



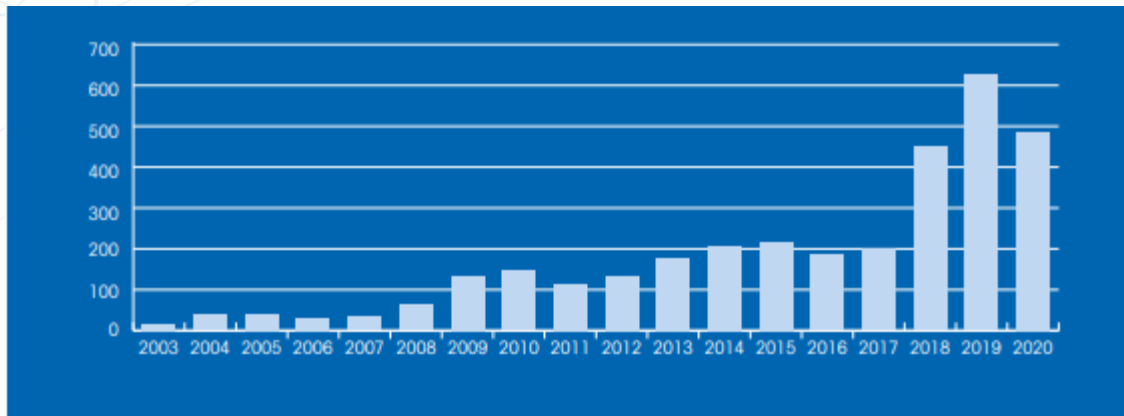
GDPR – procedure and sanctions

Vincent Wellens - NautaDutilh Avocats Luxembourg

● **NautaDutilh**

International Law Firm | Amsterdam · Brussels · London · Luxembourg · New York · Rotterdam

