



## NEWSLETTER FOURTH QUARTER 2022 DATA PROTECTION

20 December 2022

### I. WORLDWIDE

**EUROPE.** The adoption of two European regulations, [DMA](#) and [DSA](#), on 12 October and 17 October 2022 respectively marks the introduction of new enforced compliance measures for many 'online intermediaries' in order to better regulate unlawful online content.

**EUROPE.** The NIS 2 Directive [was adopted](#) on 10 November 2022 by the European Parliament and will soon be implemented. It includes new risk management procedures, the duty to report certain incidents within 24 hours and fines of up to 2% of turnover.

**NETHERLANDS.** The Dutch Ministry of Justice commissioned a [study on the Cloud Act](#), and concluded that European entities that use American hardware

or software may be subject to the US Cloud Act. This will be particularly applicable to the European 'trusted clouds', Blue and S3ns, which are based on Microsoft and Google systems respectively.

**IRELAND.** On 15 September 2022, after the EDPB's intervention, the Irish supervisory authority [fined Instagram](#) €405 million for processing minors' personal data in a breach of GDPR regulations.

**AUSTRALIA.** The Australian government has introduced a [bill](#) that will significantly increase the maximum fine for data breach incidents to €32 million or 30% of turnover.

### II. DATA SECURITY

**PASSWORDS.** In [its Deliberation No. 2022-100](#), the French data protection authority (CNIL) adopted a recommendation to define the minimum technical and organisational requirements for authentication by password or by any other non-shared information (with the exception of cryptographic keys and secrets) in the processing of personal data.

**DATA BREACH.** On 18 October, the EDPS published and submitted its [new guidelines](#) on notification of

personal data breaches to a public consultation. This is simply an update of the requirements for notification of a data breach by non-EU organisations.

**CONVICTION.** Uber's former head of security has been [found guilty](#) of obstructing the FTC's investigation and hiding a crime from authorities by helping to conceal a 2016 user data breach. He faces eight years in prison and a \$500,000 fine.

### III. SANCTIONS

**EDF.** On 24 November 2022, the CNIL [fined](#) EDF €600,000, predominantly for failing in its duties with regards to commercial prospecting and individuals' rights.

**CLEARVIEW.** The CNIL [fined](#) Clearview AI €20 million and ordered it to stop processing the data of persons

in French territory, with an additional fine of €100,000 per day's delay after two months.

**DISCORD.** The CNIL [fined](#) Discord Inc. up to €800,000 for (i) lack of a precise retention period, (ii) lax password policy and (iii) lack of a data protection impact analysis (DPIA).

## IV. MISCELLANEOUS

**WHISTLEBLOWERS.** The CNIL recently implement a specific [system](#) to collect and process whistleblower reports concerning breaches of personal data protection regulations and cybersecurity. In the case of other breaches, the CNIL may forward the request to the relevant body or to the French Defender of Rights.

**COMPETITION.** On [20 September](#), the Advocate General at the CJEU concluded that a competition authority may, under certain conditions, investigate commercial practices' compliancy with GDPR regulations.

**DPO.** In a [decision taken on 21 October 2022](#), the French Council of State specified that the protection

of the DPO under GDPR rules does not prevent the dismissal of a DPO 'who no longer possesses the professional qualities required to carry out his duties or who does not carry them out in accordance with the GDPR provisions.

**BCR.** A new [recommendation](#) relating to BCR Controllers was adopted on 14 November 2022 and was submitted for public consultation up to 10 January 2023. This recommendation will amend the existing guidelines.



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