

Updates from the CNPD

How COVID-19 shaped our work in 2020

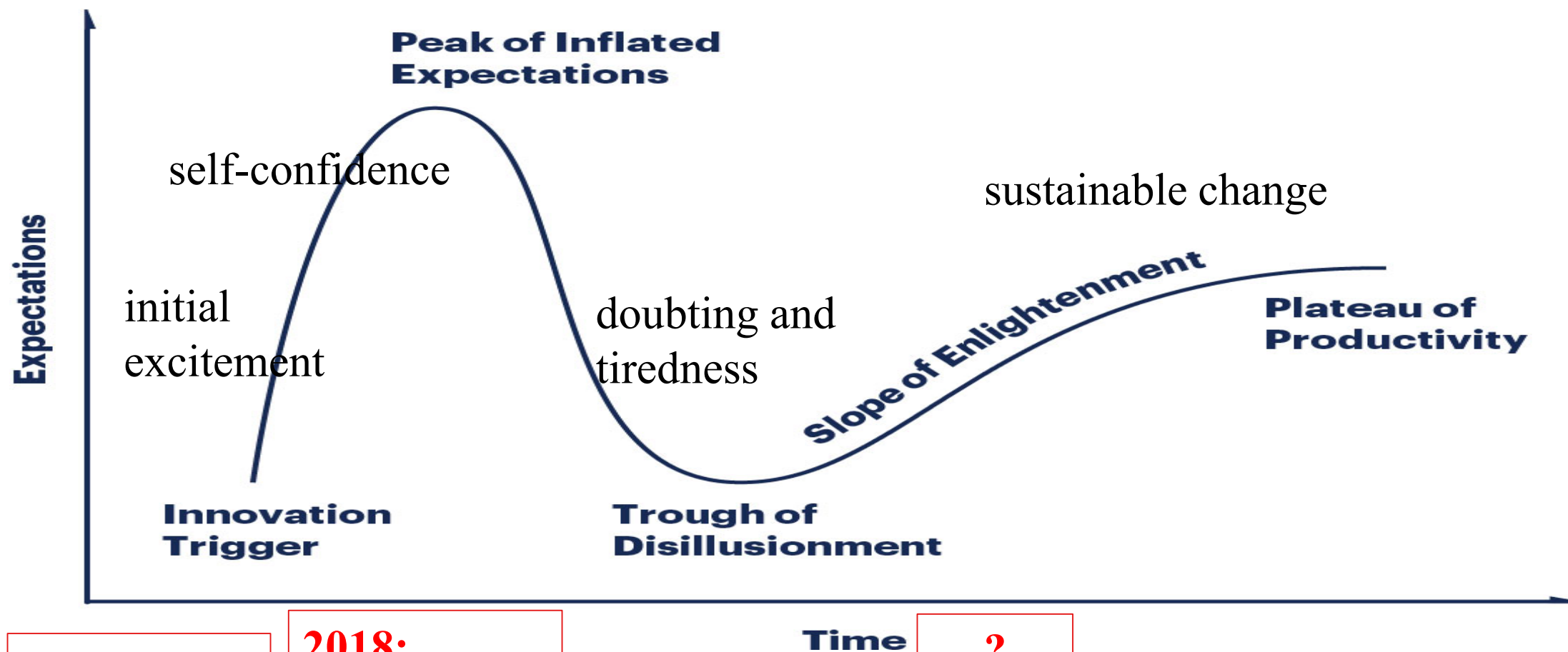


Data Privacy Day 2021

Luxembourg
28 janvier 2021

Marc Lemmer, Commissoner

GDPR: a question of (legally enforced) change management



2016:
GDPR vote

2018:
GDPR came
into effect

2019

?
2020

?
2021

Agenda



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2. COVID-19 crisis: main issues observed, main activities deployed
3. CNPD's contributions at national, European and International level
4. Conclusion

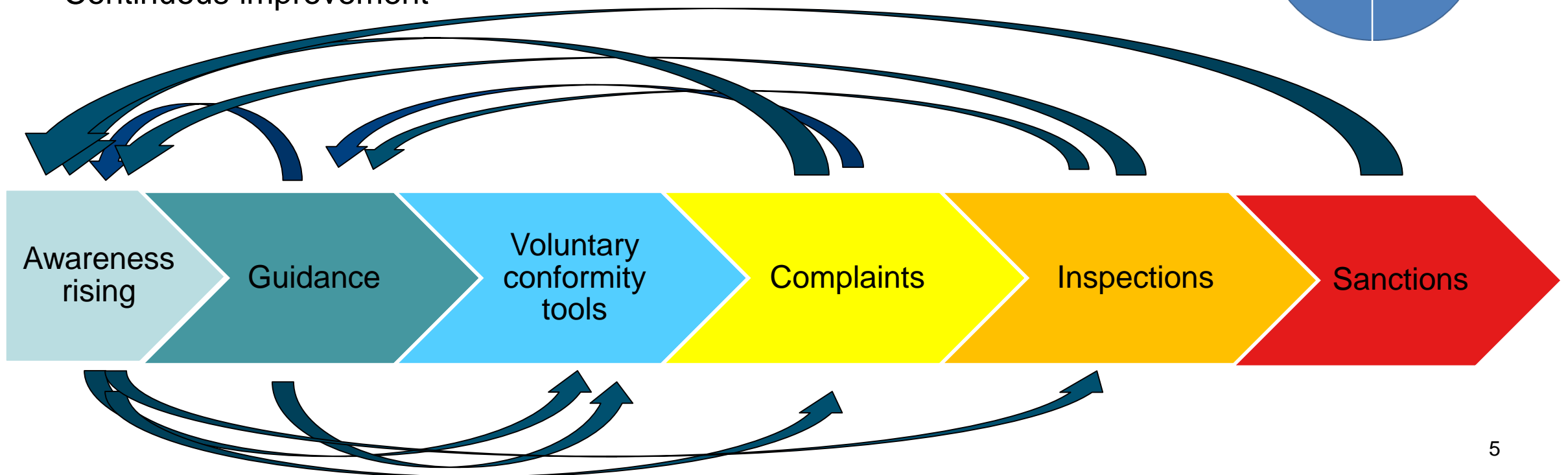
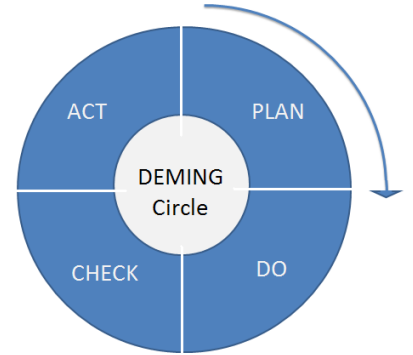
The CNPD



