

# Outline

1. Introduction
2. Basic elements
- 3. The rights of the data subjects**
4. The obligations of controllers and processors
5. The role of the CNPD

# Rights of the data subject



# Right to be informed



The data are collected	Directly	Indirectly
The identity and contact details of the controller (& representative, if applicable)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
The contact details of the DPO (if applicable)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
The purposes of the processing, the legal basis for the processing and the legitimate interests (if processing is founded on legitimate interest)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
The categories of personal data concerned		<input checked="" type="checkbox"/>
The recipients or categories of recipients of the personal data	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
The transfers of personal data to third countries (including safeguards)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
The storage duration (or, if impossible, the criteria used to determine that period)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
The rights of the DS	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
The rights to withdraw consent (if applicable)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
The right to lodge a complaint with a supervisory authority	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
The source of the personal data (incl. if from publicly accessible sources)		<input checked="" type="checkbox"/>
If there is a statutory or contractual requirement to provide the data, if the provision of the personal data is obligatory & possible consequences of a refusal	<input checked="" type="checkbox"/>	
If automated decision-making, incl. profiling, is used (if so, meaningful information about the logic, significance & envisaged consequences for the DS)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Further processing of the personal data	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

# Right to be informed

## Timeframe

- If the data are **collected directly** from the DS:
  - When the data are collected from the data subject
- If the data are **not collected directly** from the DS:
  - Within a reasonable time (max. 1 month) of the collection
  - If the data are collected to communicate with a DS or to transmit the data to another controller → during the first communication with the data subject / to the new controller

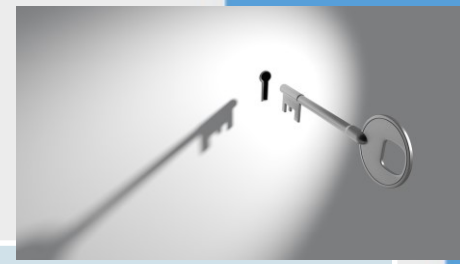
## Exceptions (direct)

- The DS already has the information

## Exceptions (indirect)

- The DS already has the information
- Impossible or disproportionate effort
- Collection or disclosure foreseen by law
- Professional secrecy

# Right of access



## Elements

The right to be informed whether or not their data are being processed and, if so, the right to access the data and to be informed about

- The purposes and the categories of personal data concerned
- The recipients (in particular in third countries)
- The storage duration (or the criteria used to determine that period)
- The DS rights, incl. the right to lodge a complaint with a DPA
- The source of the personal data (if collected indirectly)
- If automated decision-making, incl. profiling, is used (if so, meaningful information about the logic, the significance & consequences)

■ The right to receive a (free) copy of the personal data

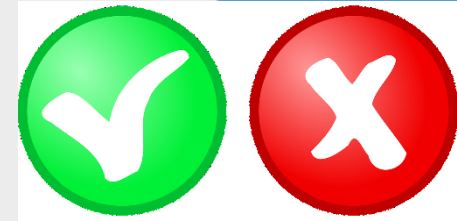
## Timeframe

- 
- Without undue delay and in any event within 1 month of the request (possible extension of 2 months)

## Exceptions

- 
- The right shall not adversely affect the rights and freedoms of others

# Right to rectification



## Elements

- The right to obtain the correction or completion of incomplete or incorrect data
  - Inaccurate data => rectification
  - Incomplete data => completion

## Timeframe

- Without undue delay and in any event within 1 month of the request (possible extension of 2 months)

## Notification

- Obligation to notify the rectification to each recipient to whom the data have been disclosed (unless impossible or disproportionate effort)
- Obligation to inform the DS of these recipients, at the request of the latter

# Right to erasure



## Elements

- The right to have personal data deleted without undue delay, if:
  - The data are no longer necessary
  - Withdrawal of consent
  - The DS exercises right to object
  - Unlawful processing
  - Legal obligation requiring deletion

## Timeframe

- Without undue delay and in any event within 1 month of the request (possible extension of 2 months)

## Exceptions

- The right of freedom of expression and information
- Compliance with a legal obligation
- Reasons of public interest in the area of public health
- Archiving purposes (in limited cases)
- The establishment, exercise or defence of legal claims

## Notification

- If the personal data have been made public, inform controllers that an erasure request has been made
- Obligation to notify the erasure to each recipient to whom the data have been disclosed (unless impossible or disproportionate effort)
- Obligation to inform the DS of these recipients, at the DS' request

# Right to restriction of processing

Content

- The right to obtain restriction of processing

When?

- Rectification request
- Objection request - unlawful processing
- Objection request - illegitimate interests
- Data is no longer necessary

Consequences:

- Storage period of data
- « Prohibited processing »



# Right to data portability

- The right to receive the personal data concerning him or her from the controller
- The right to transmit those data to another controller where technically feasible

# Right to data portability

Is it personal data concerning the data subject?

