. Basic knowledge
3. The rights of the data subjects
4. The obligations of the controllers
5. **The role of the CNPD**

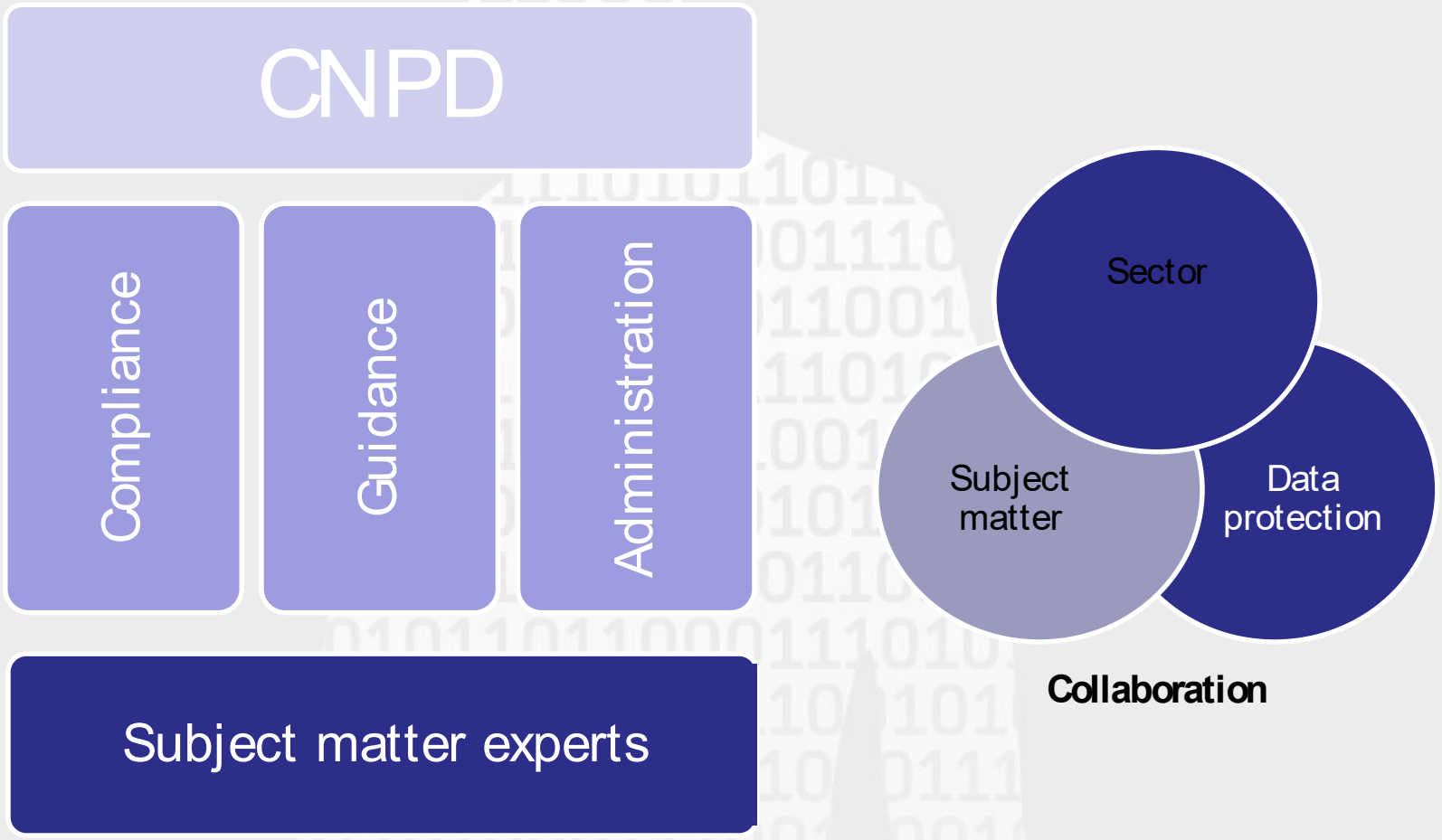
Outline

- Introduction
- Organisation and evolution of the CNPD
- Territorial jurisdiction
- Tasks
- Investigative and corrective powers
- Statistics