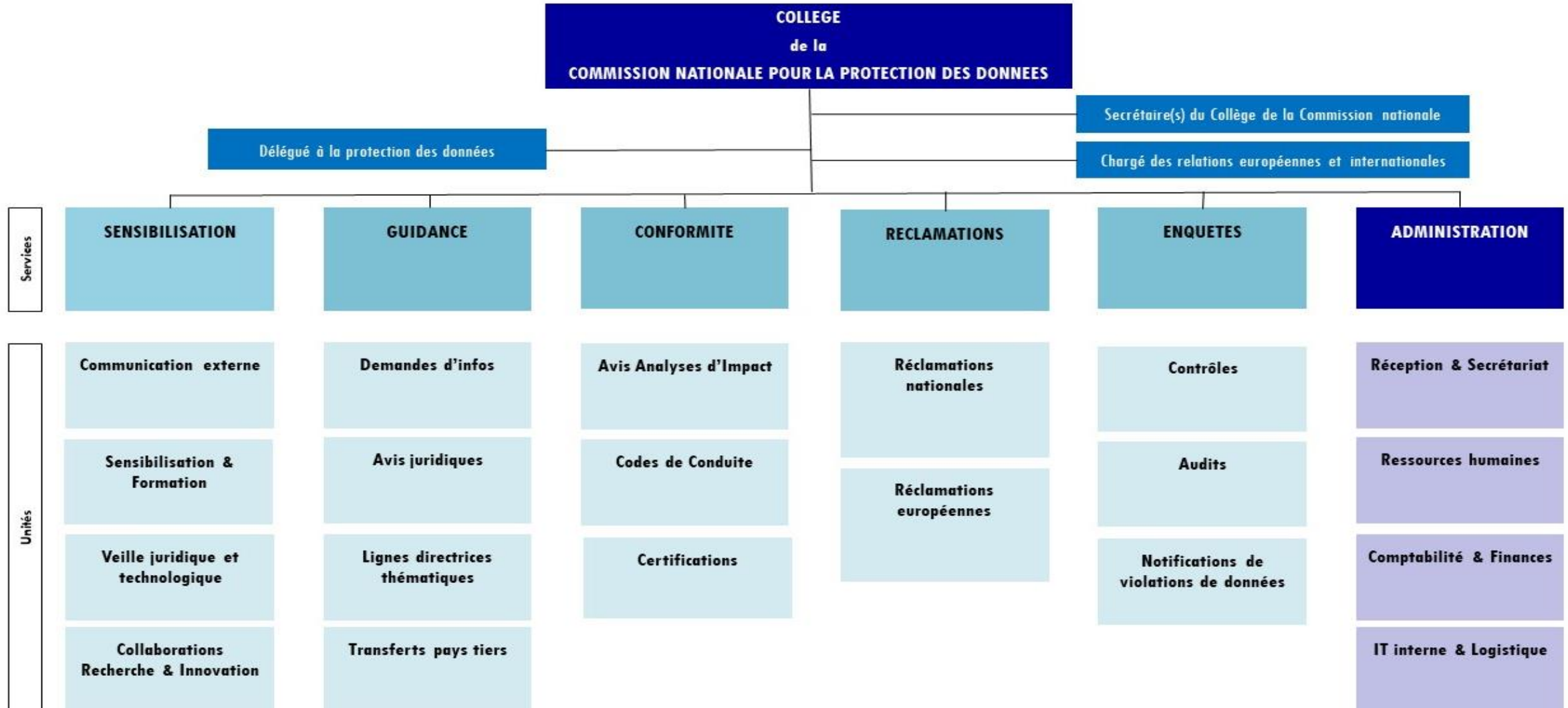
CNPD's missions and activities: informing-guiding-controlling-enforcing



- Legal missions (EU law, LU law)
- European cooperation (one-stop-shop mechanism)
- Interrelated
- Feedback loops
- Knowledge value chain
- Continuous improvement

