

LUXEMBOURG

FRANET Contractor

Ad Hoc Information Report

Data protection: Redress mechanisms and their use

2012

National commission for data protection (Commission nationale pour la protection des données, NCDP, CNPD)

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Etudes et Formation

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Mapping of Redress mechanisms in the area of data protection

Redress Mechanism Number	Type of possible outcomes of procedure	First Instance	Total Number of times this procedure was initiated in 2009 (please provide source of information in footnote)	Total Number of times this procedure was initiated in 2010 (please provide source of information in footnote)	Total Number of times this procedure was initiated in 2011 (please provide source of information in footnote)
1. Lawfulness check/complaint	Cf. outcomes of redress mechanisms numbers 3 to 13	DPA	133 ¹	145 ²	115 ³
2. Investigative powers	Cf. outcomes of redress mechanisms numbers 3 to 13	DPA	10 ⁴	5 ⁵	6 ⁶
3. Access right	Access/refusal of access to data – Rectification, deletion or blocking of data	DPA	40 ⁷	43 ⁸	25 ⁹
4. Right to object	Data cannot be processed	DPA	0 ¹⁰	0 ¹¹	0 ¹²
5. Right to object	Marketing data cannot be processed	DPA	8 ¹³	12 ¹⁴	11 ¹⁵

¹ Annual Report 2009, Luxembourgish DPA (CNPD), p. 14

² Annual Report 2010, CNPD, p. 12

³ Annual Report 2011, CNPD, p. 19

⁴ CNPD

⁵ CNPD

⁶ CNPD

⁷ CNPD

CNPD

⁹ CNPD

¹⁰ CNPD

¹¹ CNPD

¹² CNPD

¹³ CNPD

¹⁴ CNPD

¹⁵ CNPD

6. Administrative Sanctions	Written notice or reprimand	DPA	0¹⁶	1¹⁷	0¹⁸
7. Administrative Sanctions	Rectification, deletion or blocking of data	DPA	0¹⁹	0²⁰	0²¹
8. Administrative Sanctions	Temporary or definite interdiction of processing	DPA	0²²	1²³	0²⁴
9. Administrative Sanctions	Publication of the interdiction decision	DPA	0²⁵	0²⁶	0²⁷
10. Administrative sanctions (telecom sector)	Reprimand	DPA	0²⁸	0²⁹	0³⁰
11. Administrative sanctions (telecom sector)	Fine	DPA	0³¹	0³²	0³³
12. Access right	Imprisonment 8 days to 1 year and/or fine 251 – 125.000 EUR	Criminal court	No data available³⁴	No data available³⁵	No data available³⁶
13. Right to object	Imprisonment 8 days to 1 year and/or fine 251 –	Criminal court	No data available³⁷	No data available³⁸	No data available³⁹

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	125.000 EUR				
14. Administrative sanctions (telecom sector)	Imprisonment 8 days to 1 year and/or fine 251 – 125.000 EUR	Criminal court	0⁴⁰	0⁴¹	0⁴²
15. Action to restrain/stop	Stop of processing of data	Civil court	No data available⁴³	No data available⁴⁴	No data available⁴⁵
16. Action to restrain/stop	Publication of the order to restrain/stop	Civil court	No data available⁴⁶	No data available⁴⁷	No data available⁴⁸
17. Compensation	Civil compensation	Civil court	No data available⁴⁹	No data available⁵⁰	No data available⁵¹

⁴⁰ CNPD
⁴¹ CNPD
⁴² CNPD
⁴³ CNPD
⁴⁴ CNPD
⁴⁵ CNPD
⁴⁶ CNPD
⁴⁷ CNPD
⁴⁸ CNPD
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⁵⁰ CNPD
⁵¹ CNPD

Detailed information

Ad Redress Mechanism Number 1 (**Lawfulness check/complaint**):

- Range of possible outcomes: cf. redress mechanisms 1 to 13 hereafter (i.e. in case of a lawfulness check, the DPA has powers to take diverse actions, as set out hereafter)
- Legal basis: Art. 32 para. (5)
- Type of procedure: administrative (DPA)
- Possibilities of appeal: administrative court and administrative court of appeal
- Burden of proof: data controller needs to prove respect of the legal provisions
- Available mechanism to lower the burden of proof: none
- Requirement of legal representation: complainant can initiate procedure on his own
- Is there free legal advice/representation available from a public body : DPA
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure: DPA
- Cost of procedure: free
- Average duration of procedure: 1-3 months
- Outcomes for 2009, 2010, 2011: 133 complaints have been handled and solved by the DPA in 2009, 145 in 2012 and 115 in 2011.