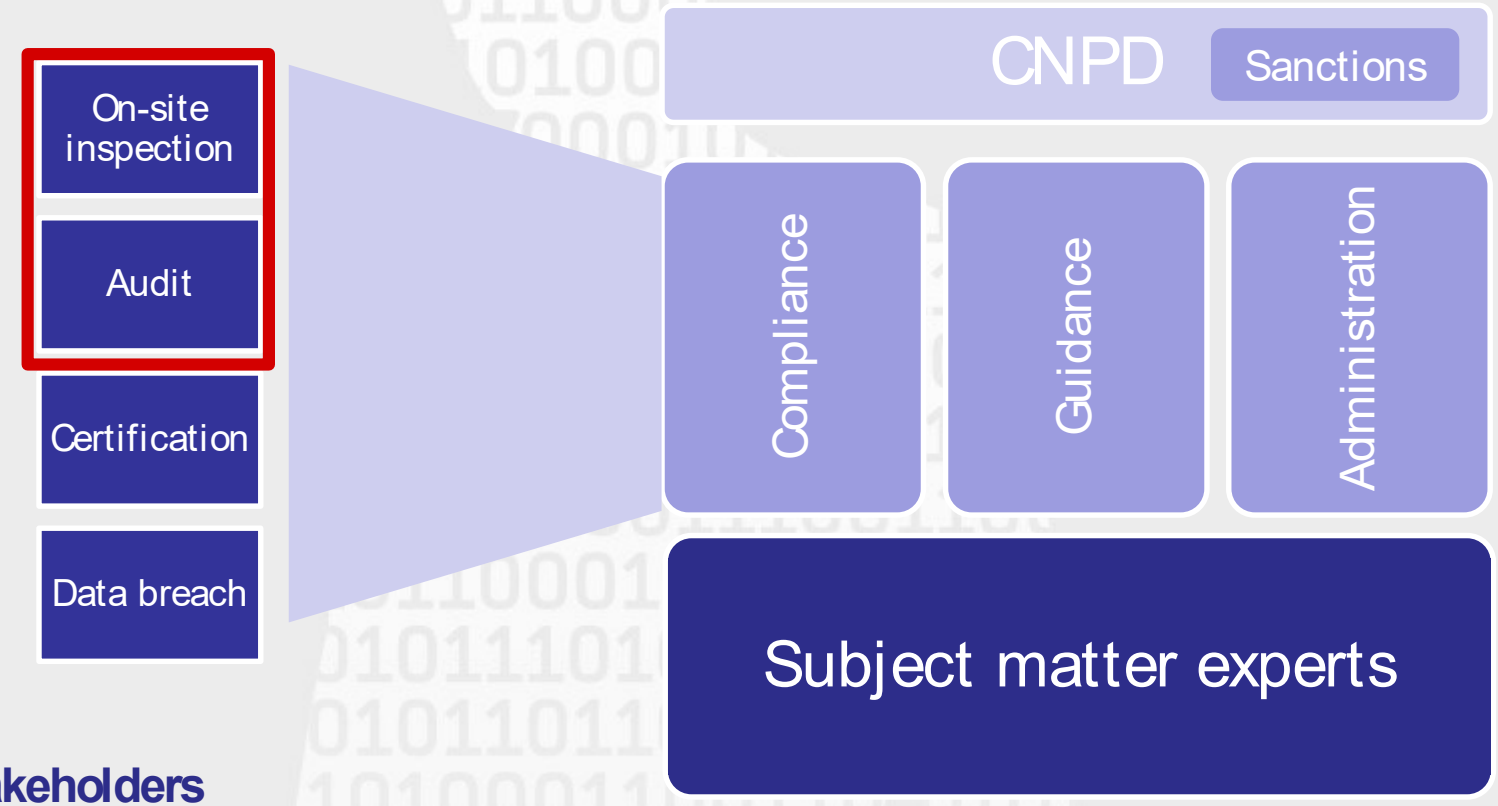
Introduction

- Independent authority created by law
  - Amended Act of 2 August 2002
  - Draft bill n°7184
- Public institution with financial and administrative autonomy
- Recent trends:
  - Sophisticated technologies: connected games, Smarthome, social media, smartphones, cloud, etc.
  - Personal data breaches (Uber, Ashley Madison, etc.)
  - Significant increase of complaints, requests for information and legislative opinions

New organizational setup (1/2)



New organizational setup (2/2)