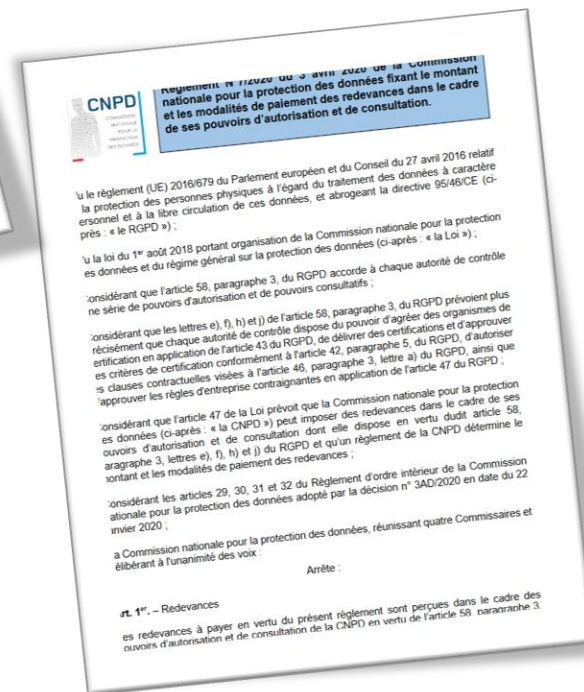
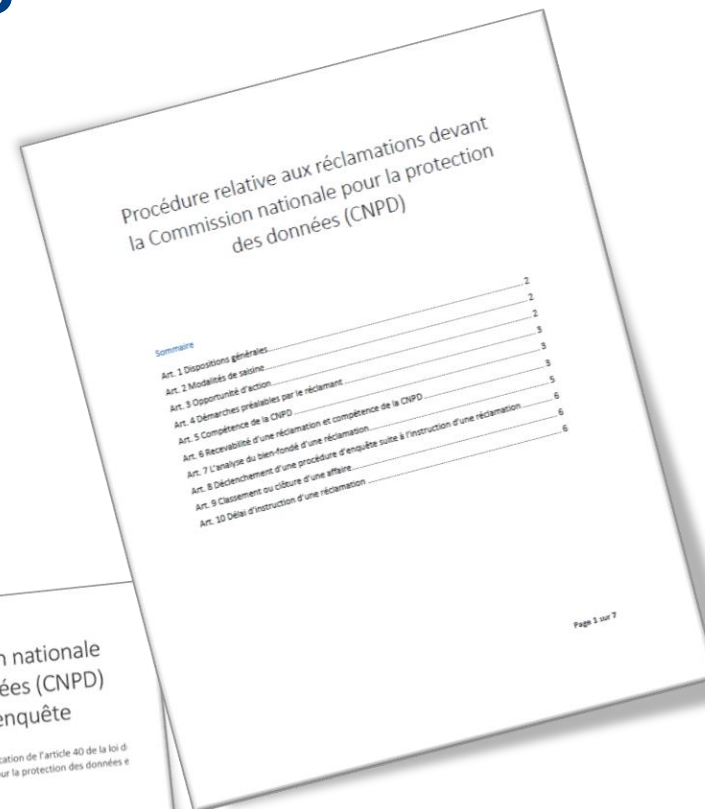
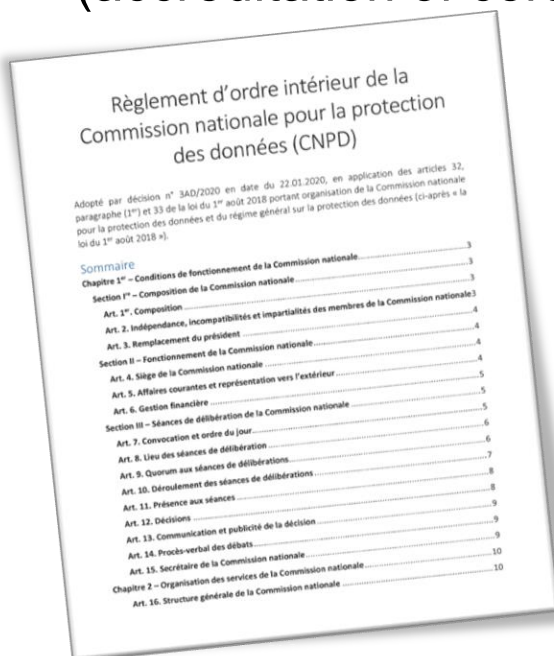


A new organisational set up since 01/2020



New internal regulations

- Adopted in 2020
 - Internal rules of procedure (ROI)
 - Investigation procedure
 - Complaint filing procedure
 - Modalities and fees for authorizations (accreditation of certification bodies,...)



Guidance, Awareness rising, Technology & Legal watch



- National and European thematic guidance
 - International data transfers in the context of Brexit
 - Electoral campaigns
 - Mobile video surveillance cameras ("dashcams")
 - PSD2 and GDPR
 - Connected vehicles
 - Certification
 - Data Protection by Design and by Default
 - Targeting of social media users
- Training workshops (Data Protection Laboratory, « DaPro Lab »)
 - Data transfer between health professionals
 - Data protection impact assessments (DPIA)
 - Data processing for scientific, historical and statistical research
 - Data processing in the finance and insurance sector
- Technology and legal watch on innovation topics
 - Fintech, blockchain, COVID-19, homeworking, biometrics

New developments: voluntary GDPR conformity tools



■ Certification

- GDPR-CARPA certification scheme (GDPR-Certified Assurance Report based on Processing Activities)
- Criteria for the accreditation of Certification bodies
- CNPD is lead-rapporteur at the EDPB
 - Development of procedures for the adoption of accreditations criteria of certification bodies
 - Adoption of certification criteria
 - Adoption of EU-level data protection seals



