

# Procedure for complaints before the National Data Protection Commission (CNPD)

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## Art. 1 General provisions

Complaints under articles 77 and 80 of the GDPR and articles 44 and 46 of the Act of 1 August 2018 on the protection of natural persons with regard to the processing of personal data in criminal matters and in matters of national security are handled by the services of the National Data Protection Commission (hereinafter “CNPD” or “National Commission”) in accordance with the procedures described below.

In the course of the procedure of complaint, the CNPD first examines whether a complaint is justified, i.e. it checks whether the facts alleged by the claimant relating to the processing of personal data are likely or not to constitute a violation of the applicable data protection legislation. Where the CNPD considers that the challenged processing of data would indeed be contrary to applicable law, it will use its best endeavours to remedy the situation without making use of the binding measures entrusted within the framework of its powers conferred by law.

## Art. 2 Modalities of referral

A complaint to the CNPD may be lodged electronically or by post mail.

In order to facilitate the filing of a complaint and in accordance with article 9 of the Act of 1 August 2018 on the organisation of the National Data Protection Commission and the general data protection framework, the CNPD provides a complaint form which is available online on the website of the National Commission.

An acknowledgement of receipt, indicating a reference to the complaint, shall be issued to the claimant within 10 working days. The acknowledgement of receipt is issued without prejudice to CNPD’s competence or on the admissibility of the complaint.

## Art. 3 Opportunity for action

The CNPD benefits of the opportunity for action<sup>1</sup>. It thus assesses on a discretionary basis whether or not a complaint shall be investigated. Depending on the characteristics of each complaint, the CNPD may decide not to investigate a complaint, taking into account, inter alia, the degree of

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<sup>1</sup>See the opinion of the Council of State of 26 June 2018; Doc. Parl.NO. 7184/28

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severity 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 overall number of complaints and resources available. In such cases, it shall proceed in accordance with Article 9(1) of this procedure.

#### **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/her by Articles 12 to 22 of the GDPR and by Articles 11 to 15 of the Act of 1 August 2018 on the protection of natural persons with regard to the processing of personal data in criminal matters and in matters of national security, and the claimant himself has not sought to exercise his rights directly with the controller in question, the CNPD shall send an e-mail or mail informing him on the steps to take, prior to any referral to the CNPD.

#### **Art. 5 Competence of the CNPD**

The Complaints Service of the CNPD examines, in the light of the data protection legislation, whether the CNPD is materially and territorially competent to process the complaint.

Where a complaint relates to the processing of personal data carried out by the courts of the judicial system, including the Public Prosecutor's Office, and of the Administrative Tribunal in the performance of their judicial functions, the complaint shall be transferred to competent judicial authority, pursuant to article 44 (4) of the Act 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 claimant is informed about such transfer.

#### **Art. 6 Admissibility of a complaint and competence of the CNPD**

The Complaint Service of the CNPD examines whether the complaint is admissible.

A complaint shall be admissible only when the following cumulatively requirements are met, namely when:

- the complaint is lodged by a natural person concerned, in accordance with Article 77 of the GDPR, or by an organisation, an association or non-profit organisation, under the terms of Article 80 of the GDPR, or in accordance with Articles 44 and 46 of the Act of 1 August

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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 shall be drafted in Luxembourgish, French or German language (including the documents attached and evidencing the facts described in the complaint);
- the complaint makes it possible to identify the author, i.e. that it contains at least his family and first name or business name and mailing address;
- the complaint identifies the controller or processor in question;
- the complaint contains sufficient information (including copies of all documents attesting to the facts alleged in the complaint) to identify the processing of challenged data which may constitute a violation of the data protection rules;
- the very subject-matter of the complaint is not simultaneously the subject of proceedings before a court or proceedings referred to in Article 47(5) and (6) of the Act of 1 August 2018 on the protection of natural persons with regard to the processing of personal data in criminal matters and in matters of national security.

The CNPD may request the claimant, within a time limit set by the CNPD, to provide him with any additional documents or information that it deems useful in considering whether the complaint is admissible. If the claimant fails to respond within the time limit, the CNPD informs the claimant that it will not respond to his complaint.

In the event that a complaint is inadmissible, the services of the CNPD shall inform the claimant by specifying the criterion(s) of inadmissibility.

