

Rules of procedure of the National Data Protection Commission (CNPD)

Adopted by Decision No. 3AD/2020 of 22.01.2020, pursuant to Articles 32, paragraphs 1 and 33 of the Act of 1 August 2018 on the organisation of the National Data Protection Commission and the general data protection framework (hereinafter "the Act of 1 August 2018").

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Chapter 1—Operating conditions of the National Commission

Section I—Composition of the National Commission

Art. 1. Composition

The National Data Protection Commission (hereinafter referred to as the National Commission) is a collegial body composed of four Commissioners, including a President. Four deputy members are called to replace members of the college when they are absent or unable to attend.

For the purposes of these rules, Commissioners and deputy members shall be referred to jointly as “members” in the plural if all or more of the Commissioners and deputy members are affected, or “member” in the singular if one of the Commissioners or deputy members is concerned.

Art. 2. Independence, incompatibilities and impartiality of members of the National Commission

The members of the National Commission exercise their mandate independently without being exposed to pressure or influence of any kind.

According to Article 27 of the Act of 1 August 2018, members of the National Commission may not be members of the Government, of the Chamber of Deputies, of the Council of State or of the European Parliament, nor may they engage in any professional activity or directly or indirectly hold interests in a company or any other body operating in the field of data processing.

Any change during his term of office in the situation of a member of the National Commission which may give rise to the application of Article 27 above shall be brought to the attention of the National Commission by that member within one month.

The National Commission does not examine whether the exercise of these functions or the holding of such participations is compatible with the status of member of the National Commission, but communicates the information obtained to the Minister having relations with the National Data Protection Commission in its responsibilities in order to rule out any incompatibility on the part of a member of the National Commission.

The members cannot sit, deliberate or adopt decisions in a matter in which they have a direct or indirect interest. If a member of the National Commission considers himself to have a direct or indirect interest in a case, he must first notify the Commissioners of the National Commission. He refrains from attending the deliberation on this case and indicates his willingness not to participate upon reception of the notice.

The President then calls a deputy member who is called to sit and deliberate in replacement of the member who is prevented from this matter.

In the case referred to in paragraph 6 of this article, the National Commission shall accept and respect the member's choice without making a separate deliberation concerning the personal assessment made by the member.

In other cases, the National Commission shall prior to each decision, ascertain the cases of conflicts of interest which may be enforceable against its members and shall take such a decision by a majority of votes, since the member concerned is not excluded either from the relevant debates nor from the vote relating thereto. This shall be recorded in the minutes.

Art. 3. Replacement of the President

In the event of President's absence or conflict of interest, his or her duties shall be performed by the Commissioner with the greatest seniority and, in the event of equal seniority, by the eldest. The cause of the replacement is mentioned in the minutes. This replacement takes place without the need for specific delegation. In this case, a deputy member sits to replace the Commissioner chairing the deliberation session.

Section II — Operation of the National Commission

Art. 4. Headquarters of the National Commission

The offices of the National Data Protection Commission are established at its headquarters as determined by Grand Ducal Regulation pursuant to article 3 of the Act of 1 August 2018.

Art. 5. Daily business and external representation

Daily business and day-to-day management of the tasks and services of the National Commission are the responsibility of the President. The President ensures external contact and represents the National Commission at public events. The President regularly reports to the Commissioners about his/her activities during deliberation sessions.

A member of the National Commission, requested directly or indirectly to represent the National Commission at institutional level or in an event, shall request the President to be designated for that purpose.

Art. 6. Financial management

The financial management of the National Commission is the responsibility of the President, who has the authority to make commitments and sign on behalf of the National Commission constituted as public institution as part of everyday management.

Beyond a threshold to be determined by the National Commission, a second Commissioner countersigns the financial commitments made by the President.

Financial commitments exceeding a threshold to be determined by the National Commission require the joint signature of all Commissioners.

The National Commission may confer signature powers within the limits and in respect of the areas it determines to one or more of the Commissioners and/or members of its staff without, however, granting the latter the right to sub delegate these powers.