Stakeholders

Commissioners

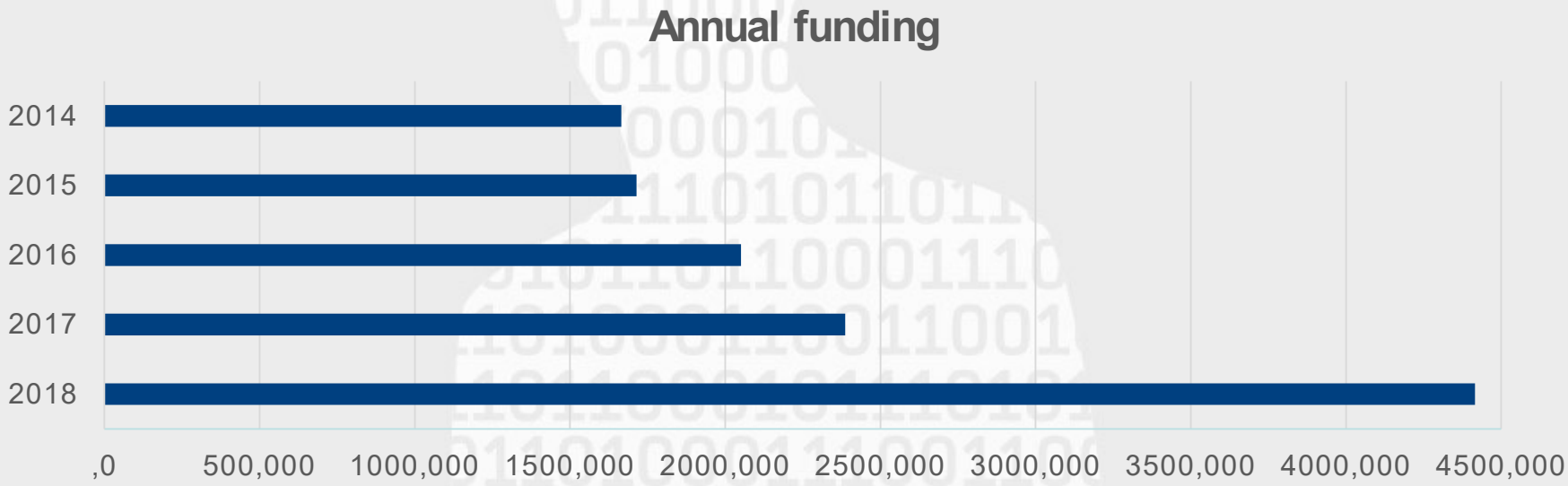
Head of investigation

Investigator

Expert

European cooperation

Evolution of the CNPD



Staff

2014	2017	2018
15	25	35

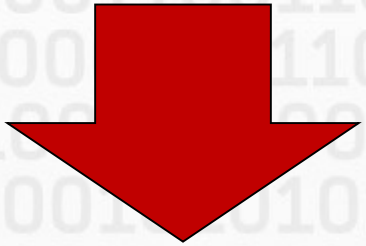
Territorial jurisdiction of the CNPD

- Jurisdiction on the territory of Luxembourg
- Introduction of the **"one stop shop"**
  - One single point of contact for companies established in several Member States
  - "**lead authority**" will be:
    - authority of the main establishment of the controller
    - place of the sole establishment of the controller
- Reinforced EU cooperation between the « lead authority » and « concerned » authorities
  - Aim is to adopt a single decision
  - In case of disagreement → binding decision by the "European Data Protection Board"

A paradigm shift

Removal of prior formalities (notifications / authorisations)

prior monitoring



Principle of Accountability

subsequent control

less bureaucracy, yet **more demanding** for controllers and processors

Tasks

- Monitor and enforce the application of the GDPR
- Advise the national parliament and government
- Raise public awareness and inform the general public
- Provide guidance to controllers / processors
- Handle complaints and conduct investigations
- Accredit the certification bodies
- Cooperate with other supervisory authorities
- Write and publish an annual activity report

Tasks

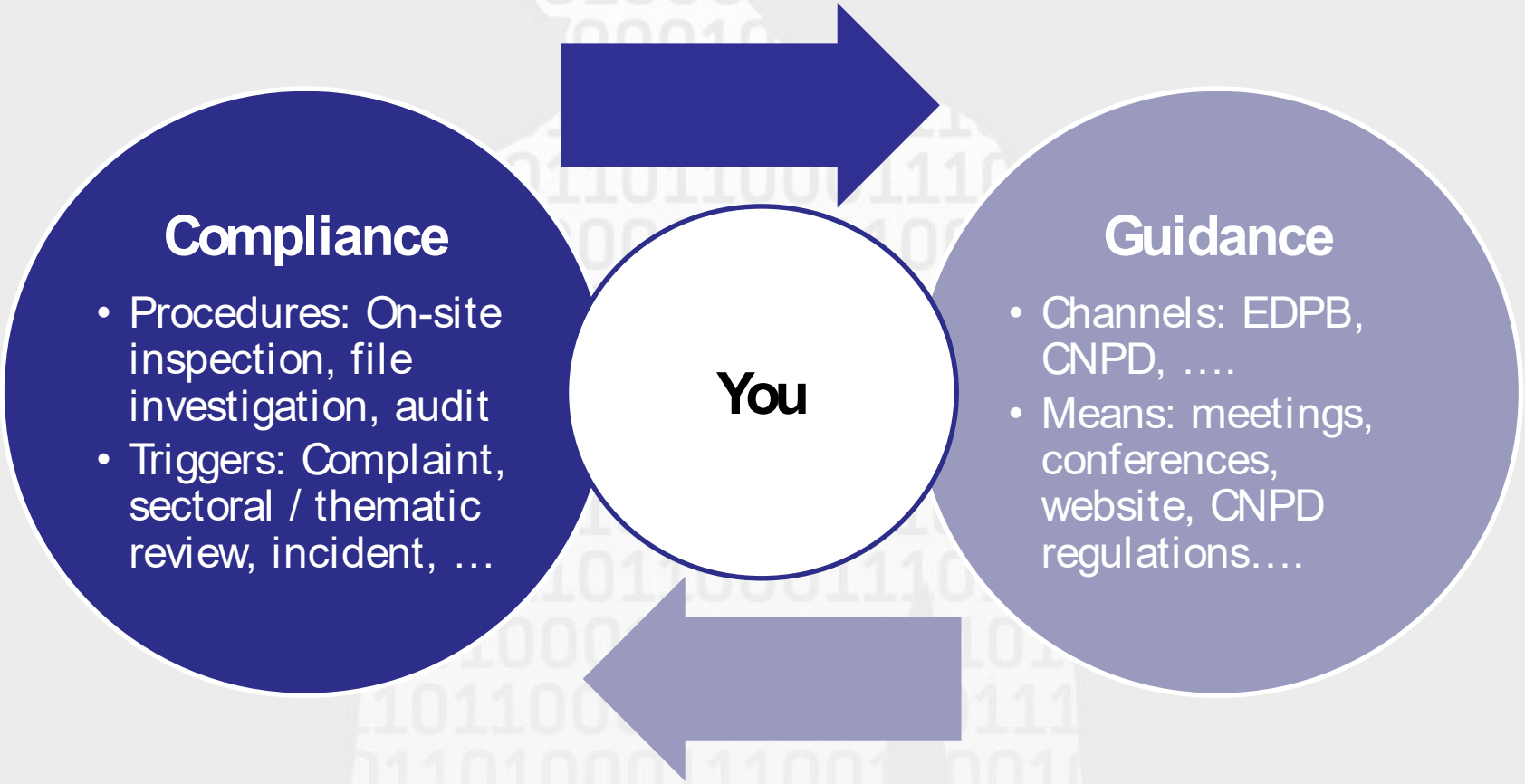
- Widening of competence to include processing activities in criminal / national security matters:
  - Currently: « Article 17 » Supervisory Authority (State Public Prosecutor + 2 members of the CNPD)
  - Draft bill n°7168 implementing Directive 2016/680:
    - Processing operations by competent authorities for criminal purposes : competence of the CNPD
    - Exception for processing operations by courts + public prosecutor when acting in their judicial capacity : competence of a judicial control authority (≠ CNPD)

