



ADOPTION OF RULES OF PROCEDURE GOVERNING DAWNRAIDS BY THE LUXEMBOURG DATA PROTECTION AUTHORITY.

On 22 January 2020, the Luxembourg data protection authority ("CNPD") adopted two set of rules: Internal regulations and regulations on the CNPD's investigations and audits.

Key points

- New framework governing the CNPD's investigation and audits
- Compliance with the adversarial principle
- Investigative powers might be challenged before Luxembourg courts

CONTEXT

On the same day, the CNPD adopted **internal regulations**, which determine operating conditions for the CNPD, the organisation of the services of the CNPD, as well as the procedures applicable before the CNPD in a certain number of listed cases (the "**Internal Regulations**") and **rules of procedures**, which will govern its investigations and audits (the "**Rules of Procedures**"). The two sets of rules are based on the law of 1 August 2018 on the organization of the CNPD and the general data protection framework ("**Law of 1 August 2018**").

We will focus in this briefing on the adoption of the Rules of Procedures which seems of particular interest to us given the number of investigations and audits conducted by the CNPD since the coming into force of the General Data Protection Regulation (2016/679) ("**GDPR**") on 25 May 2018.

Pursuant to article 58 (1) of the GDPR and section VIII of the Law of 1 August 2018, the CNPD has been granted with investigative powers to ensure the enforcement of the data protection legislation (including the GDPR).

The Rules of Procedures have been adopted in accordance with article 40 of the Law of 1 August 2018, which requires compliance with the adversarial principle.

CONTENT

The Rules of Procedures define in particular:

- the conditions for the initiation of an investigation or audit (which can happen at any moment);
- the main actors involved in the procedure (head of investigation, authorized agents, external experts);
- the main steps of the investigation process (mission order, prior information (or not) of the company under investigation, investigative measures concerning *inter alia* access to the premises / documents / computer programs, report of the investigation);
- the statement of objections by the CNPD to the company under investigation (it shall be noted that the adversarial principle will be complied with to the extent the company may address written comments to the head of investigation at the CNPD);
- the conditions under which the company under investigation can access the investigation file; and

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- once the investigation/audit is closed, the deliberation process (conducted in accordance with the principles set out in the Internal Regulations) which may lead to administrative sanctions and/or other penalties as provided for under the GDPR.

In the past months, the CNPD conducted a number of investigations and verifications notably concerning the role of data protection officers and the adequacy of CCTV systems. The year 2020 will undoubtedly be the year of the first GDPR sanctions in Luxembourg.

Although the adoption of the Rules of Procedures is welcome, it goes without saying that in case of sanctions, some data controllers might be tempted to question before the Luxembourg courts the validity of the investigations carried out by the CNPD and the sanctions that would be imposed. Already at the time of the adoption of Bill 7168, which gave rise to the law of 1 August 2018, some voices were raised to criticise the legal guarantees surrounding the CNPD's investigative powers.

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