Ad Redress Mechanism Number 2 (**Investigative powers**):

- Range of possible outcomes: Procedure based either on a complaint or a self-initiated procedure (“*auto-saisine*”) by the DPA. Outcomes: cf. redress mechanisms 1 to 13 hereafter (i.e. in case of its investigative powers, the DPA can take diverse actions, as set out hereafter)
- Legal basis: Art. 39 para. (7)
- Type of procedure: administrative (DPA)
- Possibilities of appeal: administrative court and administrative court of appeal
- Burden of proof: data controller needs to prove respect of the legal provisions
- Available mechanism to lower the burden of proof: none
- Requirement of legal representation: complainant can initiate procedure on his own
- Is there free legal advice/representation available from a public body : no data available
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure: DPA
- Cost of procedure: free
- Average duration of procedure: 1-3 months
- Outcomes for 2009, 2010, 2011: the DPA used its investigative powers in 10 cases in 2009, 5 in 2010 and 6 in 2011. Investigations have been carried out either via on-the-spot investigations or via a written procedure, depending on the case.

Ad Redress Mechanism Number 3 (**Access to data through the DPA**):

- Range of possible outcomes: In case a complainant is not granted access to his data by the data controller or if there appears to be non-compliance to the provisions of the law, the complainant can seize the DPA, which shall proceed to all the necessary verifications in that matter. Data may be (if applicable) rectified, deleted or blocked, through a decision taken by the DPA.
- Legal basis: Art. 28 para. (5) ; art 32 paras. (3) to (7) of the law.
- Type of procedure: administrative (DPA)
- Possibilities of appeal: administrative court and administrative court of appeal in case the DPA takes a decision towards the data controller
- Burden of proof: refusal of access / non-compliance

- Available mechanism to lower the burden of proof: none
- Requirement of legal representation: complainant can initiate procedure on his own
- Is there free legal advice/representation available from a public body: DPA
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure: DPA
- Cost of procedure: free
- Average duration of procedure: 1-3 months
- Outcomes for 2009, 2010, 2011: there were 40 cases in 2009 where the DPA had to intervene in case of access right, 43 in 2010 and 25 in 2011. In each case, the problem was resolved after intervention of the DPA.

Ad Redress Mechanism Number 4 (Non-respect of access right leading to criminal prosecution):

- Range of possible outcomes: Imprisonment of 8 days to 1 year and/or fine of 251 to 125.000 EUR
- Legal basis: art. 28 para. (2); art. 28 para. (7).
- Type of procedure: criminal procedure (judicial instance)
- Possibilities of appeal: 2nd instance (court of appeals) and 3rd instance (supreme court of appeals)
- Burden of proof: non-respect of access right OR non-compliance to the law (proven by the public ministry)
- Available mechanism to lower the burden of proof: none
- Requirement of legal representation: complainant initiates procedure through his criminal complaint or the DPA forwards the case to the Public Ministry. But the Public Ministry has the opportunity to pursue the case or not.
- Is there free legal advice/representation available from a public body: no
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure: DPA may intervene as party (if DPA continued the complaint to the public ministry)
- Cost of procedure: no data available
- Average duration of procedure: no data available
- Outcomes for 2009, 2010, 2011: no data available

Ad Redress Mechanism Number 5 (Right to object):

- Range of possible outcomes: if objection is justified, those data cannot be processed anymore by the data controller
- Legal basis: art. 30 para. (1).
- Type of procedure: administrative (DPA)
- Possibilities of appeal: administrative court and administrative court of appeal in case the DPA takes a decision towards the data controller
- Burden of proof: prove the compelling and legitimate reasons relating to the complainants special situation
- Available mechanism to lower the burden of proof: none
- Requirement of legal representation: complainant can initiate procedure on his own
- Is there free legal advice/representation available from a public body: DPA
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure: DPA
- Cost of procedure: free
- Average duration of procedure: 1-3 months at DPA level
- Outcomes for 2009, 2010, 2011: 0

Ad Redress Mechanism Number 6 (**Right to object**):

- Range of possible outcomes: if objection is justified, marketing data cannot be processed anymore by the data controller
- Legal basis: art. 30 para. (2).
- Type of procedure: administrative (DPA)
- Possibilities of appeal: administrative court and administrative court of appeal in case the DPA takes a decision towards the data controller
- Burden of proof: the data processor must prove that he has informed the concerned persons of their objection right
- Available mechanism to lower the burden of proof: none
- Requirement of legal representation: complainant can initiate procedure on his own
- Is there free legal advice/representation available from a public body: DPA
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure: DPA
- Cost of procedure: free
- Average duration of procedure: 1-3 months at DPA level
- Outcomes for 2009, 2010, 2011: the DPA handled 8 cases of objections to marketing in 2009, 12 in 2010 and 11 in 2011.