Section III – Deliberation sessions of the National Commission

Art. 7. Convening and agenda

The President shall convene the Commissioners at the deliberation sessions on the scheduled date and time. The President establishes the agenda.

A member who wishes to have an item on the agenda of the next meeting shall make the request to the President.

An item on the agenda may be referred to a future meeting. In order to ensure the proper functioning of the National Commission, the latter holds a meeting whenever necessary, at the convocation of the President or at the request of two Commissioners.

The President shall indicate, as far as possible, at the end of each deliberation session the day of the next session. The President may convene an ordinary session every week.

An extraordinary deliberation session will be held at the request of two Commissioners. This request shall be made either in writing to the President or at the deliberation session of the National Commission and shall specify the purpose of the meeting to be convened. The National Commission meets within fifteen days of the request.

Except in cases of urgency, as assessed by the President, the convening accompanied by the agenda and, to the extent possible, related supporting documents or a link to the related supporting documents shall be sent by electronic means or any other means to all Commissioners at least two working days before the date of the deliberation session.

If the supporting documents on the agenda have not been communicated in conjunction with the convening, it may exceptionally be communicated at a later stage to enable them to become acquainted with them.

The Commissioner who is absent or prevented from attending a deliberation session for reasons referred to in Article 2 shall notify the President as soon as possible. The latter provides for its immediate replacement.

Art. 8. Place of deliberation sessions

The sessions shall be held at the headquarters of the National Commission or at any other place on the national territory if otherwise decided. Members may participate in remote deliberations by means of teleconference or other technical means approved by the National Commission.

Art. 9. Quorum at deliberation sessions

The National Commission meets in plenary or in restricted committee. It may validly sit and deliberate only if at least three members of the college are present. Only Commissioners and deputy members sitting in replacement of a Commissioner shall have a deliberative vote.

The following subjects require the vote of the four members of the National Commission:

- 1) the decisions to be taken within the framework of Article 29 of the Act of 1 August 2018;
- 2) the adoption and subsequent amendments of the rules of procedure provided for in article 32 of the Act of 1 August 2018;
- 3) the adoption and subsequent amendments of the regulation on the investigation procedure before the National Commission provided for in article 40 of the Act of 1 August 2018;
- 4) the determination of the thresholds applicable to the financial management of the National Commission;
- 5) the authority to make commitments and to sign in the name and on behalf of the public institution constituted by the National Commission;
- 6) the allocation of services among the Commissioners pursuant to Article 23 of these rules of procedure;
- 7) the working procedures adopted pursuant to Articles 27 to 32 of this regulation.

The restricted committee of the National Commission is composed of three members, including the President who chairs over the deliberation session. The restricted committee is competent, in accordance with article 41 of the Act of 1 August 2018, to decide on the outcome of an investigation.

Art. 10. Conduct of the deliberations

1 ° Common provisions

The President opens and closes the sessions in which he/she leads the debates.

The participants in the deliberation session sign the attendance register.

The National Commission shall adopt the agenda at the beginning of each meeting. Any matter not on the agenda may be put for discussion only if at least a majority of the present members agree to consider it. In the event that new documents are presented at the meeting, the unanimous agreement of the sitting members is required to take it into account.

Decisions of the National Commission shall be taken by a majority vote. In the event of a tie, the President's vote is preponderant. Abstentions are not admissible.

Voting by proxy is not allowed. Votes shall be taken by show of hands, unless the President or two members of the National Commission request a secret ballot.

In case of urgency, as assessed by the President, the vote by correspondence shall be authorised.

Deliberation sessions are not public and the debates are confidential.

2° Provisions specific to sessions of deliberations in restricted committee

a) Deliberation relating to a proposal to close a file by the Head of Investigation

After having read the investigation file transmitted to the National Commission by the Head of Investigation together with a proposal for closure, and, where appropriate, after hearing the Head of Investigation, the National Commission sitting in restricted committee shall deliberate on the outcome of the investigation. Neither the Head of Investigation nor the Controlled take part in the deliberations. The National Commission sitting in restricted committee shall issue a final decision to close the case or, when it considers itself insufficiently informed, requests the Head of Investigation to proceed with further investigation.