Number of complaints



CNPD annual report 2020

2 sanction decisions so far following a complaint

corrective measures 2020

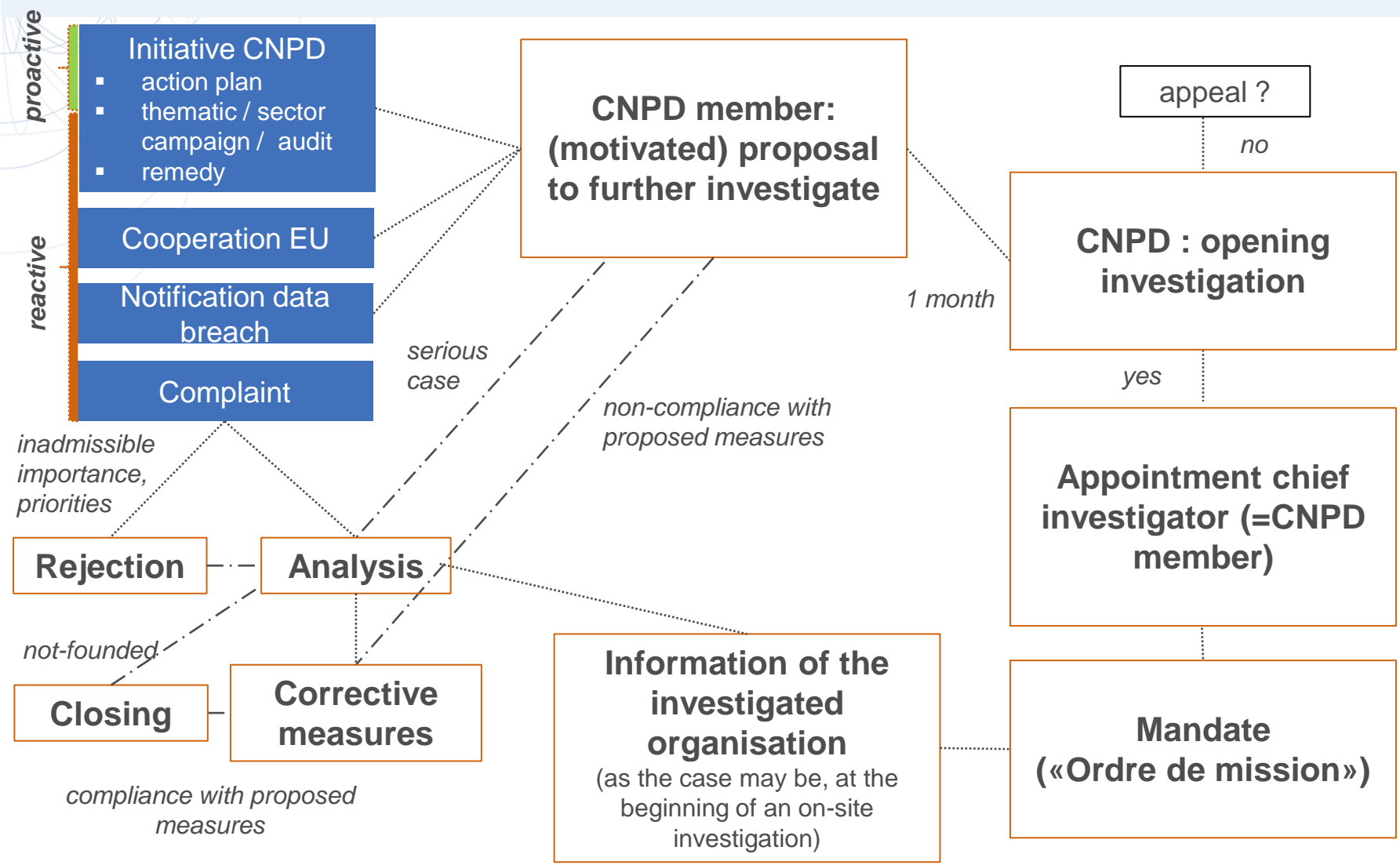
167
national cases

65
EU cases

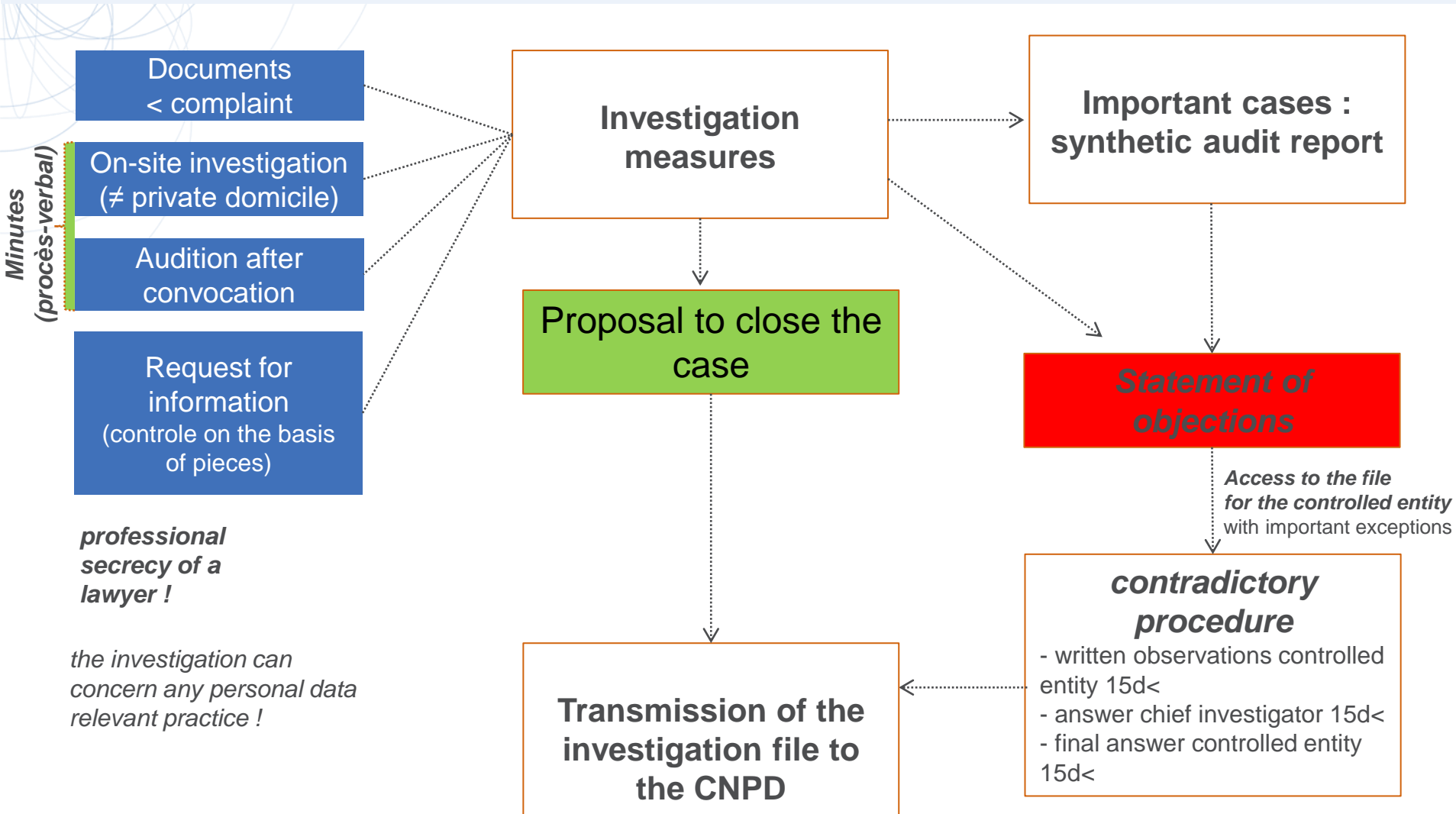
Thematic campaign + audits

- DPO : 21/25 (to be) sanctioned
- Video-surveillance
- COVID-19
- Transparency

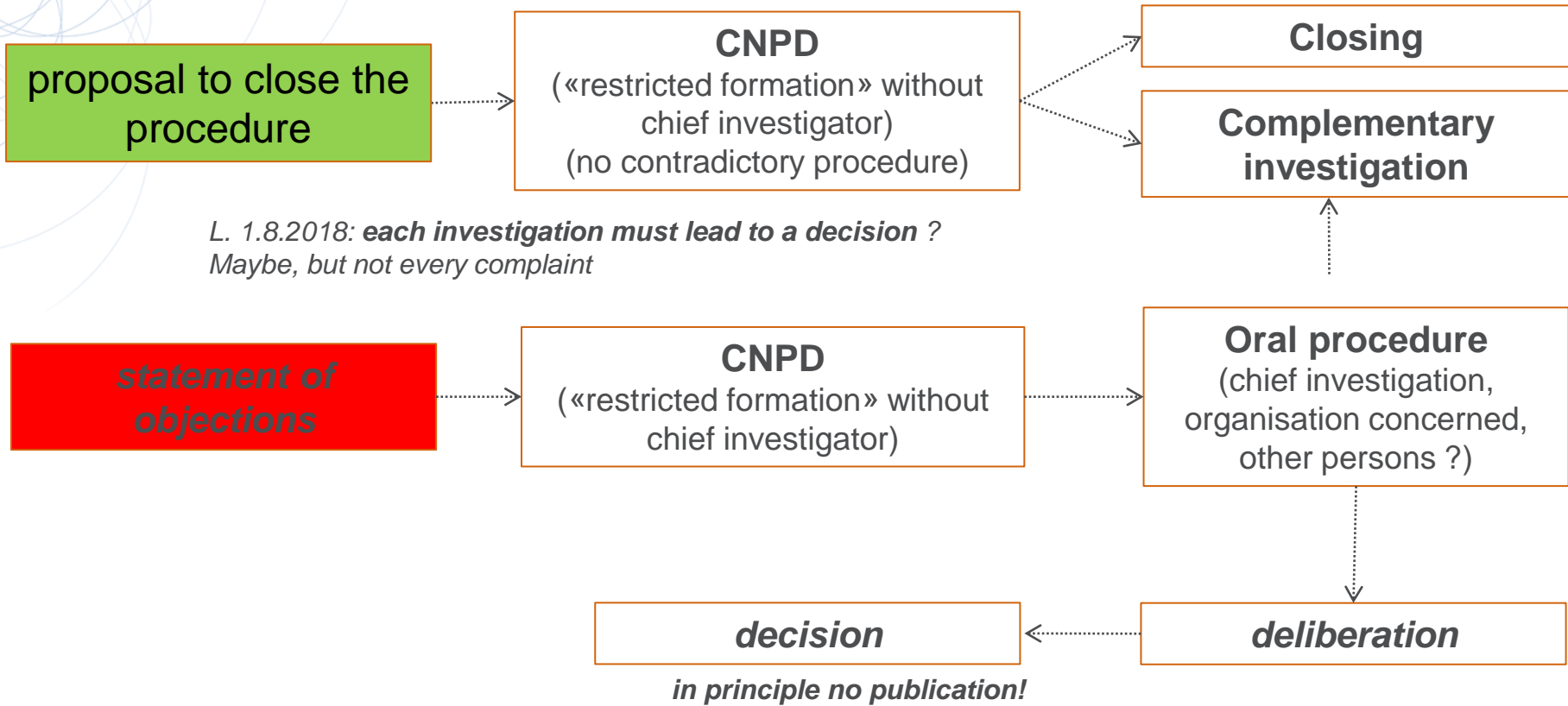
Procedure before the CNPD – opening phase