↓ Yes

No

Is the processing carried out by automated means?

↓ Yes

No

Is the legal basis for data collection consent or contract?

↓ Yes

No

Are the data provided by the data subject?

↓ Yes

No

Would the portability adversely affect the rights and freedoms of others?

↓ No

Yes

Data portability

← Assessment of the rights of all parties →

Data portability



# Right to object

The right to object

The right to object to processing of his or her personal data at **any time of the processing**

Conditions for exercise

The particular situation of the data subject  
+  
Legitimate interests of the controller, **OR**  
The performance of a task carried out in the public interest or in the exercise of official authority

Where the data are used for **marketing purposes, including profiling for direct marketing**

Exceptions

Compelling legitimate grounds of the controller, which override the rights of the DS

The establishment, exercise or defence of legal claims

Consequences and timeframe

Restriction pending the verification of the legitimate grounds and, if not valid, erasure, if requested by the data subject

Without undue delay and in any event within 1 month of the request (possible extension of 2 months)

The controller cannot use the data for marketing purposes

# Principle – Automated individual decision-making

- The right not to be subject to a decision...
- ...based solely on automated processing, including profiling...
- ...which produces legal effects...
- ...or similarly significantly affects the data subject.

# Legal bases – Automated individual decision-making

- The processing can be carried out if it is :
  - necessary for entering into or performance of a contract
  - authorised by Union or Luxemburgish law
  - based on the data subject's explicit consent

# Transparency and modalities



# Transparency and modalities

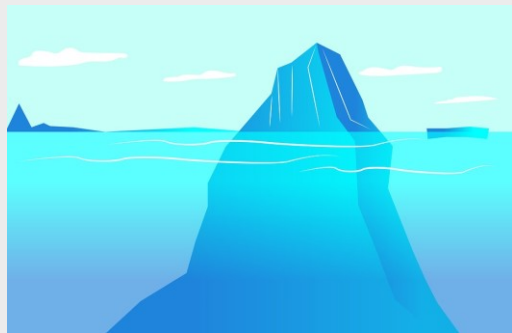
- Put in place **procedures and measures** to facilitate the exercise of data subjects' rights
  - Review information notices
    - ✓ Concise, transparent, easily understandable and accessible
    - ✓ Use clear and plain language
  - Review current procedures provided to data subjects to exercise right
    - ✓ Respect the strict deadlines
    - ✓ Provide easy access to information about processing and facilitate the exercise of rights
      - E.g. designate contact person / department incl. contact details
    - ✓ Technical and organisational measures
      - E.g. internal organisation, employee training, contracts with processing, IT systems, up-to-date list of recipients

# Transparency and modalities

- The exercise of the rights is free, unless the requests are manifestly unfounded or excessive (esp. due to their repetitive nature)
  - The request can be rejected or a fee can be charged
    - Burden of proof on the controller
    - Manifestly unfounded or excessive
      - Does not cover the overall cost of the controllers' processes
      - Concerns the requests made by one data subject
- “Customer-focused” approach:
  - prompt,
  - transparent and
  - easily understandable communication



# Transparency and modalities



Provide information on actions taken **without undue delay**

Information provided within max. 1 month

Information cannot be provided within 1 month:  
Inform DS of the extension **within 1 month of receipt of request** (with reasons for the delay) possible extension by 2 months

If no action is taken, inform DS **without undue delay** (max. within 1 month of receipt)  
Inform DS about right to lodge a complaint with the CNPD

# Remedies

## Right to lodge a complaint with the CNPD

- **WHERE?**

- Authority of his **habitual residence**,
  - Authority of his **place of work**,
  - Authority of the **place of the alleged infringement**.
- The supervisory authority shall inform the data subject within three months on the progress or outcome of the complaint lodged.

## Right to an effective judicial remedy against a supervisory authority

- Each natural or legal person has the right to an effective judicial remedy against a « **legally binding decision of a supervisory authority** concerning them » or a **failure to reply within three months**.
- The courts of the Member State where the supervisory authority is established are competent.

## Right to an effective judicial remedy against a controller or processor

- **Each data subject has the right to an effective judicial remedy** in case of an infringement of his rights against the controller or the processor (before the courts of the Member State where the data subject has his habitual residence or the Member State where the controller has an establishment).

# Remedies

## Right to compensation

Principle: compensation for material or non-material damage suffered by any person resulting from an infringement of the Regulation can be received from the controller or processor.

**Processor:** Non-compliance with the obligations of the GDPR OR where it acted outside or contrary to lawful instructions of the controller.

In case of responsibility of the controller and the processor : responsibility for the entire damage



A large, light gray silhouette of a person stands in the center of the slide. The background is filled with a pattern of binary code (0s and 1s) in a light gray color. The text "Thank you very much for your attention !" is centered over the silhouette in a dark blue font. The slide has a red vertical bar on the left and a blue vertical bar on the right.

**Thank you very much for your  
attention !**