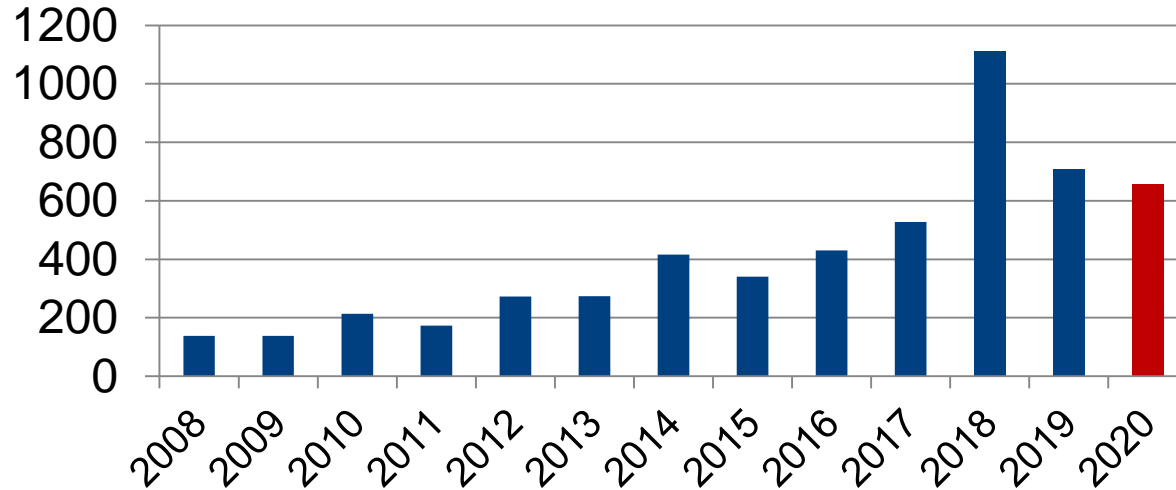
■ Codes of conduct

■ Preliminary consultations on DPIA

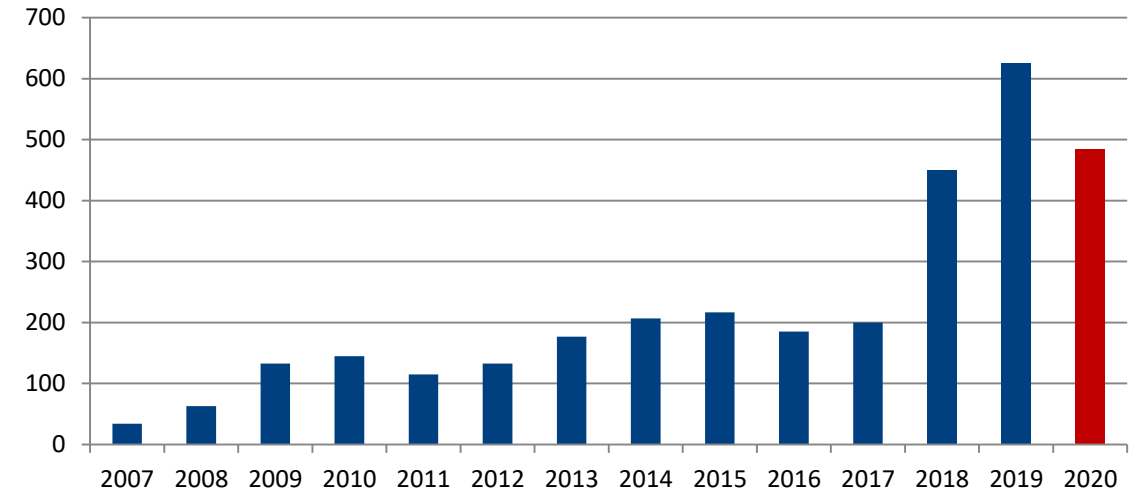


An increased activity (2018-2020)