Procedure before the CNPD – investigation phase



Procedure before the CNPD – decision phase



*L. 1.8.2018: each investigation must lead to a decision ?
Maybe, but not every complaint*

but art. 52 L. 1.8.2018 allows to publish at te cost of the condemned organisation to publish the decision if:
1° there is no further appeal possible ; and
2° the publication does not risk to cause a disproportionate risk to the parties concerned !

Administrative sanctions (CNPD)

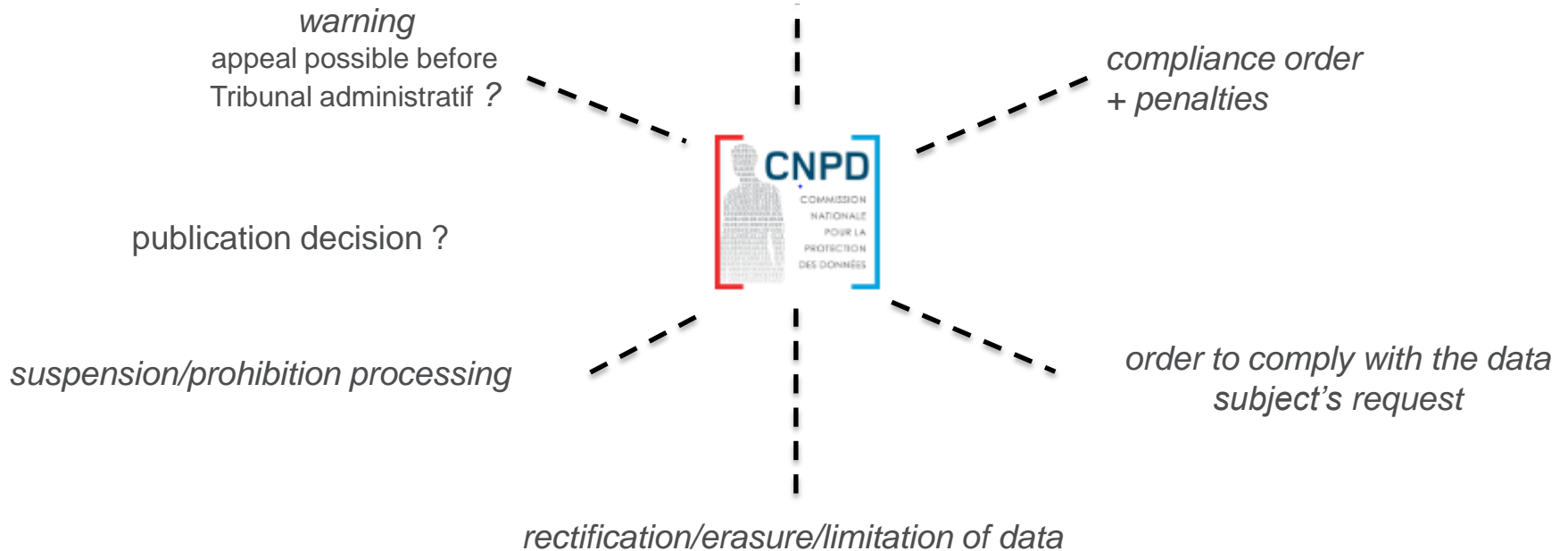
EDPB (EU) guidelines on sanctions !

effective * proportionate * dissuasive sanctions

« German » formula :

<https://iapp.org/resources/article/gdpr-fine-calculator-fining-schedule-of-german-dpas/>

*sanction (<4% of annual turnover –
groupe level)*



Appeal before the administrative jurisdictions

**No suspension of the CNPD decision
(but in practice fine recovery is suspended during pending appeal procedures)**



Tribunal administratif

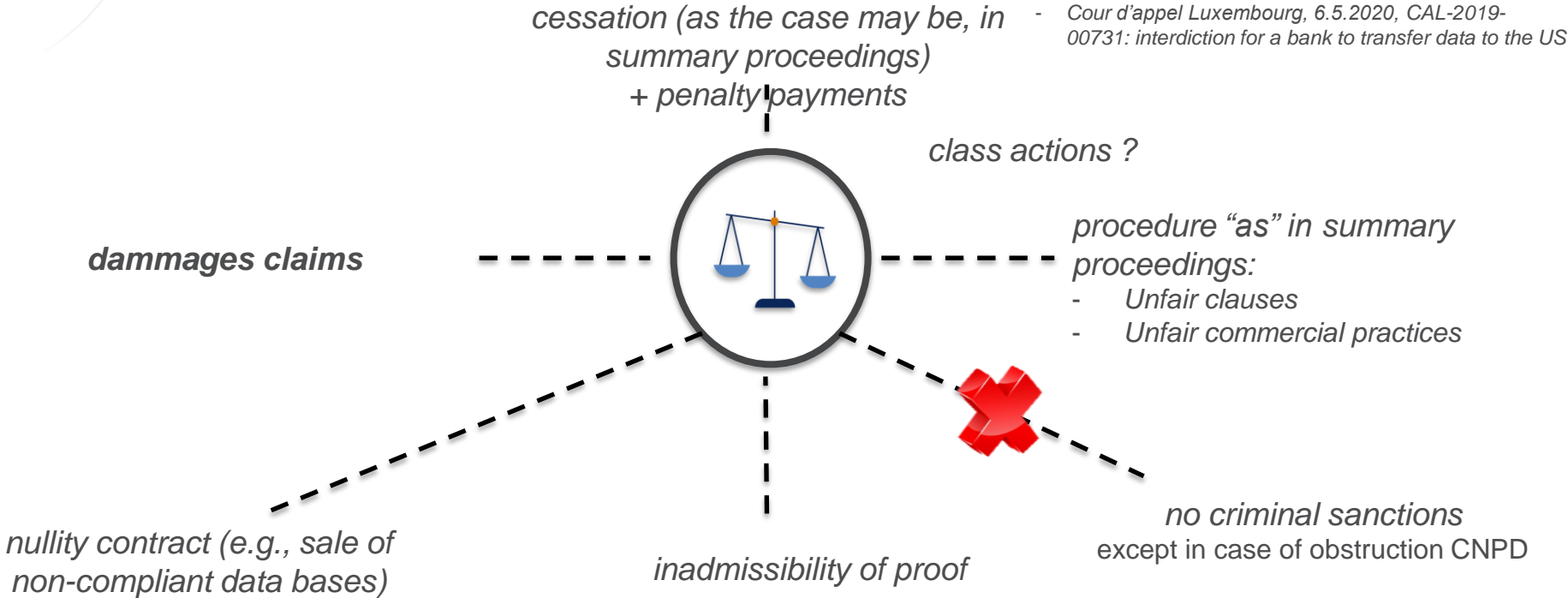
Appeal = full jurisdiction !