Investigative powers

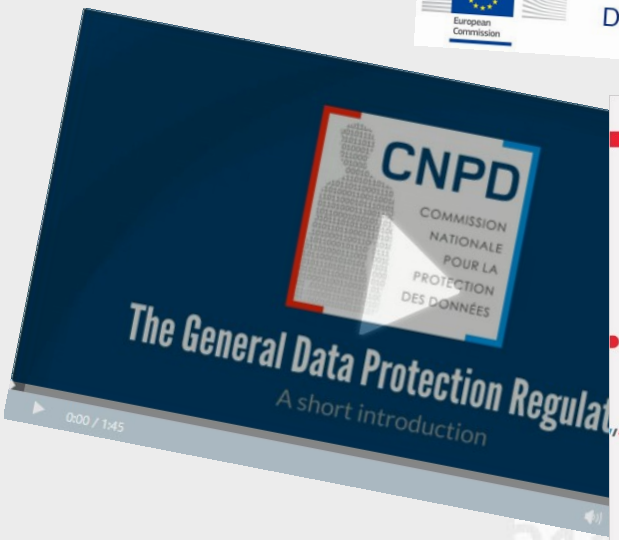
Article 58 Powers: Each supervisory authority shall have all of the following investigative powers:

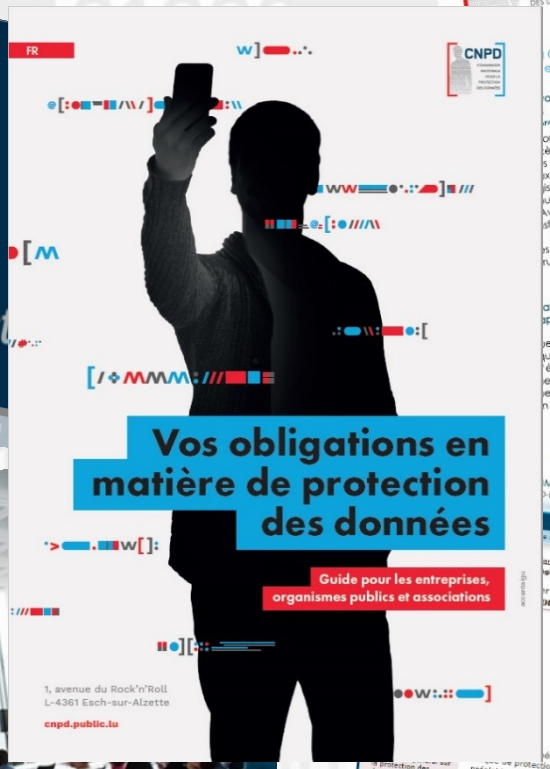
- to carry out **investigations** in the form of **data protection audits;**
- to obtain, from the controller and the processor, **access to all personal data** and to **all information necessary** for the performance of its tasks;
- to obtain access **to any premises of the controller and the processor,** including to any data processing equipment and means, in accordance with Union or Member State procedural law.
- …

