



New Guidelines on AI & privacy issued by the French Data Protection Authority

The growth of AI raises concerns about protecting individual freedoms, particularly in the processing of large amounts of personal data during algorithm training. This potential misuse includes the creation of false information, increased automation of decision-making, and new threats to people's rights.

Recognizing the need for legal certainty, the French National Data Protection Authority (CNIL) released guidelines in October 2023, asserting that GDPR principles align with AI research and development.

The guidelines focus on the AI development phase applicable under GDPR. AI system providers must first determine their role as data controllers, joint controllers, or processors when building learning databases with personal data. The CNIL deems this a crucial prerequisite to adhere to GDPR terms. Creating a database for AI system training is considered personal data processing, requiring a 'specified, legitimate, and explicit' purpose defined from the outset. While operators may not predict all future applications during algorithm training, the type of system and main functionalities must be clearly defined.

Ensuring a legal basis for processing is imperative, aligning with GDPR principles like consent, legitimate interest, public interest mission, or contract. Additional verifications are necessary when reusing data to create databases. A data protection impact assessment (DPA) is recommended and may be mandatory for high-risk scenarios, controlling violations of individual freedoms in the process. Designing AI systems must consider data protection principles, particularly minimization. Despite allowing training on large datasets, a thorough analysis of the system's purpose, technical architecture, data sources, and the selection of necessary data is essential, aided by mechanisms like pilot studies or ethics committees.

The 'privacy by design' principle should govern data collection and management. Data 'cleansing' is essential for a high-quality training database, ensuring consistency and error correction. Regular updates prevent drift, with data retention periods determined by the initial purpose under GDPR. Despite potentially long periods for training databases, data security is crucial, employing technical and management measures like data flow encryption and robust authentication. Comprehensive data documentation is necessary for traceability, legitimacy, monitoring, and transparency.

At the European level, the European Data Protection Supervisor (EDPS) also made recommendations in October 2023 regarding the Proposal for a directive on liability for defective products ('the PLD Proposal') and the Proposal for a Directive on adapting non-contractual civil liability rules to artificial intelligence ('the AILD Proposal').

According to the EDPS, while safety rules and protected fundamental rights can reduce risks, they will not eliminate them entirely. Therefore, its Opinion stresses the need for ensuring that individuals harmed by AI systems can obtain remedies regardless of whether AI systems are used and/or produced by public or private actors. Moreover, the procedural safeguards of the AILD Proposal should apply in all cases of damage caused by an AI system, irrespective of its classification as high-risk or non-high-risk. Providers and users should be explicitly required to disclose information pursuant to Article 3 of the AILD Proposal in an intelligible and generally understandable form. The EDPS also recommends that the AILD Proposal explicitly confirms that it is without prejudice to the European Union data protection law, so as not to limit in any way the potential avenues of redress for individuals. Finally, the EDPS suggests considering additional measures to alleviate the burden of proof, providing a fairer approach to addressing AI challenges in EU and national liability rules.

Carbon capture, utilisation, and storage: new investment opportunities in France as part of the French Government's carbon neutrality policy. An ambitious carbon capture, storage and utilisation strategy (CCUS) consultation was launched in France, as part of the **French government's** objectives to reach carbon neutrality by 2050.

CCUS can have the potential to capture and store between 4-8 million tonnes of CO2 emissions per year by 2030.

CCUS deployment will be focused on French industrial zones, such as Dunkerque, Le Havre, Fos-sur-Mer, Lacq/Sud-Ouest, Loire-Estuaire, and Grand Est. This evaluation is ongoing in **2023**. (David Faravelon/Sylvie Perrin)

Social networks & influence regulation in France. On June 9, 2023, France adopted the "**Law aimed at regulating commercial influence and combating the abuses of influencers on social networks**". A **joint liability** mechanism is set forth among the advertiser and the influencer for the compensation of damages caused to third parties.

Advertiser targeting French customers via a French or foreign influencer must carefully check influencer's practices or bear the risk of being held liable for their consequences.

French Parliament strengthens online protection of minors. On July 7, 2023, French law was passed to better prevent and prosecute online crimes such as cyberbullying towards minors. Social networks "shall refuse to allow minors under the age of fifteen to register for their services, unless authorization for such registration is given by one of the holders of parental authority over the minor". The technical referential for age verification will be soon issued by the French ARCOM (i.e. the French audiovisual and digital communication regulatory authority).

Abrupt termination of commercial relationships in French case law until 2023s: beware of economic dependence. Main findings concerning economic dependence in the context of the termination of an established commercial relationship:

1. The state of economic dependence is often alleged, rarely accepted.
2. If there is no obstacle to diversifying the customer base, the company in a state of economic dependence must assume its strategy.
3. Sales with the party responsible for the breach of contract are not the decisive factor. (Sophie André)



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