Cour administrative

Actions before the « regular » courts

Any person concerned or having otherwise standing is not obliged to seize the CNPD but can also bring a judicial action before the regular courts

(of the place of establishment of the data controller or the habitual residence of the person concerned)



Perspectives :

« cela peut arriver près de chez vous »



©



Any organisation can be subject to an investigation for any type of GDPR infringement and any kind of information can be requested



Impact COVID-19 on-site investigations ?



Thematic audits are « investigations »



No judicial control at the moment of the investigation

Useful links

GDPR:

<https://eur-lex.europa.eu/eli/reg/2016/679/oj>

CNPD sanctioning decisions:

<https://cnpd.public.lu/fr/decisions-sanctions.html>

Guidelines on the application and setting of administrative fines (wp253):

<https://ec.europa.eu/newsroom/article29/items/611237/en>

CNPD complaint procedure

<https://cnpd.public.lu/dam-assets/reglements-cnpd/CNPD-Procedure-Reclamationsversdef20201016.pdf>

CNPD investigation procedure

<https://cnpd.public.lu/dam-assets/reglements-cnpd/4AD-2020-Reglement-procedure-d-enquete.pdf>

Contact details



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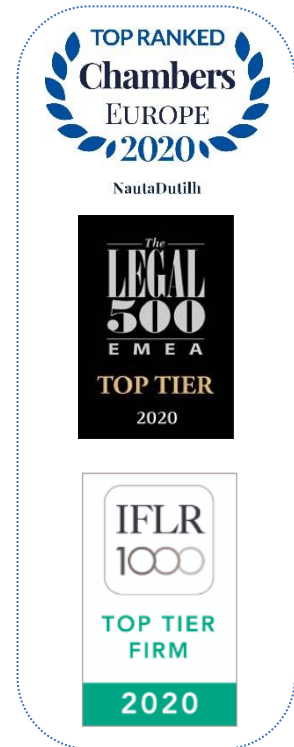


Questions? At your disposal!

Information about our firm and experience

A brief presentation of our firm

- An **international** law firm practising **Dutch**, **Belgian**, **Luxembourg** and **Dutch Caribbean** law, founded in **1724**
- One of the **largest law firms** in the Benelux region:
 - Over 400 lawyers including 68 partners
- Spread across **6 offices** and **5 country desks**:
 - Offices in Amsterdam, Rotterdam, Brussels, Luxembourg, London and New York
- Our **country desks** focus on:
 - Germany, France, India, China and Japan. We also monitor growth markets such as Brazil, Mexico, Indonesia and South Korea
- An **independent** law firm with **non-exclusive relations** with **top law firms** in more than **140 countries** allowing us to pick the best team for each cross-border project