Information requests



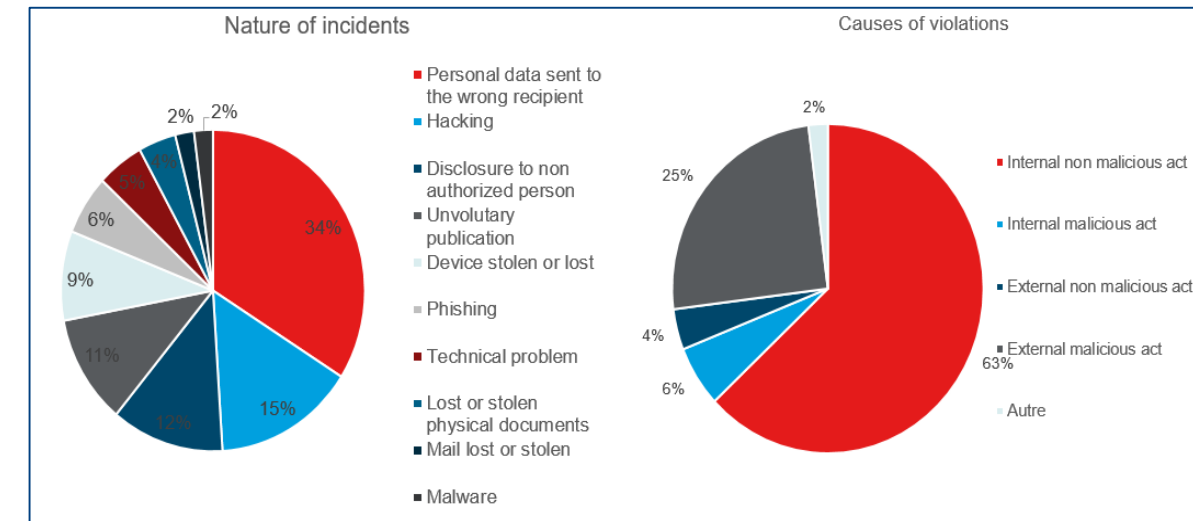
Complaints



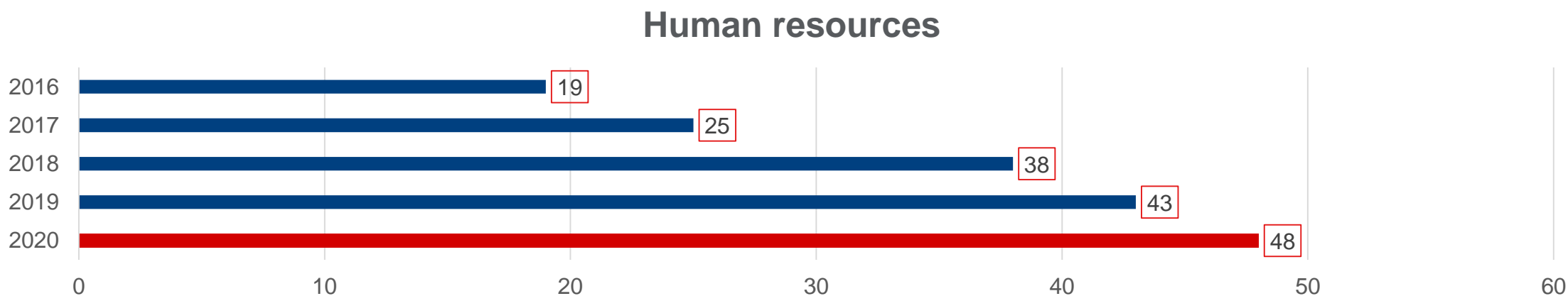
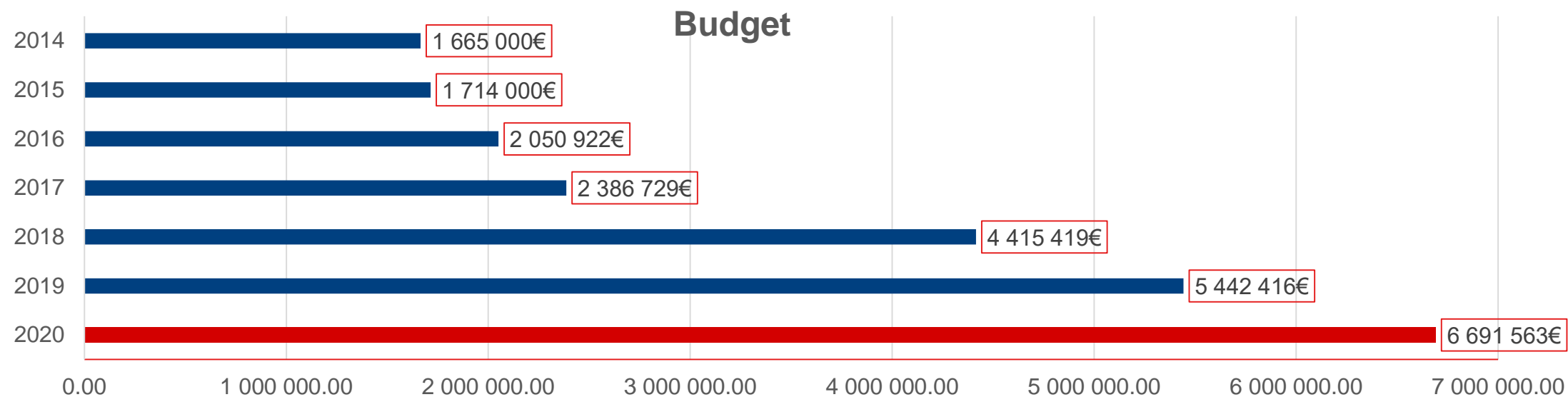
Databreach notifications

- **905** notifications (since 25 May 2018)
 - **379** in 2020 (against **354** in 2019)
 - 29 notifications per month
 - Main cause: human error (65% of cases)

Databreach notifications



Resources



CNPD work programme 2020/2022

■ Selected Priorities

- Targeted communication and awareness raising
- **“DaProLab” workshops**
- Development of an internal technology and legal watch
- Continued development of legal opinions and thematic guidelines
- Management of information requests
- International data transfer
- Promotion of voluntary GDPR conformity tools (certification, codes of conducts, data protection impact assessments)
- **Improvement of complaint management at national and European level**
- Conducting Europe-wide investigations
- Planning and conducting of audit and inspection campaigns
- Handling of data breach notifications
- **Launching the activities of the “Formation restreinte” taking sanction decisions**



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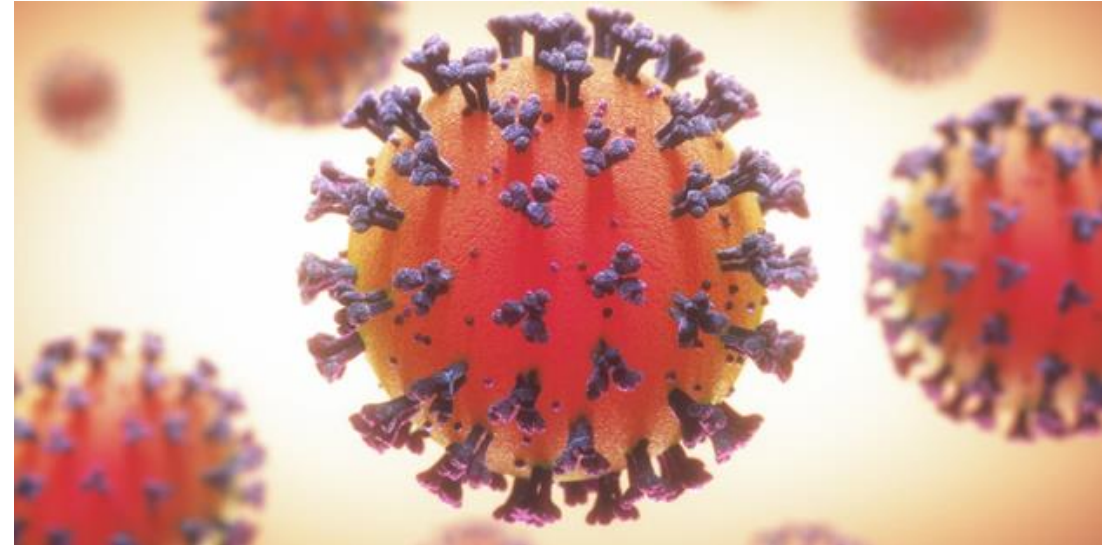
2. COVID-19: Main issues observed