B) Deliberation following a statement of objections

Following the transmission of the investigation file by the Head of Investigation, the President shall inform the Controlled of the date of the session in which the case is registered and of the opportunity offered to him or his/her representative to be heard, by registered letter with acknowledgment of receipt or by any means attesting the date of notification. This information shall be received at least one month before the date of the session at which the case is discussed. In the event of a re-examination or postponement of the case at a subsequent session, this minimum period may be reduced to seven days.

At the session, the Head of Investigation is invited to make oral observations on the case. Then when attending the session, the Controlled is invited to make oral observations. If it deemed necessary, the National Commission sitting in restricted committee may hear any person whose hearing it considers useful, including authorised agents who have participated in the investigation. In any case, the Controlled must be able to speak last. When the restricted committee estimates that it has been insufficiently informed, it may, where appropriate, request the Head of Investigation to proceed with further investigation.

Following the hearing of the Head of Investigation and the Controlled, the restricted committee deliberate on the case. Neither the Head of Investigation nor the Controlled take part in the deliberations.

Art. 11. Attendance at the sessions

The President invite any person belonging or not belonging to the services of the National Commission, whose presence appeared useful to the debates, to attend all or part of the session. These individuals participate in the sessions only in an advisory capacity. They are subject to the provisions of article 42 of the Act of 1 August 2018 on professional secrecy.

Art. 12. Decisions

The decisions of the National Commission are reasoned.

The decisions on the outcome of an investigation shall be signed by the chair of the restricted committee or by the Commissioner in the event of impediment. They are numbered with the indication of the current year and bear the date of their signature. They also mention the applicable remedies and time limits for appeal.

Other decisions of the National Commission shall be signed by the Commissioners or deputy members who participated in its deliberations. They shall be numbered and bear the date of the day of the National Commission's deliberation session.

Art. 13. Communication and publicity of the decision

The President shall notify the outcome of the investigation's decision to the Controlled by registered letter with acknowledgement of receipt.

Other decisions shall be communicated to interested parties by any appropriate means.

Without prejudice to the provisions of article 52 of the Act of 1 August 2018, the National Commission may decide, where it deems appropriate, to make public its decisions other than decisions on the outcome of the investigation, opinions and recommendations.

Art. 14. Minutes of the debates

The deliberation sessions shall be the subject of minutes containing a list of the members present, a summary of the recorded debates, the decisions taken by the National Commission and, where appropriate, an indication of the distribution of votes for each vote taken.

The opinions expressed and votes cast at a session are not documented by name, except when one of the members of the National Commission requests it.

The draft minutes are sent for approval to members who have deliberated. Only those members who attended the deliberation session reported on the draft minutes submitted for approval may require an amendment.

The approved minutes shall be signed by the Commissioners, the deputy members and the secretary of the deliberation session.

Art. 15. Secretary of the National Commission

The National Commission shall appoint one or more secretary(s) among its staff members.

The secretariat assists the President in the preparation of the deliberation sessions, attends the deliberation sessions and prepares the related minutes. He/she is in charge of sending it to the members of the National Commission.

Under the authority of the President, it shall ensure that the deadlines are respected and that the

procedures and rules applicable to the proper functioning of the National Commission are correctly applied.

The Secretary shall also keep a register of attendance, which, at the beginning of the sessions, shall be signed by the present members. It ensures the preservation and archiving of documents and minutes of the deliberation sessions of the National Commission.

In absence of the Secretary, the Commissioner or deputy member having the shortest seniority and, in the event of equal seniority, the youngest, shall draw up the minutes of the session.

Chapter 2 – Organisation of the services of the National Commission

Art. 16. General structure of the National Commission

The National Commission shall establish services, which shall be subdivided into units according to an organisation chart and the provisions of this Chapter.

The organisation chart includes the following services:

- a “Awareness” service;
- a “Guidance” service;
- a “Conformity” service;
- a “Complaints” service;
- an “Investigations” service and
- an “Administration” service.

