

NEWSLETTER

TECH / DATA



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Adoption of the EU AI Act

On February 2, 2024, the 27 EU countries unanimously adopted the AI Act. This world's first comprehensive AI law is an important regulation that establishes fundamental principles to regulate the use of artificial intelligence (AI) in line with the identified risks. Read our article to find out more.



LATEST NEWS - TECHNOLOGIES

Adoption of the EU AI Act

EU Act on artificial intelligence, COM/2021/206 final

On February 2, 2024, the 27 countries of the EU unanimously adopted the AI Act. This text aims to provide a framework for the use of AI, with obligations binding on suppliers and distributors of AI systems, but also on users. It will apply to all organizations and companies, whatever their size, as well as public entities established in the EU, and to those marketing their systems and models in the EU. These obligations depend on the level of risk identified:

- **Unacceptable risk:** these AI systems and models are prohibited and cannot be marketed in the EU, nor exported. These include biometric categorization systems using sensitive characteristics (political opinions, religious beliefs, etc.), non-targeted extraction of facial images to build facial recognition databases, emotion recognition systems and social rating systems. The deadline for compliance is 6 months after publication of the IA Act, i.e. around November 2024. Penalties for non-compliance can reach up to 35 million euros or 7% of annual worldwide sales;
- **High risk:** these are systems deployed for the products and fields of activity defined in appendices II and III* of the IA Act. They will have to be subject to a declaration of conformity and registration in the EU database, and obtain a CE mark when the use case is high-risk. These obligations apply 24 or 36 months after publication of the IA Act, depending on the case in question. The penalty will be up to 15 million euros or 3% of annual worldwide sales;
- **Low risk:** these AI systems and models are those that interact with natural persons. They must comply with obligations of information and transparency towards users, these obligations being applicable 24 months after the publication of the IA Act. The maximum penalty is 7.5 million euros or 1% of annual worldwide sales;
- **Minimal risk:** these AI systems and models can voluntarily follow codes of conduct. The deadline for implementation is 24 months after publication of the AI Act, i.e. around October 2026.

In addition, general-purpose AIs such as ChatGPT, will have to provide a sufficiently detailed summary of the data used in line with the new transparency obligations, and comply with copyright regulations. Opt-out procedures should therefore be put in place so that right-holders can object to the automated search and analysis of data.

A mapping of AI systems held by the entity will need to be carried out, along with a risk analysis to classify existing systems or models according to the different levels mentioned above, as the obligations under the IA Act apply to each AI system or model individually and not to the organization as a whole.

The dates specified above are to be confirmed, the ratification of the IA Act being scheduled for April 2024, it will come into force on the date defined in the act or, failing that, 20 days after its publication in the Official Journal of the European Union.

**Biometric identification, critical infrastructure, education, employment, essential private services, law enforcement, migration, justice*



LATEST NEWS - TECHNOLOGIES

Adoption of the first European certification scheme (EUCC)

European Cybersecurity Certification Scheme (EUCC), January 31, 2024

On January 31, 2024, the European Commission adopted the first European Cybersecurity Certification Scheme, EUCC (EU Common Criteria), in line with the EU Cybersecurity Regulation. This cybersecurity certification scheme proposes an EU-wide set of rules and procedures on how to certify ICT (information and communications technology) products throughout their lifecycle, thereby making them more trustworthy for users. It will shortly be published in the EU's Official Journal and will come into force 20 days after its publication. The first certificates can be issued one year later.

French competition authority inquiries ex officio and public consultation on generative AI

The French competition authority – the Autorité de la concurrence (ADLC) has launched a public consultation to analyze the competitive functioning of the generative AI sector. The ADLC says it is particularly interested in the practices implemented by players that are already present in the cloud infrastructure sector and at issues relating to access to cloud infrastructure, data and skilled workforces. Players are invited to contribute to the public consultation and submit their answers by March 22, 2024.

EUCCS: French cloud industry calls for a high-level certification

The French cloud industry has called on the French government and European decision-makers to fully support the European cloud certification project. While France has adopted the most rigorous certification, SecNum Cloud, the other member states have their own certification systems with uneven levels of requirements. For several years now, the European Union has been discussing the EUCCS (European Cybersecurity Certification Scheme on Cloud Services) certification project, aimed at harmonizing cybersecurity standards between member states.

While discussions concerning the EUCCS seemed to be converging towards a multi-level certification, including demanding criteria such as the European location of cloud providers, this requirement is currently being called into question.

French manufacturers are calling for the creation of a stricter, more protective EUCCS certification, and point out that dropping data localization requirements from the highest levels of certification could result in Europe losing its autonomy and reinforcing its technological and economic dependence on GAFAM.

