

PRACTICAL GUIDE ARE YOUR DATABASES COMPLIANT WITH CNIL?

Over the past two years, CNIL--the regulatory body which ensures compliance with French data protection laws--has been cracking down on businesses that fail to adhere to its registration standards. The penalties for non-compliance are severe.

How can you ensure that your business's personal data processing, collection, and storage mechanisms are CNIL-compliant? This article provides a brief summary of CNIL's registry requirements, highlighting special data protection issues of which you should be aware.

➤ STANDARD NOTIFICATION PROCEDURE

Under French law, you have a legal duty to preserve the security of any personal data you store, process, or collect. You also have a duty to prevent such data from being distorted, damaged, or communicated to non-authorized third parties.

If you intend to create records of personal data, you must declare your intention to CNIL before you commence collecting or processing *anything*. Failure to notify CNIL of your intention to do so is a criminal offence.

When notifying CNIL, you must include, *inter alia*, the following information:

- Your business identity
- Your purpose for processing the personal data
- The recipients of the data
- The service or department in charge of processing the personal data
- Any data transfers you have contemplated
- Any persons who will require access to the data while processing it

Upon receiving your declaration, if CNIL finds that you are compliant with French data protection regulations, it will send you an acknowledgement. CNIL's acknowledgement gives you the "green light" to commence processing personal data in accordance with your declaration.

➤ SIMPLIFIED AND SENSITIVE NOTIFICATION PROCEDURES

If you seek to process data of a common nature (e.g. names, addresses, telephone numbers, etc.), you may pursue a simplified declaration. Under CNIL's simplified process, you are not required to submit all the information described in the standard process above. Instead, you may register using simplified notification forms, which can be found on CNIL's website.

On the other hand, CNIL strictly regulates the collection of sensitive data. Sensitive data is personal data which relates to an individual's race, religion, political beliefs, trade union membership, or private life. Because collecting these types of data can pose risks to the civil liberties of individuals, CNIL requires that you obtain express consent from your

data subjects beforehand. To ensure that you are fully compliant, it is advisable that you obtain such consent in writing, with the individual's signature attached.

In addition to the consent of the data subject, you must also present the reason why you are requesting the sensitive data. Lastly, CNIL must approve all requests for sensitive data.

CNIL enforces the processing of medical and criminal data with especially stringent regulations. Breaching CNIL's regulations on sensitive information can result in 5-year prison term and a 300,000€ fine. Due to the complexity of these data protection regulations, we recommend that you consult an attorney before endeavoring to collect sensitive data.

➤ FAIR USES WHICH DO NOT REQUIRE NOTIFICATION

Certain types of information do not have to be registered with CNIL. For example, if you process personal data for the sole purpose of keeping a register intended exclusively for public information and open to the public for consultation, you do not have to declare your intentions to CNIL.

Additionally, if you appoint a personal data protection officer whose job is to ensure compliance with French or EU data protection obligations, you become exempt from CNIL's formal processes for notification. However, even with a data protection officer, you are still obligated to notify CNIL when transferring data outside the EU.

When appointing a data protection officer, you must notify CNIL of your intentions. CNIL requires that the officer is duly qualified, and that he keeps a record of all data processing that is immediately available for inspection. French data protection laws regulate the type of relationship you may have with the officer. For instance, you may not sanction the officer for actions arising out of his duties, and if CNIL finds evidence of non-compliance, it may require you to revert to its standard notification procedures.

➤ DATA TRANSFERS

If you do business internationally, you should be wary that an increasing number of data protection laws prohibit cross-border data transfers. Under European Commission Directives, the EU permits transferring personal data only to nations whose have "adequate" data protection laws. So far, the EU has only recognized Switzerland, Canada, Argentina, Guernsey, and the Isle of Man as having adequate data protection laws.

The EU does recognize certain exceptions to cross-border transfer restrictions, however. For details regarding these exceptions, please see our memo on data transfers.

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