The following functions are directly attached to the National Commission:

- the Secretary(s) of the College of the National Commission;
- the agent responsible for European and international relations;
- the Data Protection Officer.

Art. 17. “Awareness” Service

The Awareness service ensures external communication and awareness among the public, controllers and processors.

It manages the documentation of the National Commission while ensuring legal and technological

monitoring.

It monitors research and innovation projects in which the National Commission participates or provides support.

Art. 18. “Guidance” Service

The Guidance Service handles requests for information addressed to the National Commission and drafts legal opinions and thematic guidelines.

It also prepares authorisations for contractual clauses and administrative arrangements, and approvals of binding corporate rules, which shall be submitted to the National Commission in accordance with the procedures referred in Articles 31 and 32 of this Regulation.

Art. 19. “Compliance” Service

The “Compliance” Service is competent for the development and application of tools to facilitate the demonstration of compliance by processors and controllers, such as codes of conduct or certification.

It also prepares opinions on impact assessments relating to data protection.

Art. 20. “Complaints” Service

The “Complaints” Service is competent to manage complaints lodged before the National Commission, both at national level and within the framework of the European cooperation.

Art. 21. Investigations Service

The “Investigations” Service carries out the National Commission investigative powers and manages the processing of data breach notifications submitted to the National Commission.

Art. 22. “Administration” Service

The “Administration” Service is in charge of the reception desk the National Commission, which carries out the daily secretarial work.

It is also responsible for the management of human resources, as well as the budget and finances of the National Commission.

It also supervises IT and internal logistics issues.

Art. 23. Management of the services and missions of the National Commission

On the proposal of the President, the National Commission shall assign to each of the Commissioners one or more services for the exercise of the technical and administrative powers conferred to the National Commission by the Act of 1 August 2018.

Chapter 3 – Rules of procedure applicable to the National Commission

Art. 24. Notification of a violation of personal data

In accordance with Article 33 of Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (hereinafter referred to as the GDPR), data controllers must notify the National Commission of violations of personal data within 72 hours after they become aware whether the violation in question is likely to create a risk for the rights and freedoms of the persons concerned.

In accordance with Article 2 of Regulation (EU) No 611/2013 of the European Commission of 24 June 2013, electronic communications service providers accessible to the public shall notify the National Commission of any violations of personal data within 24 hours upon disclosure.

The National Commission makes specific notification forms available in the internet provided for that purpose.

Art. 25. Prior consultation

In accordance with Article 36 of the GDPR, a request for prior consultation may be referred to the National Commission by a data controller when the data protection impact assessment is carried out pursuant to Article 35 GDPR and it results that the processing would present a high residual risk

if the controller did not take measures to mitigate the risk.

For this purpose, the National Commission shall make available to the public on its website a form dedicated to the submission of such a request for prior consultation.

Art. 26. Notification of the designation of the Data Protection Officer

When a data controller or processor designates a data protection officer pursuant to Article 37(1) of the GDPR the National Commission shall make available on its website a dedicated form for the notification of the National Commission in relation to that designation in accordance with Article 37(7) of the GDPR.

Within one month of receipt of the notification of a designation of a data protection officer or of an amendment thereto, the National Commission shall verify that it contains all the required elements and shall send an acknowledgement of receipt to the controller or processor as well as to the designated Data Protection Officer. The deadline only starts from the moment the notification is complete.

Art. 27. Approval of Codes of Conduct

Associations and other bodies representing categories of controllers or processors intending to develop a code of conduct or to amend or extend an existing code of conduct shall submit the draft code, amendment or extension to the National Commission in accordance with Article 40(5) of the GDPR for national codes or in accordance with Article 40(7) of the GDPR for transnational codes. The National Commission shall give an opinion on whether the draft code, amendment or extension complies with the GDPR and approves the draft code of conduct, amendment or extension if it considers that it offers adequate safeguards.

Applications for approval of draft codes of conduct, amendments or extensions shall be submitted to the National Commission in writing.

When the amendments or extension of the draft code of conduct have been approved, the National Commission shall register and publish the code of conduct.