Data protection - procedure and sanctions

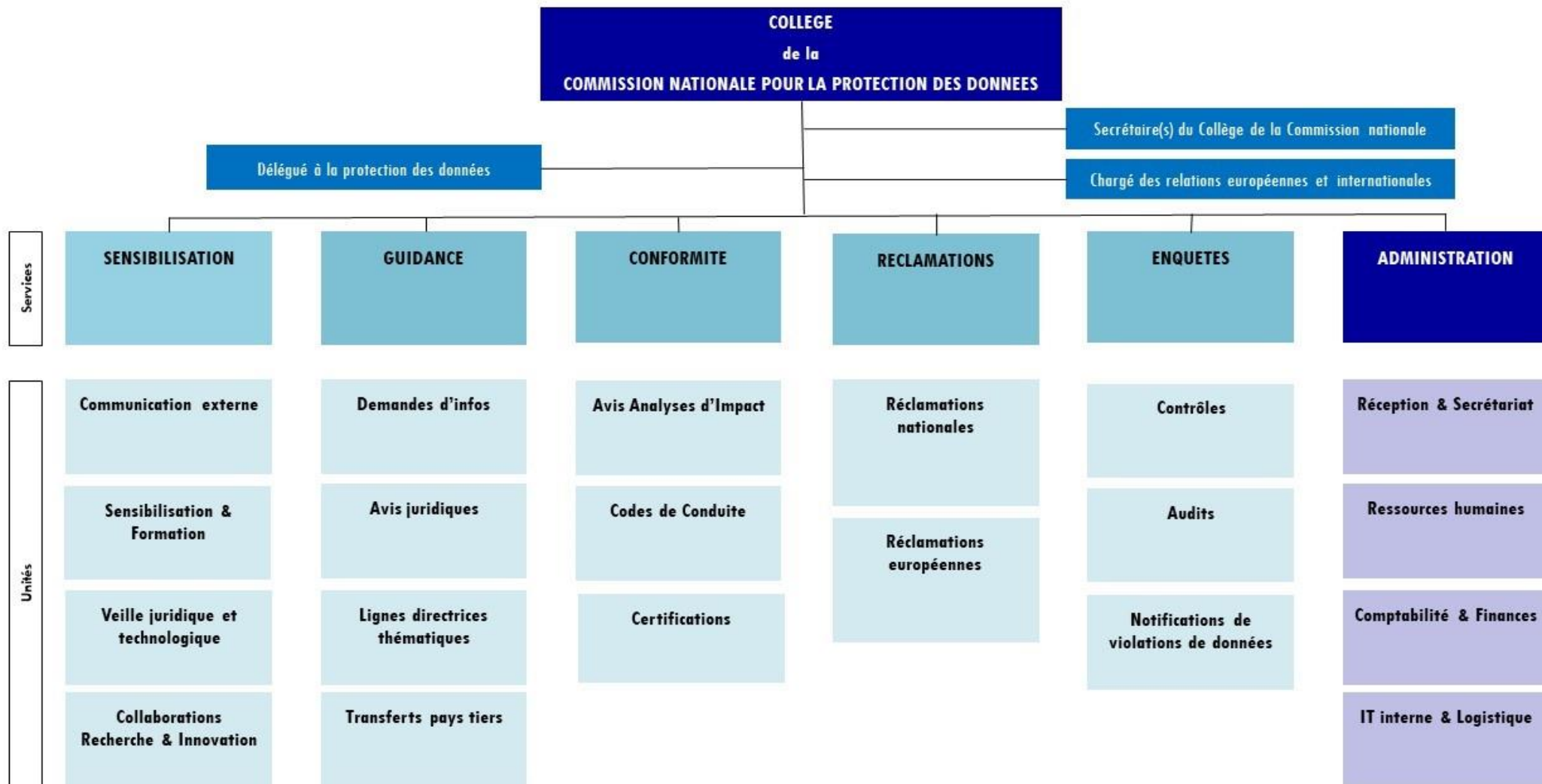
ALJB webinar



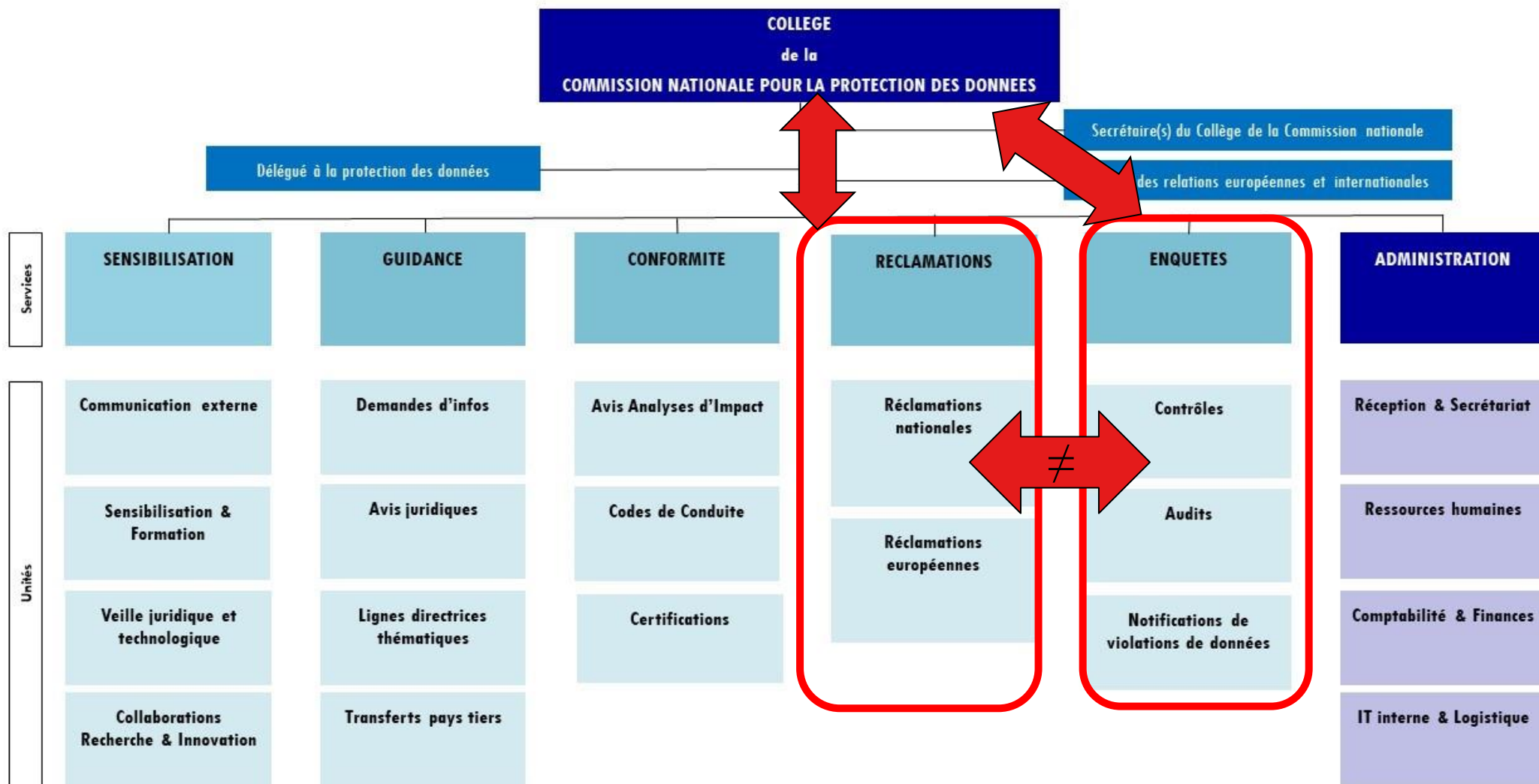
18.01.2022

Michel Sinner
Chef de service Enquêtes