Ad Redress Mechanism Number 7 (**Non-respect of right to object leading to criminal prosecution**):

- Range of possible outcomes: Imprisonment of 8 days to 1 year and/or fine of 251 to 125.000 EUR
- Legal basis: art. 31 para. (2).
- Type of procedure: criminal procedure (judicial instance)
- Possibilities of appeal: 2nd instance (court of appeals) and 3rd instance (supreme court of appeals)
- Burden of proof: non-respect of opposition right
- Available mechanism to lower the burden of proof: none
- Requirement of legal representation: complainant initiates procedure through his criminal complaint or the DPA forwards the case to the Public Ministry. But the Public Ministry has the opportunity to pursue the case or not.
- Is there free legal advice/representation available from a public body: no
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure: DPA may intervene as party (if DPA continued the complaint to the public ministry)
- Cost of procedure: no data available
- Average duration of procedure: no data available
- Outcomes for 2009, 2010, 2011: no data available

Ad Redress Mechanism Number 8 (**Administrative/disciplinary sanctions**):

- Range of possible outcomes : Written notice (i.e. warning) or reprimand through a decision of the DPA
- Legal basis: Art. 33 para. (a)
- Type of procedure: administrative (DPA)
- Possibilities of appeal: administrative court and administrative court of appeal
- Burden of proof: decision by the DPA to apply the administrative sanction or not
- Available mechanism to lower the burden of proof: none
- Requirement of legal representation: complainant can initiate procedure on his own
- Is there free legal advice/representation available from a public body : DPA
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure? DPA

- Cost of procedure: DPA procedure is free, but if an administrative recourse is chosen, legal representation is mandatory
- Average duration of procedure: 1-3 months
- Outcomes for 2009, 2010, 2011: there was one case in 2010 where a reprimand was pronounced by the DPA, after being informed that a data has been wrongly disclosed to a third party.

Ad Redress Mechanism Number 9 (**Administrative/disciplinary sanctions**):

- Range of possible outcomes : Rectification, deletion or blocking of data through a decision of the DPA
- Legal basis: Art. 33 para. (b)
- Type of procedure: administrative (DPA)
- Possibilities of appeal: administrative court and administrative court of appeal
- Burden of proof: decision by the DPA to apply the administrative sanction or not
- Available mechanism to lower the burden of proof: none
- Requirement of legal representation: complainant can initiate procedure on his own
- Is there free legal advice/representation available from a public body : DPA
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure? DPA
- Cost of procedure: DPA procedure is free, but if an administrative recourse is chosen, legal representation is mandatory
- Average duration of procedure: 1-3 months
- Outcomes for 2009, 2010, 2011: 0

Ad Redress Mechanism Number 10 (**Administrative/disciplinary sanctions**):

- Range of possible outcomes : Temporary or definite interdiction of processing through a decision of the DPA
- Legal basis: Art. 33 para. (c)
- Type of procedure: administrative (DPA)
- Possibilities of appeal: administrative court and administrative court of appeal
- Burden of proof: decision by the DPA to apply the administrative sanction or not
- Available mechanism to lower the burden of proof: none
- Requirement of legal representation: complainant can initiate procedure on his own
- Is there free legal advice/representation available from a public body : DPA
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure? DPA
- Cost of procedure: DPA procedure is free, but if an administrative recourse is chosen, legal representation is mandatory
- Average duration of procedure: 1-3 months
- Outcomes for 2009, 2010, 2011: the DPA pronounced one interdiction to process data on the entire national territory in 2010.

Ad Redress Mechanism Number 11 (**Administrative/disciplinary sanctions**):

- Range of possible outcomes : Order to publish the interdiction decision at the expense of the infringer through a decision of the DPA
- Legal basis: Art. 33 para. (d)
- Type of procedure: administrative (DPA)
- Possibilities of appeal: administrative court and administrative court of appeal
- Burden of proof: decision by the DPA to apply the administrative sanction or not
- Available mechanism to lower the burden of proof: none
- Requirement of legal representation: complainant can initiate procedure on his own
- Is there free legal advice/representation available from a public body : DPA

- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure? DPA
- Cost of procedure: DPA procedure is free, but if an administrative recourse is chosen, legal representation is mandatory
- Average duration of procedure: 1-3 months at DPA level
- Outcomes for 2009, 2010, 2011: 0

Ad Redress Mechanism Number 12 (**Action to restrain/stop**):

- Range of possible outcomes: judicial order to stop a data processing and/or judicial order pertaining to a temporary suspension or closing-down of activity. The concerned person, the DPA or the Public Ministry can each launch this procedure.
- Legal basis: Art. 39
- Type of procedure: judicial (civil)
- Possibilities of appeal: : 2nd instance (court of appeals) and 3rd instance (supreme court of appeals)
- Burden of proof: if complainant is the DPA, the non-respect of an administrative sanction taken by the DPA needs to be proven
- Available mechanism to lower the burden of proof: none
- Requirement of legal representation: legal representation is necessary depending on who brought the case before court
- Is there free legal advice/representation available from a public body : no data available
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure: DPA
- Cost of procedure: no data available
- Average duration of procedure: no data available
- Outcomes for 2009, 2010, 2011 : 0

