

Information on the processing of personal data carried out by the National Data Protection Commission (CNPD) for the handling of complaints submitted under the provisions of the EU Commission's adequacy decision of 10 July 2023 regarding the United-States – field of the national security of the U.S.

1. Data controller

The National Data Protection Commission (CNPD) is the controller of the personal data processed for the handling of complaints lodged by the data subjects under the provisions of the adequacy decision of 10 July 2023 regarding the United-States¹ (hereinafter, the adequacy decision).

The contact details of the CNPD are the following:

National Data Protection Commission

15, Boulevard du Jazz

L-4370 Belvaux

Tél. : (+352) 26 10 60 - 1

Fax. : (+352) 26 10 60 - 6099

E-mail: info@cnpd.lu

2. Purposes of the processing and legal basis for the processing

The adequacy decision refers to a specific mechanism provided by US law for the handling of complaints of data subjects related to the field of signals intelligence (field of the national security of the U.S.).

This mechanism has been put in place in accordance with the Executive Order 14086 Enhancing Safeguards for United States Signals Intelligence Activities². This Executive Order defines the conditions under which a data subject can lodge a complaint concerning a processing of personal data that would have been carried by a US security agency in breach of US law regarding signals intelligence activities.

Recital 177 of the adequacy decision states that *“A Union data subject who wishes to lodge such a complaint must submit it to a supervisory authority in an EU Member State competent for the oversight of the processing of personal data by public authorities.”*

The complaint form available to this end on the CNPD's website has been established in cooperation with the data protection authorities of the Member States of the European Economic Area (EEA).

¹ Commission Implementing Decision EU 2023/1795 of 10 July 2023 pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council on the adequate level of protection of personal data under the EU-US Data Privacy Framework : <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32023D1795>

² <https://www.federalregister.gov/documents/2022/10/14/2022-22531/enhancing-safeguards-for-united-states-signals-intelligence-activities>

The implementation procedures are available on this page :

https://www.dni.gov/files/documents/ICD/ICD_126-Implementation-Procedures-for-SIGINT-Redress-Mechanism.pdf

The redress mechanism provides that the complaints must be transmitted by the competent authority in English. Therefore, if a complaint is submitted to the CNPD in another language, the complaint will be translated into English by the CNPD.

The processing of personal data carried out by the CNPD to handle a complaint submitted through the form available on its website is necessary for the performance of a task carried out in the public interest vested in the CNPD [Article 6.1.e) of the General Data Protection Regulation³].

3. Categories of personal data processed by the CNPD

The CNPD processes the personal data transmitted by the data subject via the complaint form, namely:

- **Identifying data and contact details:** surname and name, other names (where relevant), date and place of birth, title (where relevant), telephone number and residential address. The complainant also has the possibility to provide an e-mail address to facilitate exchanges with the CNPD.

A copy of an identity document (identity card, passport or driving license) is required by the CNPD to verify the identity of the complainant. This copy must be transmitted according to the indications contained in the complaint form⁴.

- **Subject matter of the complaint:** general description of the alleged infringement. This description does not require to demonstrate that the personal data was in fact collected by the U.S. intelligence agencies.
- **Additional information relating to the complaint:** point 2.b of the form allows the complainant to specify several aspects of the complaint. The complainant does not have to indicate which company has sent or otherwise made available the personal data to the U.S. nor does the complainant have to indicate which company has processed the personal data in the U.S. - unless such elements are available to the complainant when submitting the complaint. Furthermore, if unaware of such information, the complainant does not have to specify which US Government entity or entities are believed to be involved in accessing the personal data nor does the complainant have to indicate the specific means by which the personal data have been transferred or otherwise made available to the U.S.

4. Recipients

Commissioners and staff of the CNPD in charge of handling the complaints have access to the personal data collected through the complaint form available on the CNPD's website.

After verifying the complainant's identity and that the admissibility conditions are met, the CNPD will transmit the complaint (and the personal data contained within) to the Secretariat of the EDPB⁵.

³ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

⁴ Taking into account the risks associated to a communication via e-mail, where the copy of the identity document is not sent via post, the data subject should proceed as follows:

- Place the copy of the identity document in a ZIP file password protected and send the ZIP file to [e-mail à préciser].

- Then, contact the CNPD by phone [numéro à préciser] to communicate the password vocally.

⁵ The European Data Protection Board (EDPB) is an independent EU body composed of the representatives of national data protection supervisory authorities and of the European Data Protection Supervisor (EDPS).

The Secretariat of the EDPB will then transmit it to the U.S. authority competent to handle such complaint, namely the Office of the Director of National Intelligence's Civil Liberties Protection Officer ('CLPO'). These transmissions are carried out in a secure manner via encrypted communications.

If the CLPO considers that the complaint is admissible, the CLPO will transmit the following information to the Department of Commerce and the Data Protection Review Court (DPRC): identity of the complainant, public authority that transmitted the complaint (the CNPD) and the date when the qualifying complaint was transmitted to the CLPO. This transmission is carried out in a secure manner via encrypted communication. The Department of Commerce maintains a record of the complainant who submitted a complaint.

The CLPO informs the EDPB Secretariat of the outcome of the complaint, which will then transmit this information to the CNPD. The CNPD will then inform the complainant.

Complainants have the possibility to seek review of the CLPO's decision before the DPRC in the U.S.⁶ The request may be submitted directly to the CNPD. The request (and the personal data it contains) will then be transmitted to the DPRC via the Secretariat of the EDPB. The outcome of the review will be communicated to the complainant by the CNPD, in a translated version if needed.

The Department of Commerce verifies at least every five years whether information pertaining to a complaint related to signals intelligence activities has been declassified. If this is the case, the Department of Commerce will inform the Secretariat of the EDPB which will in turn inform the CNPD. The CNPD will then inform the complainant about the declassification and that such information may be available under applicable U.S. law, in particular the U.S. Freedom of Information Act.

5. Storage duration

Personal data are kept by the CNPD for a period of ten years from the date of the closing of the case. This retention period starts at the end of the applicable time-limit for requesting a review before the DPRC (60 days after receiving the notification from the ODNI CLPO).

If an application for review before the DPRC is introduced by the complainant, this period of ten years starts when the complainant is informed, by the CNPD, of the outcome of the review.

Finally, to allow the CNPD to inform the complainant in case of declassification of information pertaining to the complaint and if such declassification does not occur within the time period described above, the name, surname and contact details of the complainant can be kept by the CNPD for a longer time until the complainant is informed about the declassification.

In this context, it is the responsibility of complainants to keep the CNPD informed of any changes related to their contact details (for instance in case of change of residential address or of e-mail address).

6. Rights of the data subject

⁶ Recital 184 of the adequacy decision states: "Any complainant, as well as each element of the Intelligence Community, may seek review of the ODNI CLPO's decision before the Data Protection Review Court (DPRC). Such applications for review must be submitted within 60 days after receiving the notification from the ODNI CLPO that its review is complete and include any information the individual wishes to provide to the DPRC (e.g. arguments on questions of law or the application of law to the facts of the case)."

You have the right to access your personal data and to obtain a copy of them (Article 15 of the GDPR), to obtain the rectification of inaccurate or incomplete personal data (Article 16 of the GDPR), to object to the processing of your personal data under the conditions laid down in Article 21 of the GDPR, to obtain the erasure of your personal data under the conditions laid down in Article 17 of the GDPR, and to obtain the restriction of the processing under the conditions laid down in Article 18 of the GDPR.

For any queries regarding the exercise of your rights, you can contact the data protection officer (DPO) of the CNPD: dpo@cnpd.lu.

➤ *Information on the declassification of complaints by U.S. authorities:*

As mentioned above, the Department of Commerce verifies at least every five years whether information pertaining to a complaint related to signals intelligence activities has been declassified. If it is the case, such information may be available to the complainant under applicable U.S. law, in particular the U.S. Freedom of Information Act.

7. Complaint

If you consider that the processing of your personal data by the CNPD infringes the General Data Protection Regulation, you can lodge a [complaint with the CNPD](#).