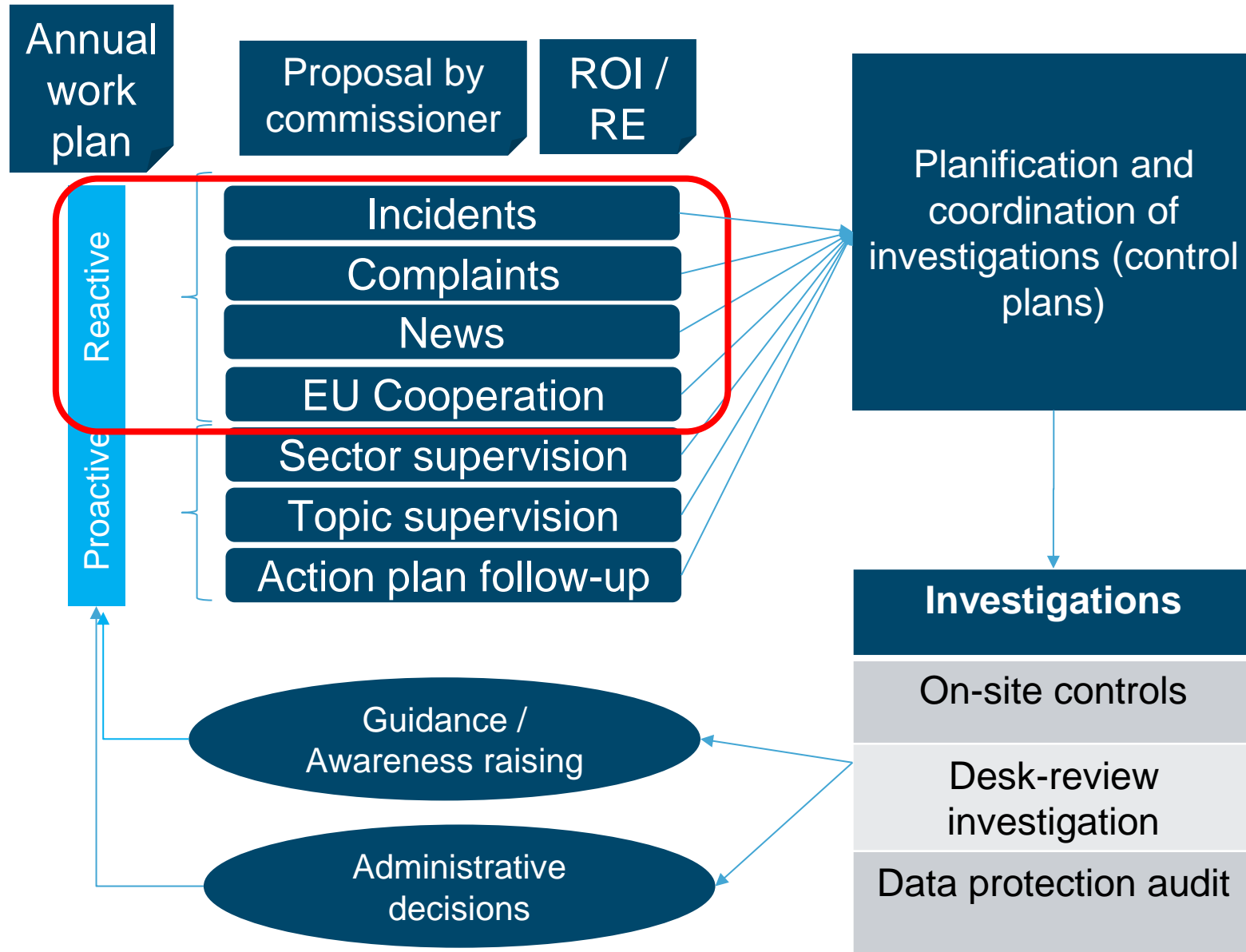
CNPD - Structure



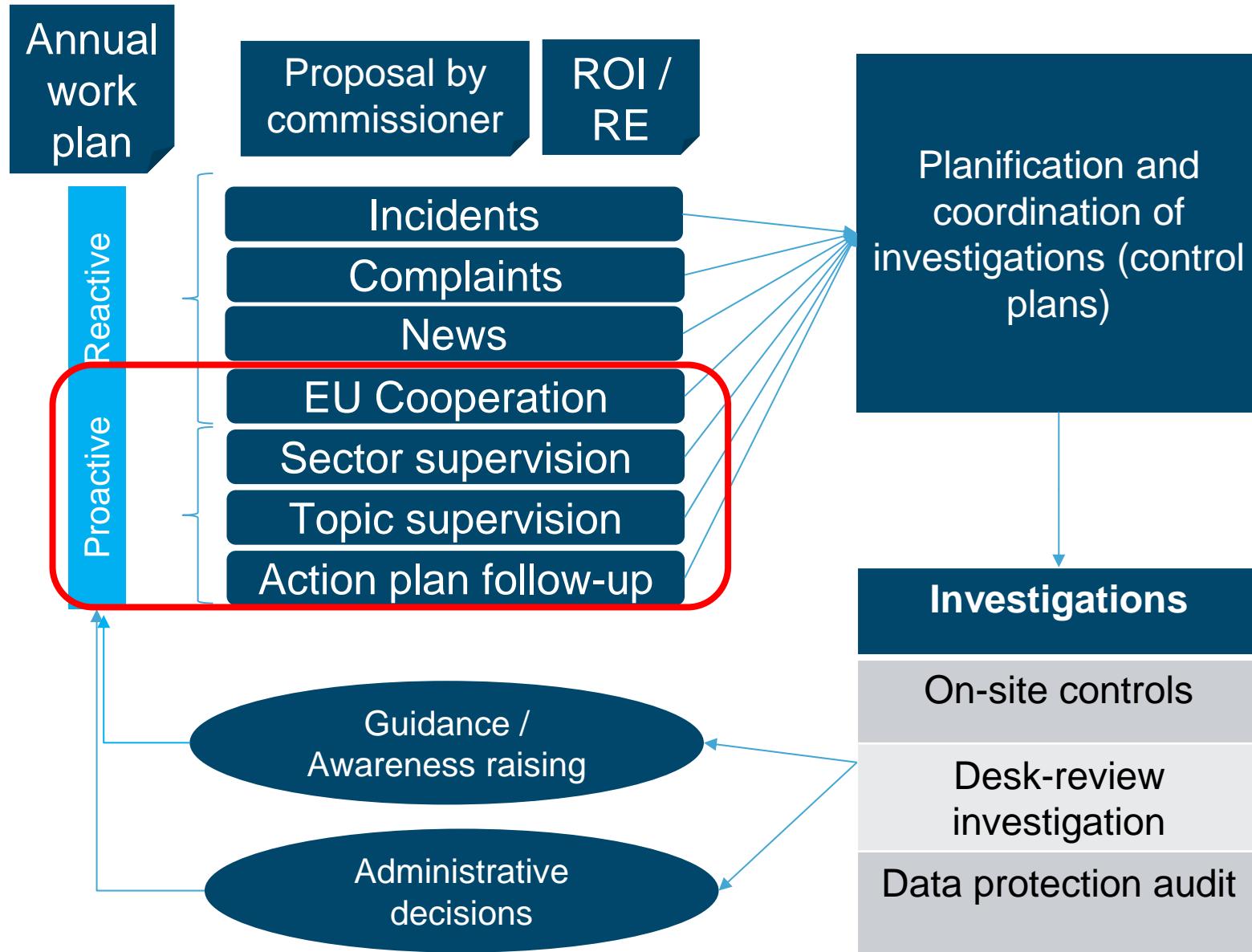
CNPD – Functional separation



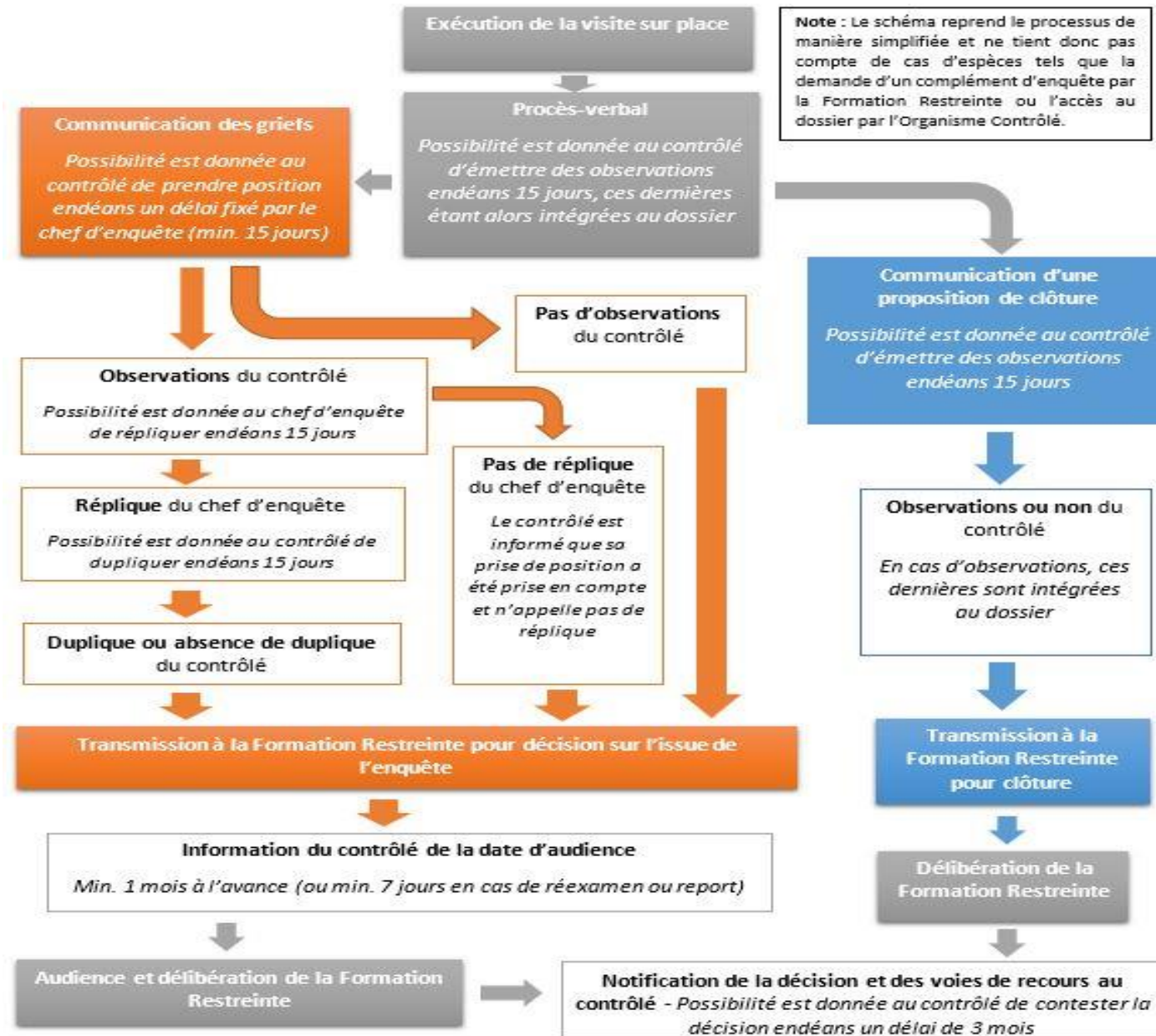
Compliance control – Frame of reference