Ad Redress Mechanism Number 13 (**Action to restrain/stop**):

- Range of possible outcomes: judicial order to publish the decision to restrain/stop the processing.
- Legal basis: Art. 39 para. (5)
- Type of procedure: judicial (civil)
- Possibilities of appeal: 2nd instance (court of appeals) and 3rd instance (supreme court of appeals)
- Burden of proof: if complainant is the DPA, the non-respect of an administrative sanction needs to be proven
- Available mechanism to lower the burden of proof: none
- Requirement of legal representation: : legal representation is necessary depending on who brought the case before court
- Is there free legal advice/representation available from a public body : no data available
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure: DPA
- Cost of procedure: no data available
- Average duration of procedure: no data available
- Outcomes for 2009, 2010, 2011 : 0

Ad Redress Mechanism Number 14 (**Administrative/disciplinary sanctions – telecommunications sector only**):

- Range of possible outcomes : Reprimand
- Legal basis: Art. 3 para. 3 of the modified law of 2005, laying down specific provisions for the protection of persons with regard to the processing of personal data in the

electronic communications sector and amending articles 88-2 and 88-4 of the Code of criminal procedure (“the law of 2005”)

- Type of procedure: administrative (DPA)
- Possibilities of appeal: administrative court and administrative court of appeal
- Burden of proof: proof that no data breach did occur
- Available mechanism to lower the burden of proof: none
- Requirement of legal representation: no
- Is there free legal advice/representation available from a public body : DPA
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure? DPA
- Cost of procedure: DPA procedure is free, but if an administrative recourse is chosen, legal representation is mandatory
- Average duration of procedure: 1-3 months
- Outcomes for 2009, 2010, 2011: those provisions were added in July 2011. As these provisions are quite recent, there are no cases yet.

Ad Redress Mechanism Number 15 (Administrative/disciplinary sanctions – telecommunications sector only):

- Range of possible outcomes: Fine of max. 50.000 EUR (only in case of a second repetition of a breach)
- Legal basis: Art. 3 para 3 of the modified law of 2005
- Type of procedure: administrative (DPA)
- Possibilities of appeal: administrative court and administrative court of appeal
- Burden of proof: proof that no data breach did occur or that it was the first data breach
- Available mechanism to lower the burden of proof: none
- Requirement of legal representation: no
- Is there free legal advice/representation available from a public body : DPA
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure? DPA
- Cost of procedure: DPA procedure is free, but if an administrative recourse is chosen, legal representation is mandatory
- Average duration of procedure: 1-3 months
- Outcomes for 2009, 2010, 2011: those provisions were added in July 2011. As these provisions are quite recent, there are no cases yet

Ad Redress Mechanism Number 16 (Non-respect of administrative/disciplinary sanctions leading to criminal prosecution):

- Range of possible outcomes: Imprisonment of 8 days to 1 year and/or fine of 251 to 125.000 EUR
- Legal basis: Art. 3 para. 5 of the modified law of 2005
- Type of procedure: criminal procedure (judicial instance)
- Possibilities of appeal: 2nd instance (court of appeals) and 3rd instance (supreme court of appeals)
- Burden of proof: non-respect of administrative/disciplinary sanctions
- Available mechanism to lower the burden of proof: none
- Requirement of legal representation: DPA forwards to Public Ministry or self-initiated procedure by Public Ministry (complaint)
- Is there free legal advice/representation available from a public body: no
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure: DPA may intervene as party (if DPA continued the complaint to the public ministry)
- Cost of procedure: no data available
- Average duration of procedure: no data available
- Outcomes for 2009, 2010, 2011: 0

N.B.:

Please note that in case of a judicial procedure based on the Luxembourgish data protection laws, the DPA is not mandatorily involved as a party to the case. As there is no compulsory feedback on such cases from the respective tribunals and courts to the DPA, we are unfortunately not able to provide any statistics in that respect.

We would also like to underline the fact that the modified law of 2002 contains close to twenty criminal sanctions. We did not consider these sanctions as each being a redress mechanism on its own, as for each sanction, a prior procedure is necessary (i.e. a complaint or a forwarding of the case by the DPA to the Public Ministry) in order to open a judicial procedure. The same note applies to the provisions of the modified law of 2005 (telecom sector).

Finally, we would like to add that under our national law, it is always possible to sue (on a civil basis) for damages if the conditions set out by the civil code are met (cf. art 1382 ff. Code Civil)