- Challenges in internal CNPD organisation:
 - Business continuity:
 - quick switch into 100% homeworking (March 15)
 - 50/50 A&B groups (July-Aug)
 - Back to 100% office work (Sept-Oct)
 - 50/50 A&B groups (Nov-Dec)
 - 100% homework (Dec)
 - 50/50 A&B groups (Nov-Dec)
- New offices
 - Installation project on hold (March-April)
 - Moving in (July1)
- Team
 - Recruiting, welcoming and integration of new collaborators



2. COVID-19: Main issues observed

- Requests of information related to processing of sensitive personal data
 - Travel histories
 - Passenger lists
 - Attendance lists
 - **Body temperature checks**
 - Face mask pictures
 - People counting
 - COVID-19 testing results
 - **Contact tracing**
 - Quarantine tracking
 - Vaccination campaign tracing



2. COVID-19: Main activities deployed

- Answering information requests collected through CNPD hotline
 - Body T° checks, vidéo conferencing platforms, home working, home schooling, ...
- Guidance given
 - Recommendations issued
 - Opinions on successive Covid-19 laws
- Awareness rising and communication
 - Frequent updates of website
- On site inspection campaign
- European cooperation and international collaboration (EDPB, GPA)



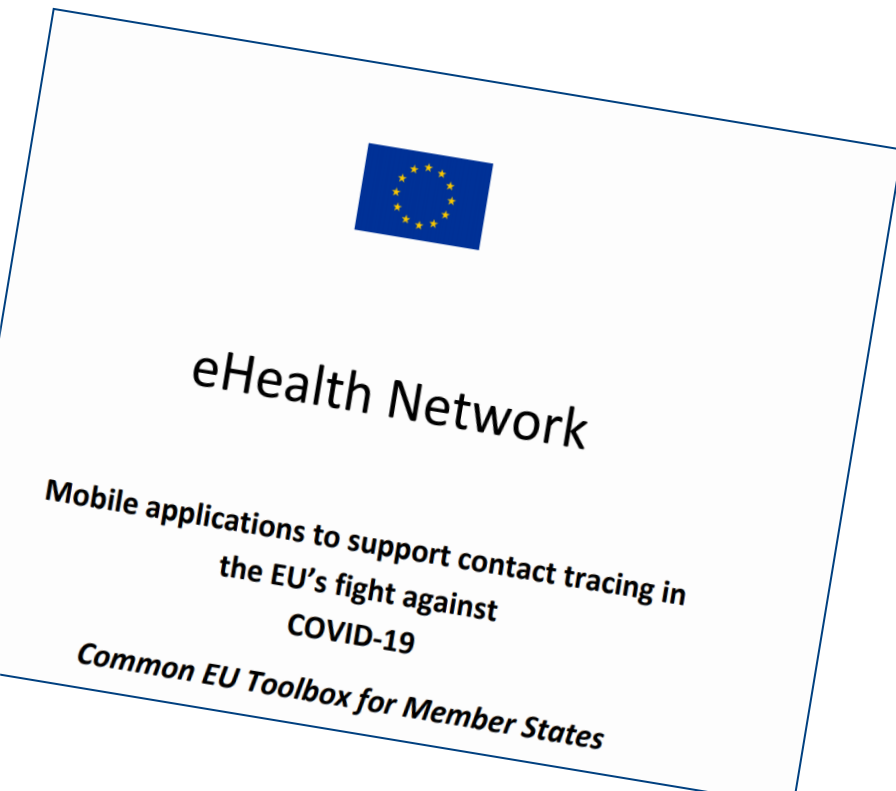
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3.1. Contact Tracing App

- CNPD contributions
 - EDPB task force, EU toolbox, EC recommendation
 - Research Luxembourg TF, governmental expert group