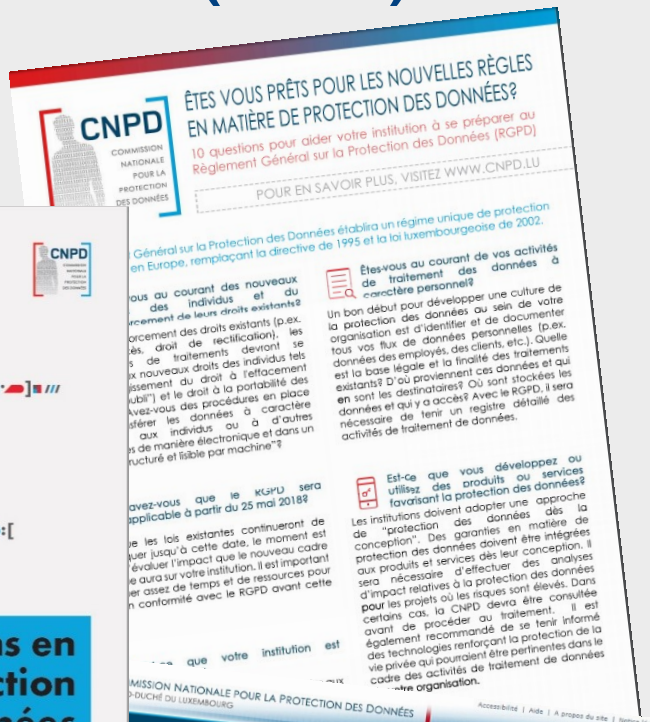
The right balance (1/3)

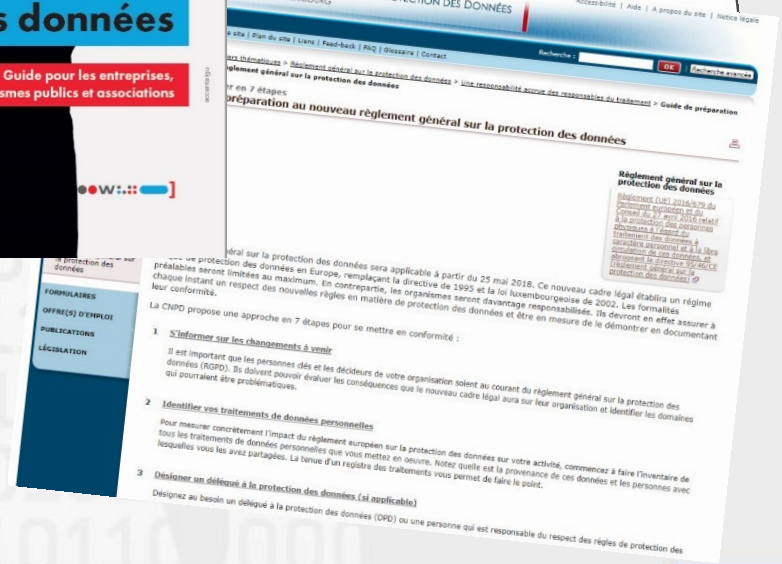


The right balance (2/3)

