

Rules of Procedure

on the cooperation and respective roles of national SAs and the EDPB Secretariat regarding the submission of complaints in the redress mechanism available to EU individuals in relation to alleged violations of U.S law with respect to their data collected by U.S. authorities competent for national security

Adopted on 17 April 2024

The following rules of procedure will give guidance on the tasks of the EDPB Secretariat and the SAs and on how they will work together in order to ensure that a complaint is properly verified, processed and transmitted to the CLPO¹.

1) The tasks of Supervisory Authorities ('SAs')²

The tasks of the SA that receives a complaint are:

- to verify the identity of the complainant, subject to the SAs' discretion on the modalities for such verification, and to check that the complaint satisfies the conditions set forth in Section 4(k)(i)-(iv) of E.O. 14086³
- if found complete, to provide a translation of the request into English, if and to the extent necessary
- if found complete, to transmit the complaint to the EDPB Secretariat, in an encrypted format⁴
- to notify the ODNI CLPO's reply, received via the EDPB Secretariat, to the complainant, including a translation if and to the extent necessary, and communicate to the EDPB Secretariat the date of such notification
- to transmit any appeal submitted by the complainant to the EDPB Secretariat, in an encrypted format
- to communicate to the complainant the reply (standardised answer), on his/her appeal, received, via the EDPB Secretariat, from the U.S. Department of Justice's Office of Privacy and Civil Liberties (OPCL), which provides support to the DPRC, including the DPRC's statement that it has concluded its review including a translation, if and to the extent necessary

¹ For the purposes of this document, any references to the Civil Liberties Protection Officer ('CLPO') mean the Office of the Director of National Intelligence's Civil Liberties Protection Officer ('ODNI CLPO').

² For the purposes of this document, any references to Supervisory Authorities ('SAs') means Data Protection Authorities ('DPAs'), as per Art. 4(21) GDPR.

³ E.O. 14086, Section 4(k)(v) stipulates that: "Qualifying complaint" means a complaint, submitted in writing, that (...) is transmitted by the appropriate public authority in a qualifying state, **after it has verified the identity of the complainant** and that the complaint satisfies the conditions of section 5(k)(i)-(iv) of this order.'. Also, [Intelligence Community Directive \(ICD\) 126, Section E\(1\)\(c\)\(8\)](#): 'Specifically, for a transmitted complaint to be a "qualifying complaint" consistent with Executive Order 14086's definition of "covered violation" and "qualifying complaint," the complaint must: (...) **contain a verification** by the appropriate public authority in a qualifying state: (a) of the identity of the complainant, and (b) that the complaint satisfies the conditions of Section E.1.c.(1) - (7) of this Directive; and **Section E(1)(e) of the ICD**: 'The transmission of the complaint from an appropriate public authority in a qualifying state **must also contain a description of the manner in which the authority verified the identity of the complainant**. The CLPO shall rely on the verification of the identity of the complainant by the appropriate public authority in a qualifying state, but should either the information provided by the appropriate public authority in a qualifying state or subsequent investigation of the complaint call into question the identity of the complainant, the CLPO may request additional information from the public authority in a qualifying state in a manner that does not reveal intelligence sources or methods or otherwise indicate whether an individual has, in fact, been the subject of signals intelligence activities.'

⁴ Section E(1)(f) of ICD states that: 'If the CLPO determines that the complaint is not a qualifying complaint because it does not meet the conditions of Section E.1.c., or does not meet the conditions of Section E.1.d., of this Directive, the CLPO will provide written notification via **encrypted electronic communication and in the English language** to the appropriate public authority in a qualifying state of the deficiencies in the complaint.'

- to communicate to the complainant that information pertaining to him/her may be available to him/her under applicable U.S. law⁵, as transmitted by the Department of Commerce, via the EDPB Secretariat, including a translation, if and to the extent necessary.

2) The tasks of the EDPB Secretariat

As part of its duty to channel complaints on behalf of the SAs, the tasks of the EDPB Secretariat are:

- to verify that the complaint received has been made to and transmitted by a competent SA in the EEA
- to check whether the complaint was based on the EU Common Complaint Form. In view of ensuring consistency, the EDPB Secretariat may send reminders or clarification questions to the SAs on procedural matters (with the support of the BTLE ESG⁶ coordinators, if necessary) to transmit complaints between SAs and the ODNI CLPO
- to transmit the complaint to the ODNI CLPO, in an encrypted format
- to transmit the ODNI CLPO's reply to the SA, in an encrypted format
- to communicate to the ODNI CLPO the date of the notification, by the SA, of the ODNI CLPO's reply to the complainant
- to transmit any appeal received from the SA to the U.S. Department of Justice's Office of Privacy and Civil Liberties ('OPCL'), which provides support to the DPRC, and to transmit the reply (standardised answer) received from the OPCL to the SAs, including the DPRC's statement that it has concluded its review, in an encrypted format⁷
- to transmit to the SA, information provided by the U.S. Department of Commerce ('DoC') on the declassification of a complaint⁸, in particular that information pertaining to the complainant may be available to him/her under applicable U.S. law,⁹ in an encrypted format to serve as the single point of contact for communications with the above-mentioned U.S. authorities
- to bring to the attention of all members of the EDPB any matters of general interest that would occur from this process relating to all the above-mentioned tasks.