3.2. Opinions on “COVID laws”

- **Avis de la CNPD relatif au projet de loi n°7738** modifiant la loi modifiée du 17 juillet 2020 portant introduction d'une série de mesures de lutte contre la pandémie Covid-19 du 22 décembre 2020
- **Avis de la CNPD relatif au projet de loi n°7635** portant introduction d'une série de mesures temporaires en matière de sécurité et santé au travail dans le cadre de la lutte contre le COVID-19 du 30 octobre 2020
- **Avis de CNPD relatif aux amendements gouvernementaux au projet de loi n° 7683** modifiant la loi modifiée du 17 juillet 2020 portant introduction d'une série de mesures de lutte contre la pandémie Covid-19 du 27 octobre 2020
- **Avis de la CNPD relatif au projet de loi n° 7645** modifiant la loi modifiée du 17 juillet 2020 portant introduction d'une série de mesures de lutte contre la pandémie Covid-19 du 10 septembre 2020
- **Avis de la CNPD relatif au projet de loi n° 7634** modifiant la loi du 17 juillet 2020 portant introduction d'une série de mesures de lutte contre la pandémie Covid-19 du 21 juillet 2020
- **Avis de la CNPD relatif au projet de loi n° 7622** portant introduction d'une série de mesures de lutte contre la pandémie Covid-19 du 08 juillet 2020
- **Avis complémentaire concernant le projet de loi n° 7606** portant introduction d'une série de mesures concernant les personnes physiques dans le cadre de la lutte contre le virus SARS-CoV-2 (COVID-19) du 16 juin 2020
- **Avis de la CNPD relatif au projet de loi n° 7606** portant introduction d'une série de mesures concernant les personnes physiques dans le cadre de la lutte contre le virus SARS-CoV-2 (COVID-19) du 08 juin 2020

3.3. Recommendations on personal data processing in the context of a pandemic (1)



- Context
 - According to the COVID law of 17.07.2020 the Health Inspectorate is qualified to adopt appropriate measures within the limits of its mandates and may collect data related to the health of individuals
 - Contact tracing is reserved to the Health Inspectorate
- CNPD recommendations (latest update: 22 December 2020)
 - **Legal obligation of Employers**
 - can only process personal data strictly necessary for compliance with their legal obligations (labor law, Health & Safety)
 - **Legal obligation of employee/civil servants**
 - Must ensure all that is needed to maintain the health and safety of him/herself and colleagues
 - Shall not communicate other information as doctor certificate to employer **without indication of nature of illness / infection / Covid 19 symptoms.**

3.3. Recommendations on personal data processing in the context of a pandemic (2)



- CNPD recommendations (latest update: 22 December 2020)
 - **Processing of personal data by employers**
 - only processing of personal data which are strictly necessary for compliance with labor law obligations
 - only processing elements linked to a medical doctor certificate.
 - no compilation of files or processing related to health data linked to COVID-19 **even if**
 - an employee informs his/her employer voluntarily that he
 - has been tested positive for coronavirus
 - thinks he may present symptoms of the disease
 - No collection of files or body temperature data of employees or info on other diseases (comorbidity risk)
 - No carrying out of investigations or “contact tracing”
 - Body T° checks at office entrance: OK if not automated and without any recording allowing identification of an individual
 - Testing and health questionnaires: OK only for health professionals within their competences

3.4. Data Protection and privacy implications working at home office

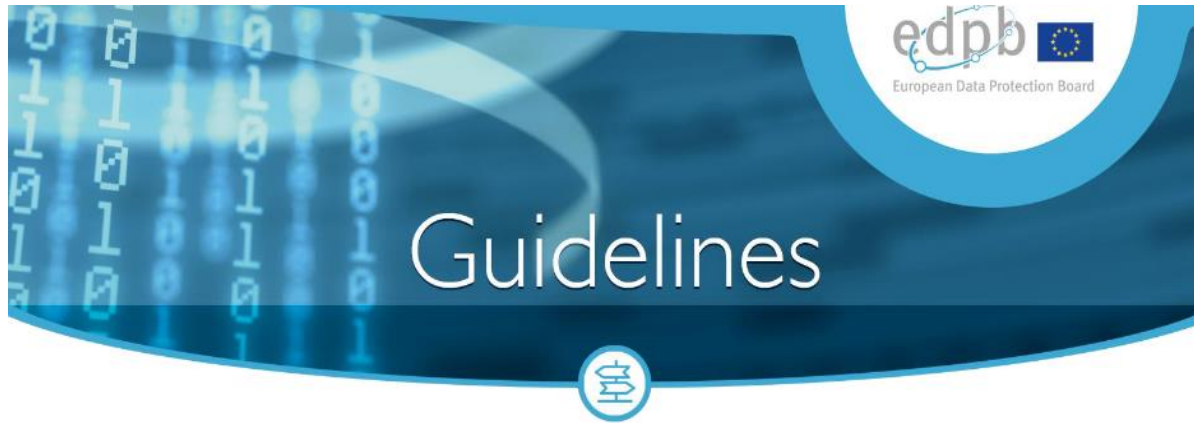
- Context
 - Information flow vs. measures to ensure **confidentiality and security of processing of data**
 - Only process the personal data, which are **strictly necessary** for compliance with legal obligations
 - necessary to implement organizational measures (e.g. remote working)
 - training and information measures
 - prevent professional risks.
- Numerous request of information received regarding
 - Videoconferencing in the context of remote work
 - Surveillance of employees at home office