Art. 28. Approval of codes of conduct monitoring bodies

In accordance with Article 41(3) of the GDPR, the National Commission adopts criteria for the approval of approved codes of conduct of monitoring bodies. Bodies applying for accreditation as a

monitor compliance for a code of conduct approved under Article 41(1) of the GDPR shall submit their application to the National Commission. The National Commission will initiate the procedure for the accreditation of the applicant body based on the accreditation criteria adopted at the time of the application.

Art. 29. Approval of certification criteria

In accordance with Article 42 of the GDPR, the National Commission approves certification criteria aimed at demonstrating the conformity of data processing operations, implemented by data controllers and processors with respect to the GDPR.

The National Commission is also competent to have the European Seal approved for certification criteria by the European Data Protection Board in accordance with the consistency mechanism as set out in Article 63 of the GDPR.

Applications for approval shall be submitted to the National Commission in accordance with a procedure adopted and published on its website.

Art. 30. Accreditation of certification bodies

In accordance with Article 15 of the Act of 1 August 2018, the certification bodies referred to in Article 43(1) of the GDPR are approved by the National Commission.

Applications for approval shall be submitted to the National Commission in accordance with a procedure adopted by the National Commission and published on its website.

Art. 31. Authorisations of contractual clauses and administrative arrangements

Subject to the application of the consistency mechanism referred to in Article 63 of the GDPR, the National Commission may authorise in accordance with Article 46(3) of the GDPR:

1. contractual clauses between the controller or processor and the controller, processor or the recipient of the personal data in the third country or international organisation; or
2. provisions to be inserted into administrative arrangements between public authorities or bodies which include enforceable and effective data subject rights.

Applications for authorisation are submitted to the National Commission by writing and shall follow the procedures described in the working documents issued by the European Data Protection Board

in accordance with the GDPR.

Art. 32. Approval of binding corporate rules

Under Article 47 of the GDPR, the National Commission shall approve binding corporate rules in accordance with the consistency mechanism set out in Article 63 of the GDPR.

Applications for approval are submitted to the National Commission by writing and shall follow the procedures described in the working documents issued by the European Data Protection Board in accordance with the GDPR.

Art. 33. Introduction of a complaint

The complaints are brought before the National Commission and processed in accordance with a procedure adopted by the National Commission and published on its website.

Art. 34. Requests for prior notice under Article L.261-1 of the Labour Code

When the National Commission has been requested to deliver an opinion referred to in article L.261-1, paragraph (4) of the Labour Code, it shall deliver its opinion within one month of the referral. The time limit starts from the moment the request file for an opinion is complete.

Art. 35. Investigations

The investigation procedure is described in the Regulation on the investigation procedure pursuant to article 40 of the Act of 1 August 2018.

Art. 36. Remedies

Subject to the provisions of the Act of 1 August 2018, the rules laid down by the Grand Ducal Regulation of 8 June 1979 on the procedure to be followed by the State and municipal administrations apply to all individual administrative decisions issued by the National Commission for which a particular text does not provide a special procedure with at least equivalent guarantees for the citizen in accordance with Article 4 of the Act of 1 December 1978 regulating the

Please note that the English version of the rules of procedure is an unofficial translation. In case of any inconsistency between the English and French texts, the text in the French language shall prevail.

noncontentious administrative procedure.

Chapter 4 – Final Provisions

Art. 37. Amendment of the Regulation

Amendments to these Rules of Procedure may be proposed by the President or a Commissioner. Any amendments to the Rules of Procedure must be adopted unanimously.

Art. 38. Entry into force and publication

These Rules of Procedure shall enter into force on the day of their signature.

The rules of procedure and subsequent amendments are published in the Official Journal of the Grand Duchy of Luxembourg and on the website of the National Commission.

Art. 39. Abrogation

The rules of procedure approved by the National Commission of 29 November 2002 are hereby repealed.

Thus decided unanimously at Esch-sur-Alzette on 22 January 2020.

The National Data Protection Commission

			
Tine A. Larsen Présidente	Thierry Lallemand Commissaire	Christophe Buschmann Commissaire	Marc Lemmer Commissaire