3) The responsibility of the SAs to verify the completeness of the complaint

The SA which has received a complaint is responsible for its verification, namely for the verification of the identity of the complainant, subject to the SA's discretion on the modalities for such verification, and that the complaint satisfies the conditions set forth in Section 4(k)(i)-(iv) of E.O. 14086¹⁰.

This includes to:

⁵ Section 3(d)(v)(C) of E.O. 14086.

⁶ 'BTLE ESG' refers to the EDPB Border, Travel and Law Enforcement subgroup.

⁷ See footnote 4.

⁸ Section 3(d)(v)(C) of E.O. 14086

⁹ Section 3(d)(v)(C) of E.O. 14086.

¹⁰ E.O. 14086, Section 4(k)(v) and) Intelligence Community Directive (ICD) Sections E(1)(c)(8) and E(1)(e).

- verify the identity of the complainant ¹¹ and that he/she is acting on his or her own behalf and not as a representative of a governmental, non-governmental or intergovernmental organisation
- verify that the complaint pertains to the personal data of or about the complainant, a natural person, reasonably believed to have been transferred to the United States after the effective date of the Adequacy Decision (i.e. after the 10th July 2023)
- verify that the complainant alleges that his/her personal data was unlawfully accessed and used by U.S. intelligence agencies after his/her personal data was transmitted from the EU to the U.S.
- ensure that the complaint is made in writing (including via email) and that it contains the following information:
 - any information that forms the basis of the complaint, including the details of the online account or personal data transfer believed to have been accessed/occurred (which need not demonstrate that the complainant's data has in fact been subject to United States signals intelligence activities);
 - the nature of the relief sought;
 - the specific means by which personal data of or about the complainant is believed to have been transmitted to the United States;
 - which United States Government entity or entities believed to be involved in accessing the personal data of or about the complainant (if known);
 - and any other measures the complainant may have pursued to obtain the information or relief requested, and the response received through those other measures;
 - that the complaint is not frivolous, vexatious, or made in bad faith.

4) The responsibility of the SA to verify the admissibility of the appeal

- Check that the appeal was lodged by the same individual having introduced the complaint
- Check that the appeal was submitted to the SA within 60 days after the date on which the complainant received notification, from the SA, that the ODNI CLPO has completed its review.¹² To this end, any transmissions of applications for review of ODNI CLPO's decisions should identify, in the transmittal, the relevant dates.

5) Cooperation and communication in conjunction with the EDPB Secretariat

¹¹ E.O. 14086, Section 4(k)(v) and) Intelligence Community Directive (ICD) Sections E(1)(c)(8).

¹² 28 CFR § 201.6(a) of Attorney General regulation states that a complainant “may apply for review by the DPRC of a determination made by the ODNI CLPO in response to a qualifying complaint submitted by the complainant by filing an application for review with the appropriate public authority in a qualifying state, for forwarding to OPCL, no later than sixty (60) days after the date, as reported to OPCL by the appropriate public authority in a qualifying state, on which the complainant receives notification that the ODNI CLPO has completed its review”; see also 28 CFR 201.10 of Attorney General regulation providing that Executive Order 14086 and its terms shall be interpreted by the DPRC exclusively in light of United States law and the United States legal tradition, and that DPRC's review of an application shall be guided by relevant decisions of the United States Supreme Court in the same way as are courts established under Article III of the United States Constitution.

The EDPB members agreed to use an EU individual complaint form. The members also agreed to publish it alongside other useful information on their respective websites.

Communication between the EDPB Secretariat and SAs will be facilitated via appropriate (secure) electronic means (i.e., in an encrypted form).

[REDACTED]

All SAs will use this email address for their communication with the EDPB Secretariat (i.e. for the transmission of the complaints, as well as relevant questions pertaining to this redress mechanism).

In exceptional cases, there may be disagreement between an SA and the EDPB Secretariat as to whether a complaint can be deemed complete, in which case the EDPB Secretariat and that SA will work together to reach consensus.