



PRIVACY LAWS & BUSINESS

DATA PROTECTION & PRIVACY INFORMATION WORLDWIDE

France implements new data protection law

With new data protection legislation finally in place, **Pascale Gelly** examines whether France now meets the standards set out by the European Union.

After years of rebounds and false alerts which kept the legal community under intense suspense, the French Parliament adopted on July 15th the new version of the 1978 data protection law, so-called "Loi Informatique et Libertés". This was not yet the happy end of this eight year-long story. As soon as it was voted in, the law was brought before the Constitutional Court for review, showing how crucial the debate was for defendants of civil liberties. But at last, since August 7th 2004, France can claim to have implemented the EU Data Protection Directive and that overall, it is in compliance with its Constitution.

As the 1978 law had inspired the drafters of the EU directive, the original text was not very far from the directive's provisions. Still, important modifications had to be made to create the higher level of protection imposed by the directive. One main change brought in by the law lays in the scope of powers given to the French Data Protection Authority, the CNIL, marking a clear intent to increase the level of enforcement.

While on the one hand attempting to reduce the burden of formalities for data controllers, on

the other, the law now imposes prior controls for the private sector in cases where data processing presents specific risks. Other important changes concern the information notices provided to individuals and the control of data transfers out of the European Community.

Lawful data processing

The law brings few changes to the directive's essential principles of fairness, purpose limitation, data adequacy, data accuracy and storage limitation.

Consent

While the EU directive states that individuals' consent is one of a number of options for legitimising data processing, the French law establishes consent as a principle. Along

the same lines, it establishes a different order for what may be exceptions to consent, putting the necessity for the performance of a contract well under the compliance with a legal obligation. It is too early to tell whether this wording will have any consequence on the interpretation of the law. However, it is interesting to notice how important consent is for the legislators in Southern Europe, while EU data

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