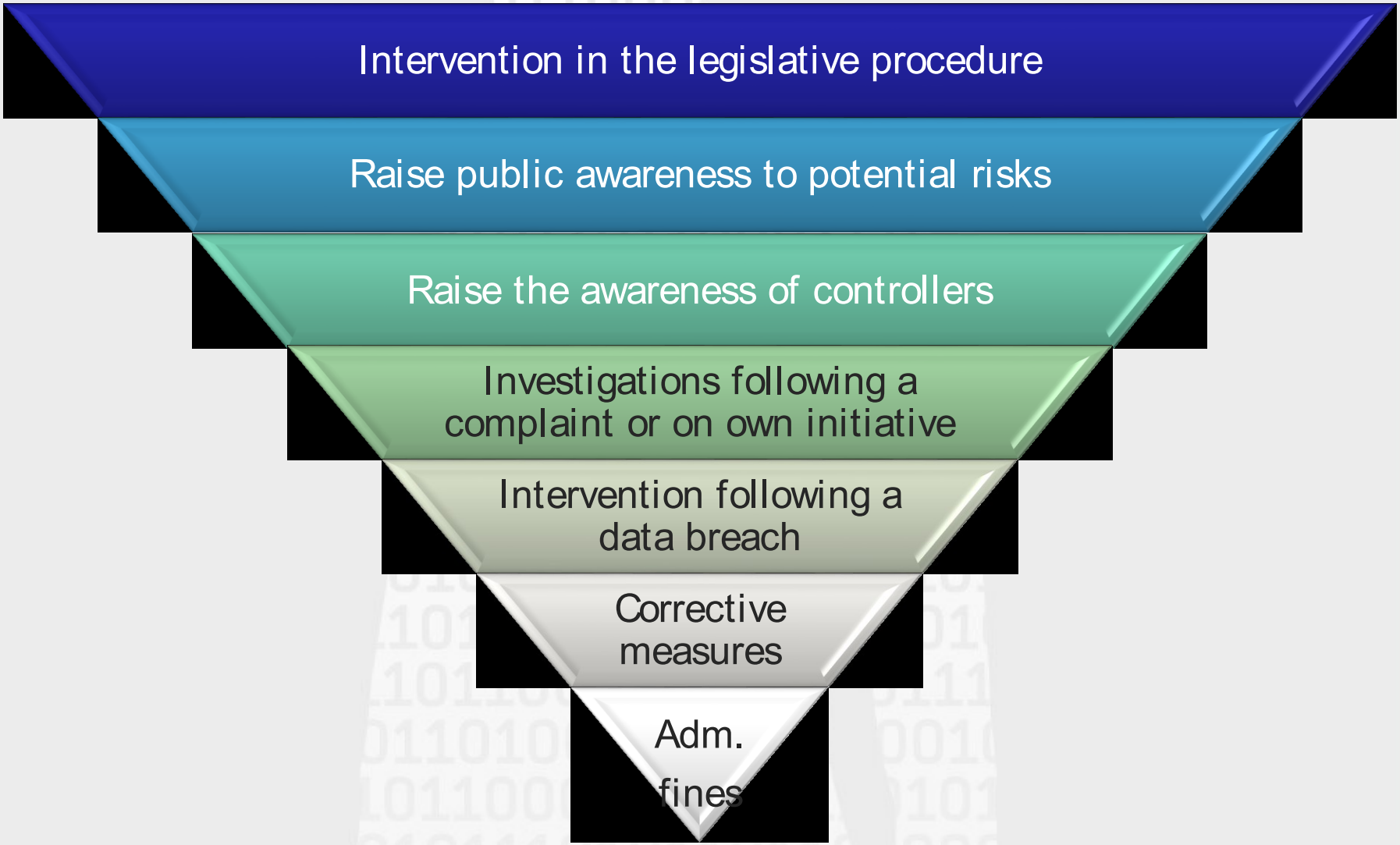








The right balance (3/3)



Different types of investigations

On-site inspection

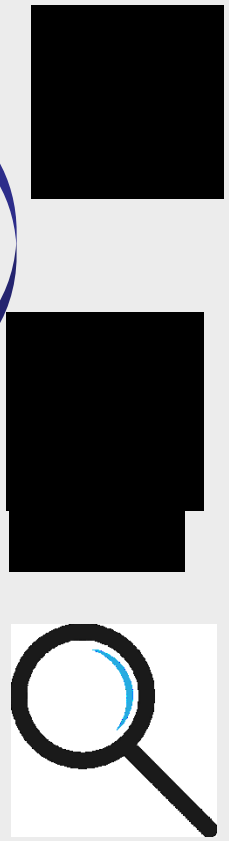
- Inspection at the premises of the controller / processor
- Specific/limited scope
- One-off visit – where applicable triggers a file inspection

File inspection

- Questionnaire including a document request
- Review of answers and other relevant documents
- Switch to on-site inspection or data protection audit according to preliminary results

Data protection audit

- In depth review – broader in scope
- Multiple exchanges in form of meetings
- communication to exchange information and documents
- Risk based approach – refinement of scope during audit execution



Corrective powers

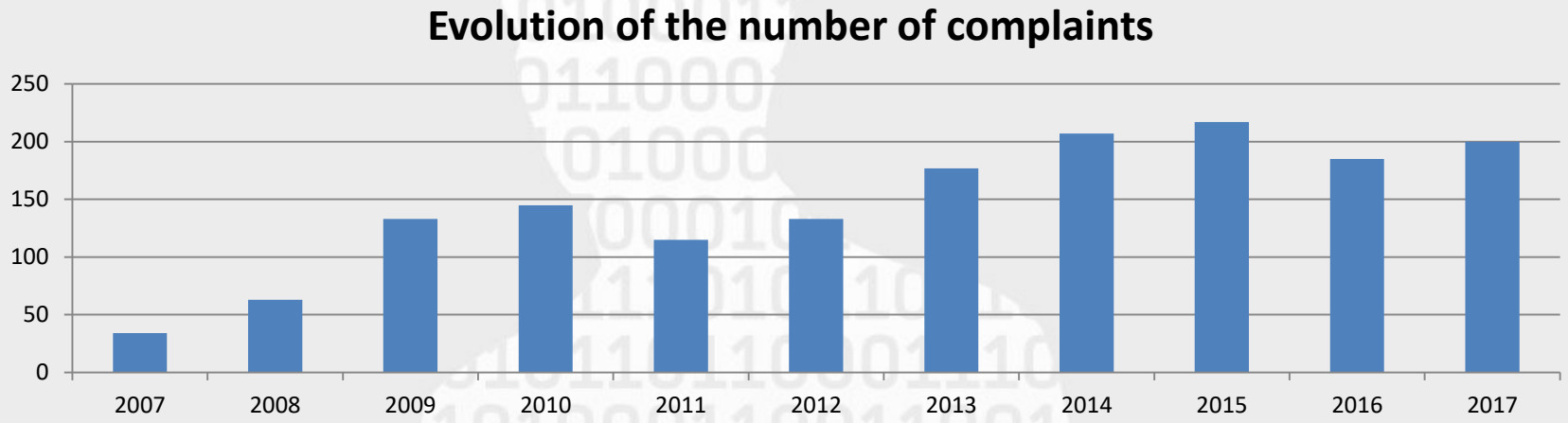
- Issue warnings and reprimands
- Order the controller/processor to bring processing operations into compliance with the GDPR
- Impose a temporary or definitive limitation, including a ban on processing
- Power to impose administrative fines:
  - Major innovation for the Grand Duchy
  - Imposed in addition, or instead of, other corrective measures

