



Squadra Avocats

NEWSLETTER

FIRST QUARTER 2023

DATA PROTECTION

January – March 2023

2022 CNIL figures



I. WORLDWIDE

e-Evidence. On 25 January 2023 the final versions of the Regulation and the EU Directive on cross-border access to electronic evidence were adopted.

Appeal. Pursuant to Article 78.1 of the GDPR, the Belgian Constitutional Court, in a decision dated 12 January 2023, ruled that Article 108 of the Data Protection Authority (DPA) law was unconstitutional in that it did not grant interested third parties the right to appeal against the legally binding decision of a supervisory authority.

DPO. In two decisions on 9 February 2023 (cases C-560-21 and C453/21), the CJEU ruled that national legislation can dictate that controllers or processors may only dismiss a DPO for serious reasons, even if their dismissal is unrelated to the fulfilment of their role. However, such regulations should not prevent the dismissal of a DPO who no longer has the required professional skills or who has a conflict of interest.

Competition. In a preliminary decision of 11 January 2023, the German competition regulator demanded that Google change its practices in order to obtain the consent of its users, given the amount of data collected and used by the software publisher's numerous services.

II. DATA TRANSFERS

Adequacy. On 14 February 2023, the European Parliament adopted a resolution on the European Commission's draft Adequacy Decision on data transfers between the EU and the US, ruling that this draft does not ensure equal data protection measures between both parties.

The EDPS welcomes a number of significant amendments, but has expressed concerns about the rights of data subjects and onward transfers.

HDS. The new HDS certification will be developed in 2023 to include the systematic hosting of health data in the European Economic Area, or in a country offering an adequate level of GDPR with legal or technical measures implemented to reduce the risk of extraterritorial data transfer. Actors will have to methodically opt for and adopt solutions that are independent of extra-European rights and capital.

OECD. OECD members affirm their commitment to promoting an international framework for the development of robust and sustainable international data transfer agreements to standardise laws internationally regulating access to personal data for national security and law enforcement purposes.

III. NON-COMPLIANCE

ChatGPT. The Italian supervisory authority deems ChatGPT to be unlawful, particularly due to *“the lack of information available to users and all those whose data is collected by OpenAI, but above all the lack of legal justification of the massive collection and storage of personal data, with the aim of 'training' the algorithms underlying the way the platform works.”*

Signal. The president of the encrypted messaging app has expressed concern that the UK government's proposed Online Security Bill could compromise users' security and privacy by weakening encryption.

Data brokers. Noyb has filed several complaints against websites and data brokers for mishandling access requests using cookies as authentication, deeming these companies to have taken an obstructive approach, denying access or asking for unnecessary information in user authentication.

IV. MISCELLANEOUS

OVH. On 26 January 2023, the Commercial Court of Lille ordered OVH to compensate one of its clients following a fire in one of its data centers in March 2021. The court ruled that by storing the backup files in the same location as the main server, OVH was contractually liable under the backup contract.

CNIL. In 2023, the CNIL announced its focus on the use of “enhanced” cameras by public actors, the use of the personal credit incidents file, the management of health files and mobile applications.

Proportionality. In a judgment of 8 March 2023, the Court de Cassation reiterated that the right to the protection of personal data is not absolute, and that it must weighed up against other fundamental rights. Accordingly, the Court ruled that the salary slips of eight employees should be shared where necessary in so far as it is “*essential to the exercise of the right to evidence and commensurate with the aim pursued*”.

AI. The draft law on the Olympic and Paralympic Games, adopted on 28 March 2023 by the National Assembly, provides for an “experimental and temporary” legal framework to improve video surveillance systems with artificial intelligence algorithms that can detect “anormal situations”. To avoid conflict with the European draft AI regulation, this system may be recognised as a “high-risk application”, which would necessitate more extensive requirements.



Jean-Baptiste Belin



Chloé Niedergang



Émilie Mounic



Benoîte Chanfray



Alexandre Tessonneau