Where a claim is manifestly unfounded or excessive, the CNPD may refuse to respond to the request in accordance with Article 57(4) of the GDPR.

Anonymous complaints are in principle closed without further action. Exceptionally, depending on the seriousness and impact on the individuals concerned of the reported events, the college of the CNPD may decide to examine the items that are the subject of an anonymous report.

## **Art. 7 Control of the validity of a complaint**

When a complaint is admissible, the Complaint Service of the CNPD analyses whether the subject-matter of the complaint is likely to be resolved without the initiation of an investigation procedure.

The facts alleged in the complaint are then communicated to the controller in question, in order to provide any explanations he deems useful. Such exchanges may take place by any means.

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By way of derogation from the preceding paragraph, the subject-matter of the complaint may not be communicated to the controller or processor if the college of the CNPD has decided to conduct an investigation and, in particular, an on-the-spot investigation, not previously announced in order to ascertain directly the facts reported, in accordance with the rules laid down in the regulation of the CNPD relating to the investigation procedure.

The identity of the claimant shall not be communicated to the controller or processor, unless it is indispensable for the processing of the complaint.

Throughout the analysis of the file, the Complaints Service of the CNPD may request the controller, the processor or the claimant to provide additional information, documents or explanations and to take a position on the facts and opinions of the other party or on the opinion of the CNPD.

Any letter addressed to the controller, processor or claimant shall indicate the time limit within which the response is due.

After assessment, the CNPD concludes that the complaint is wholly or partly substantiated, it shall invite the controller or processor, either to take the steps it indicates to comply with the legal provisions within a time limit set by it, or to inform it within the same time limit of the reasons why it does not intend to implement the measures indicated. The CNPD shall inform the controller or processor that it will be able to initiate a formal investigation procedure against him if the measures are not implemented within the specified time limit.

The CNPD informs the claimant of the outcome of his complaint.

Whenever, after assessment, the CNPD concludes that the complaint is unfounded, it informs the parties of the complaint by mail containing the statement of reasons.

## **Art. 8 Triggering of an investigation procedure following the analysis of a complaint**

The college of the CNPD may at any time in the procedure for the analysis of a complaint decide to initiate a formal investigation procedure in accordance with articles 37 to 41 of the Act of 1 August 2018 on the organisation of the National Data Protection Commission and the general data protection framework and the rules laid down in the regulation of the CNPD relating to the investigation procedure.

In such a case, in accordance with Article 8 (2) of the regulation of the CNPD on the investigation procedure, the head of investigation and the authorised agents shall take into account the background retroacts of the investigation of the complaint. Thus, the information, documents and position statements of the claimant and the controlled are part of the investigation file.

## **Art. 9 Classification or closure of a case**

The CNPD may decide:

- (1) to close a case on the basis of Article 3 of this procedure,
- (2) to close a case at the end of the investigation of the complaint pursuant to Article 7 of this procedure.

In these cases, the CNPD shall notify the claimant of its classification or closure decision and inform him that he may, as appropriate, pursuant to article 78 of the GDPR, article 55 of the Act of 1 August 2018 on the organisation of the National Commission for Data Protection and the general data protection framework or Article 45 (2) of the Act 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, lodge an amendment appeal with the Administrative Court within 3 months as from the date of notification.

## **Art. 10 Processing time of a complaint**

The CNPD uses its best endeavors to process the complaints without undue delay. However, the processing time of a complaint may vary depending on:

- the complexity of the complaint,
- the cross-border nature of the complaint involving the European co-operation and coherence Mechanism,
- the responses provided by the controller, the subcontractor or the claimant,
- the actions taken by the National Commission in the context of the processing of the complaint,
- the number of complaints filed with the CNPD and the available resources.

If the data subject wishes to be informed of the status of his or her current complaint with the National Commission, he or she may contact the CNPD by electronic or postal means by mentioning the reference given by the CNPD to his claim. The CNPD reserves the right not to respond to a request on state of a complaint that would be made within two months of the date of submission of the complaint.

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Thus decided unanimously in Belvaux, on 16 October 2020

The National Data Protection Commission



Tine A. Larsen  
Présidente



Thierry Lallemand  
Commissaire



Christophe Buschmann  
Commissaire



Marc Lemmer  
Commissaire