Infringements can be subject to a max. administrative fine of up to 20 million EUR, or in the case of an undertaking, up to 4 % of the total worldwide annual turnover of the preceding financial year.

Legal remedies

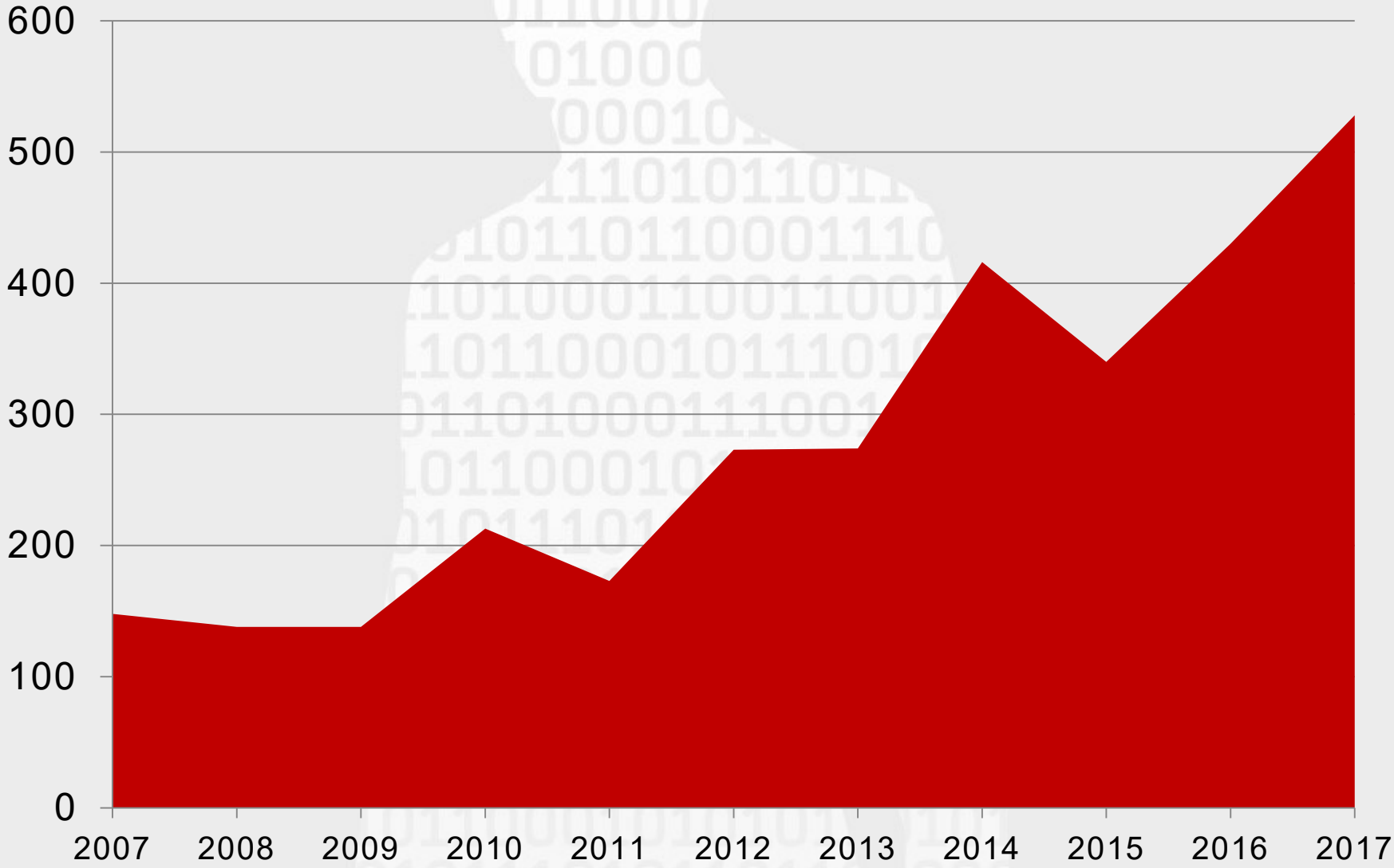
- Right for every data subject to lodge a complaint
  - with a supervisory authority of the MS of the data subject's habitual residence, place of work or place of the alleged infringement
- Right to an effective judicial remedy against a supervisory authority
  - against a legally binding decision concerning a data subject
  - against a failure to reply within 3 months
  - competence of the courts of the MS where the supervisory authority is established:
    - Competence of the Luxembourgish "*Tribunal administratif*" deciding on the merits of the case