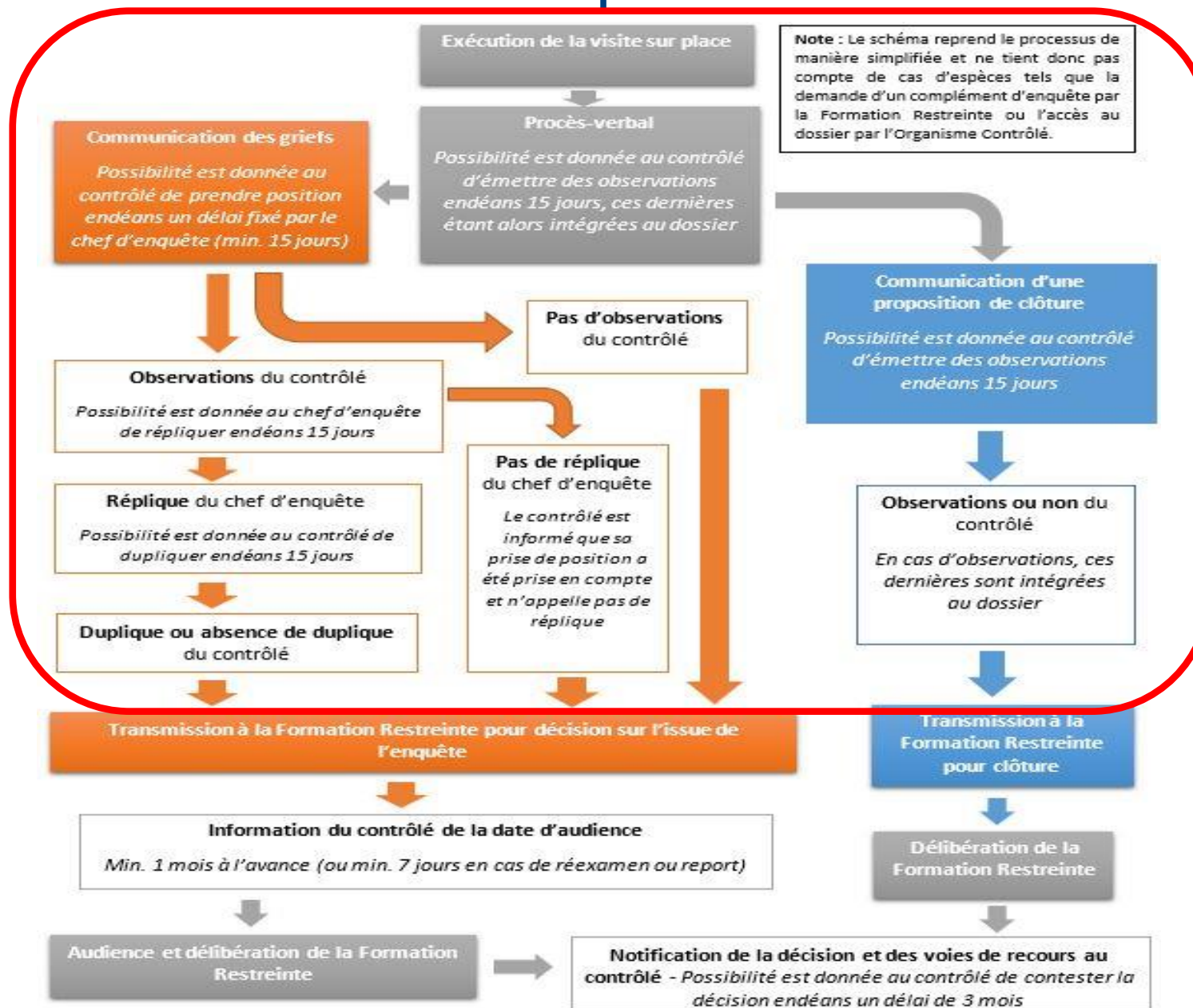
Compliance control – Frame of reference



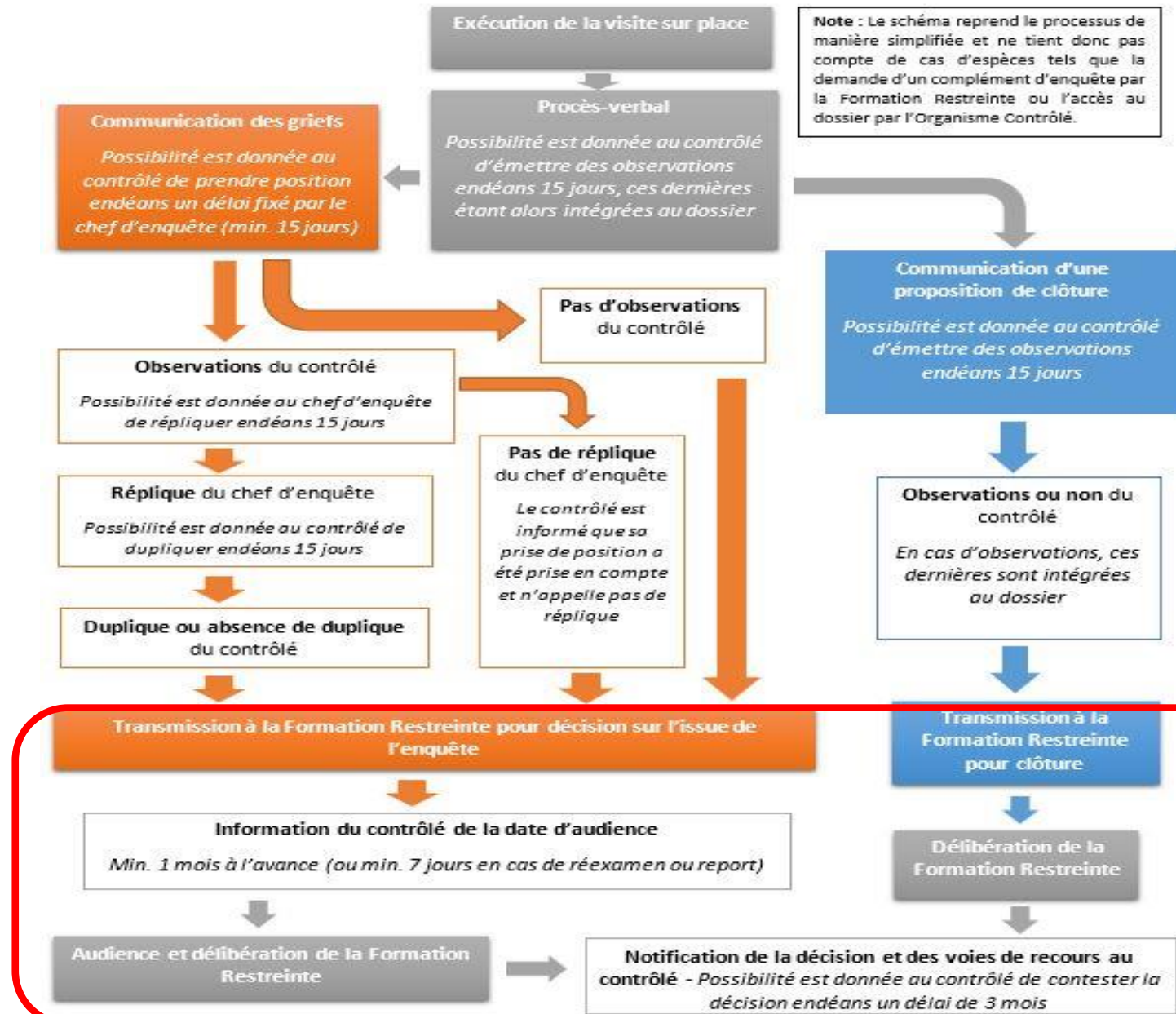
On-site controls - procedure



On-site controls - procedure



On-site controls - procedure



Thank you for your attention!

Questions?

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.



Commission nationale pour la protection des données

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