3.5. Onsite inspections

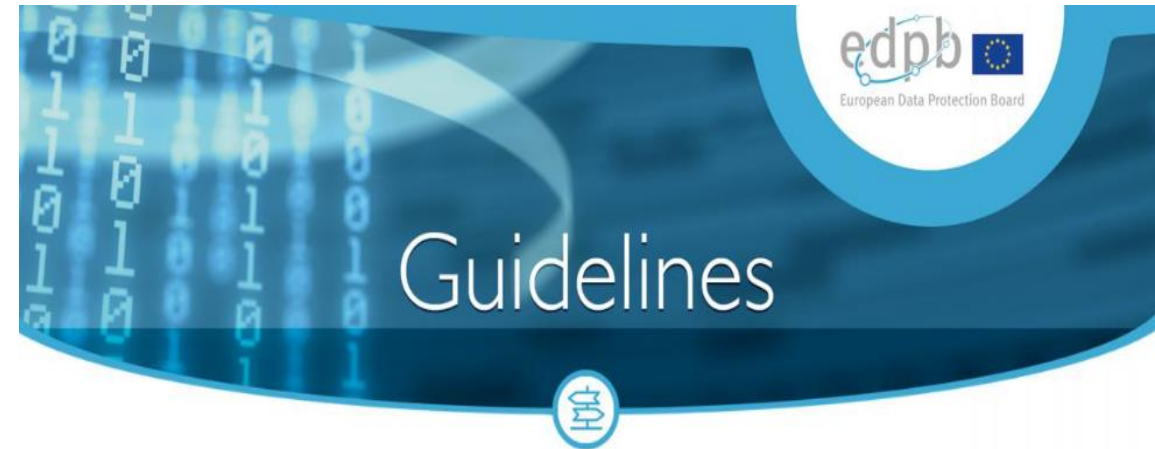
- Focus
 - Investigation campaign on how organisations are processing personal data specifically for COVID surveillance
 - Collection of personnel data via questionnaires
 - Body temperature checks
 - Data subjects: employees, clients, providers, participants in events
- Objective
 - Check how organisations are implementing COVID recommendations and information actions from CNPD
- Methodology
 - Sample of 20 organisations based in Luxembourg
 - Across socioeconomic sectors,
 - Small, medium large organisations
 - According to internal investigation procedure

3.6. EDPB guidelines



Guidelines 03/2020 on the processing of data concerning health for the purpose of scientific research in the context of the COVID-19 outbreak

Adopted on 21 April 2020



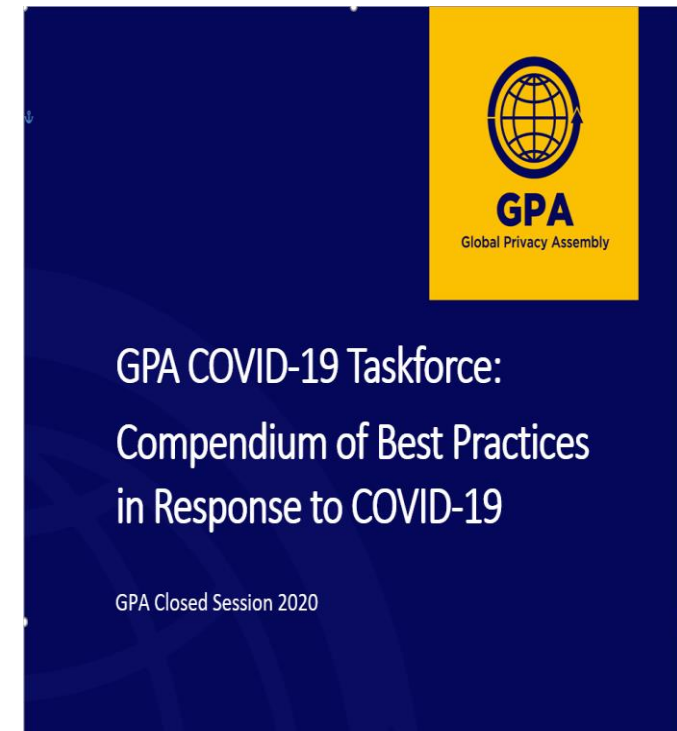
Guidelines 04/2020 on the use of location data and contact tracing tools in the context of the COVID-19 outbreak

Adopted on 21 April 2020

3.7. Global Privacy Assembly



- GPA Statements and Meeting Summaries on the Coronavirus Pandemic (18/03/2020)
- Compendium on best practices across GPA members countries (10/2020)
- [Webinar 1, July 6 2020](#) – “Contact Tracing & the Apple & Google solution. In conversation with the technical specialists”
- [Webinar 2, July 23 2020](#) – “Enablers and Protectors: The Role of DPAs Confronting COVID-19 – Contact Tracing and the Recovery Response”
- [GPA and CIPL Joint Webinar](#) – ‘Data Protection Reimagined: Digital Acceleration, New Emerging Issues and the Role of Privacy Regulators in the COVID-19 Era.’
- [GPA COVID-19 Taskforce and IAPP Web Conference](#) – ‘New Normal: Data protection: Security, Privacy and Safety in the Workplace.’
- [OECD/GPA Virtual Workshop \(COVID-19 series\)](#) – ‘The road to recovery: Lessons learned and challenges ahead; Addressing the data protection and privacy challenges raised by COVID-19’



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Conclusions?

- 3 years after GDPR came into force and “after” the pandemic:
 - At which stage of the journey are organisations today?
 - What’s their level of maturity today ?
 - Are there any “COVID” effects? Positive, negative, sustainable ones?

- GDPR is **not an obstacle** in the fight against a pandemic and the development/ application of new technologies
- GDPR proved to be a guarantee for **safeguarding human rights** in democratic states
- The public and individuals have even **higher expectations** regarding the protection of their personal data
- **Organisations** which implemented GDPR thoroughly before the pandemic were able to manage data protection challenges during the crisis substantially better compared to organisations with only few effort done before
- **Supervisory Authorities (SAs)** were able to work in agile and collaborative mode but need to continue to adapt and foster collaboration at European level (guidelines, cross border inspections, enforcement, ...)

2021 ? Time

Thanky you for your attention!

Commission nationale pour la protection des données

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Illustrative examples Attention : the answers to the questions depend on the context – the slides have been commented during the presentation to illustrate the reasoning based on a specific case.
A case-by-case analysis may lead to other answers. The data controller must respect the obligations imposed by the GDPR and must be able to demonstrate his compliance.