Increase of complaints (2017)

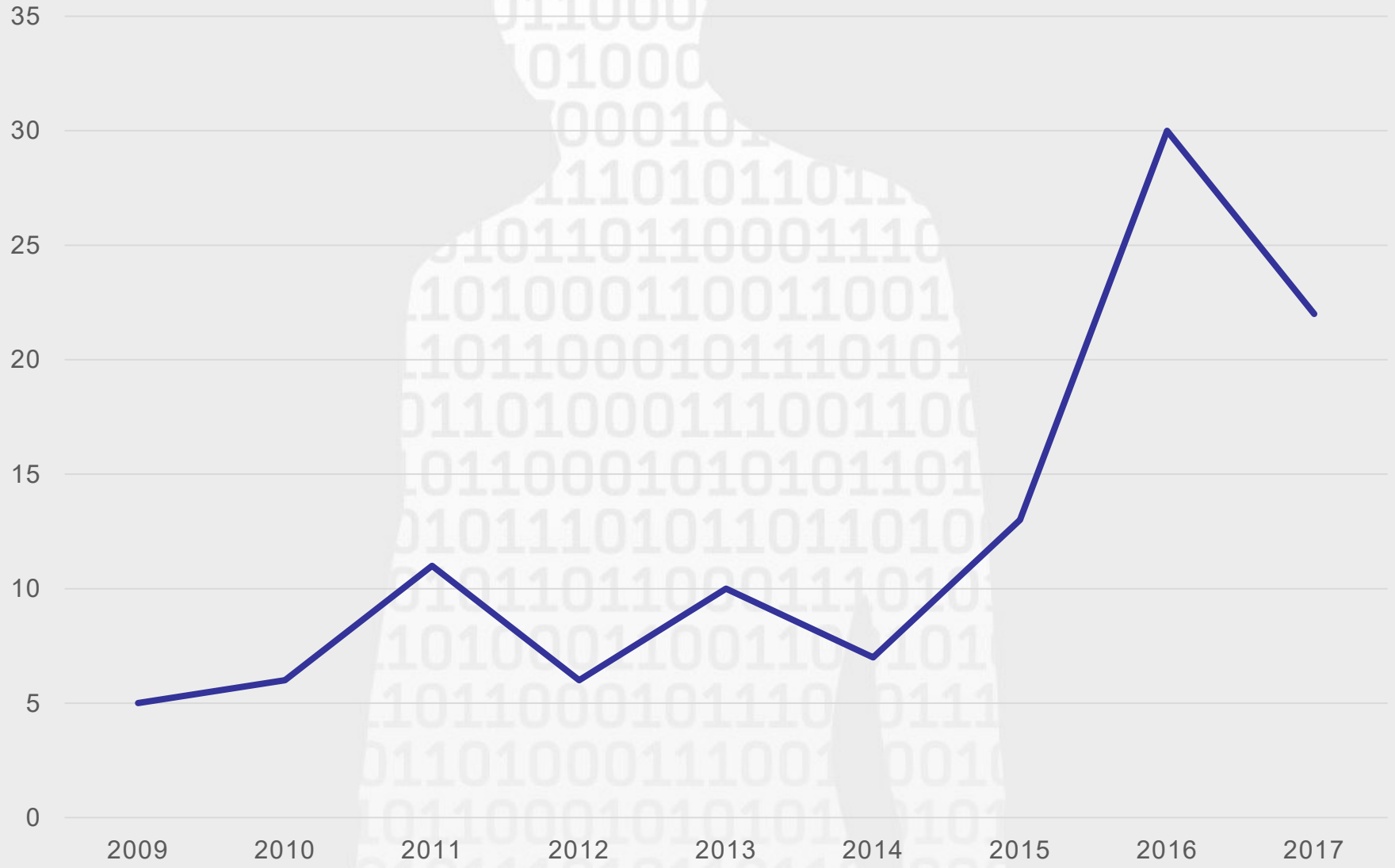


- Lawfulness of certain administrative/commercial practices (30%)
- Refusal of the data subject's right of access (13,5%)
- Illicit communication to third parties (18.5%)
- Supervision at the workplace / video-surveillance (12%)
- Requests of erasure or rectification of data (12%)
- Objection for marketing purposes (5%)
- Right to be forgotten (5%)
- Other (4%)

Increase of written information requests (2017)



Legal opinions (2017)



Initiation to data protection – 06-07/01/2018

Thank you for your attention!

Commission nationale pour la protection des données

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