

PRACTICAL GUIDE PRIVACY POLICY

This practical guide is for informational purposes only and is not a comprehensive presentation of the Privacy Policy. It does not constitute legal advice.

You regularly collect or process the personal data of your clients and or commercial partners. Law n° 78-17, dated January 6, 1978 and called the “Information Technology and Liberties” Law, imposes certain obligations that are in your best interest to respect. Among these obligations, you can easily satisfy one by developing a privacy policy.

➤ PURPOSE

The privacy policy satisfies the information regulation imposed on the data controller¹ by article 32 of the “Information Technology and Liberties” Law. The policy allows the data controller to inform the individuals whose personal data is collected regarding the manner in which the data will be used. The affected individuals can thus fully exercise their rights regarding their personal data.

➤ CONTENT

The “Information Technology and Liberties” Law dictates the contents of the privacy policy, the duties of the data controller and the rights of the individuals whose personal data is collected.

▪ Duties of the Data controller

According to article 32 of the “Information Technology and Liberties” Law, the data controller must inform the individuals whose personal data is collected of:

- his identity,
- the purpose of the processing,
- whether providing the data is voluntary or mandatory,
- the eventual consequences of incorrect data,
- the recipients or type of recipients of the data,
- the foreseeable transfers of the data to a state that is not part of the European Community, and
- all the rights granted to the concerned individuals by the “Information Technology and Liberties” Law.

Additionally, in the case of using a network, the data controller must inform all users, in a clear and comprehensive manner, of the foreseeable use of the information monitoring the connection status (cookies, session variables, etc.) and the collection of information regarding the configuration of the users’ computers (operating system, browsers, etc.).

¹ According to article 3 of the “Information Technology and Liberties” Law: The personal data controller is, unless expressly appointed by legislative provisions or regulations relative to this treatment, the person, public authority, service or body that determines its purpose and means.

- **Rights of the Individuals Whose Data is Collected**

- *Right to Object*

Article 38 of the “Information Technology and Liberties” Law states: “Everyone has the right to object, for legitimate reasons, that their personal data is processed.”

Additionally, everyone can refuse, at no cost and without having to provide a reason, that their personal data is used for prospecting purposes, notably commercial ones.

- *Right of Access*

The right of access arises from articles 39, 41 and 42 of the “Information Technology and Liberties” Law. In accordance with these articles, everyone that demonstrates their identity has the right to interrogate the data controller in order to find out if he possesses information about him or her and to assure that this information is provided to him or her.

The data controller cannot object to these requests from the individual concerned to communicate the information unless the requests are obviously abusive, notably in their number, repetitive character or systematic.

- *Right of Modification*

According to article 40 of the “Information Technology and Liberties” Law, everyone that demonstrates their identity can request that their personal data be corrected, completed, updated, secured or erased by the data controller, and if the data is imprecise, incomplete, ambiguous, or outdated that its collection, use, communication or storing be forbidden.

The data controller should prove that he carried out the requests as demanded by the individual concerned.

➤ SANCTIONS

The National Committee on Information Technology and Liberties (“CNIL”) can sanction the data controller who does not respect the duties it imposes. The CNIL can, most notably, issue a warning against them, require them to respect the duties in a specific amount of time, and if the data controller does not conform to the requirement, issue financial sanctions up to 300,000 euro, or in the case of a business, up to 5% of its revenue before taxes of the previous financial year, capped at 300,000 euro.

In addition, the data controller who does not respect certain obligations imposed upon him by the “Information Technology and Liberties” Law will incur criminal sanctions of up to five years imprisonment and a 300,000 euro fine.

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