Creation of a European AI Office

EU Commission, dec., January 24, 2024, creating the European AI Office for Artificial Intelligence

In a decision dated January 24, 2024, the European Commission created the European AI Office. The mission of this global office is to supervise the development of artificial intelligence systems, particularly those for general use, as well as interaction with the scientific community. It is part of the administrative structure of the Directorate-General for Communication Networks, Content and Technology.



LATEST NEWS - TECHNOLOGIES

Deepfakes and removal of illicit content by X

X has suspended searches for "Taylor Swift" due to the proliferation of "deepfakes" using her image and voice. In accordance with article 6 of the LCEN, websites are required to remove illegal content as soon as they become aware of it. To better identify such content, Article 16 of the Digital Service Act (DSA) now requires easy reporting mechanisms to be put in place.



INTERNATIONAL FOCUS

FCC bans automated calls

The U.S. Federal Communications Commission (FCC) has decided to outlaw automated calls using voices generated by artificial intelligence (AI). This decision specifically targets automated calls employing AI voice cloning tools. Indeed, an investigation is underway into a potential attempt to disrupt the current election in the United States, after it was found that robocall spoofing President Joe Biden's voice had been made to discourage New Hampshire residents from voting in the state's primary.



Air Canada condemned because of its chatbot

Civil Resolution Tribunal, 2024 BCCRT 149, *Moffatt v. Air Canada*

An Air Canada customer had booked a flight with the airline after the death of his grandmother. The chatbot on the airline's website told him that he could request a special bereavement fare within 90 days of his purchase, so he bought a ticket at the normal fare, thinking he could get a partial refund.

However, after the trip had taken place, Air Canada employees informed him that it was not possible to benefit from this fare after the trip had taken place. The British Columbia Court of Civil Resolution ordered Air Canada to pay compensation, considering that the company was responsible for the information published on its website, whether it came from a web page or a chatbot.



LATEST NEWS - DATA PROTECTION

**BREAKING
NEWS**

The Data Act comes into force

EU Regulation establishing harmonized rules for fair access to and fair use of data, 2022/0047(COD)

On January 11, 2024, the Data Act came into force. It aims to complement the European Data Governance Act 2022/868 applicable from September 2023, and puts in place new rules to ensure that connected products are manufactured in such a way as to enable their users, whether professionals or consumers, to access, use and share the data generated by these devices with third parties.



CNIL's priority control themes for 2024

In early February 2024, the CNIL announced its priority control themes for 2024. Each year, the CNIL's inspections focus on subjects of high public interest or linked to current events. In 2024, it will focus on :

- Data collection for the Olympic and Paralympic Games;
- Online collection of data from minors;
- Data processing for loyalty programs and electronic till receipts
- The implementation conditions of the data subjects' right of access.

These themes will account for an average of 30% of the inspections carried out.

Cooperation between CNIL and the French competition authority

Competition and personal data: a shared ambition

The CNIL and the French Competition Authority (ADLC) have published a document highlighting the importance of their collaboration. The document underlines the crucial role of personal data protection in ensuring fair competition. The aim of such collaboration is to turn consumer data protection into a competitive advantage. The ADLC and the CNIL plan to meet periodically in seminars to develop their analyses of topics of mutual interest, such as artificial intelligence and the Internet of Things, and to deepen their understanding of common regulatory issues.

LATEST NEWS - DATA PROTECTION



CNIL SANCTIONS

Against YAHOO EMEA LIMITED

Deliberation SAN-2023-024, December 29, 2023

YAHOO EMEA LIMITED has been fined 10 million euros by the French Data Protection Authority (CNIL). The CNIL, which had received 27 complaints, penalized the fact that cookies were deposited without the Internet user's consent. Furthermore, when a user of the "Yahoo! Mail" messaging service wished to withdraw his consent to the deposit of cookies, the company warned him that he would no longer be able to access the services offered by the company, and that he would lose access to his messaging service, without any other alternative being offered, which the CNIL also condemned.

Against AMAZON FRANCE LOGISTIQUE

Deliberation SAN-2023-021 of December 27, 2023

The CNIL has condemned AMAZON FRANCE LOGISTIQUE for implementing an excessively intrusive system for monitoring employee activity and performance. The CNIL noted that the company used indicators on employee activity and performance, collected with the help of scanners, to manage stocks and orders in its warehouses in real time, finding a breach of the principle of data minimization and unlawful processing. In fact, the indicators processed by the company led to excessive computer surveillance of the employees, in view of the objective pursued by the company.

Finally, the CNIL considered that employees and external visitors were not properly informed of the processing of their data and the presence of video surveillance systems. As a result, AMAZON FRANCE LOGISTIQUE has been fined 32 million euros.

Against TAGADAMEDIA

Deliberation SAN-2023-025 of December 29, 2023

On December 29, 2023, the CNIL fined TAGADAMEDIA 75,000 euros. The CNIL had decided to investigate the practices of data brokers as part of its priority control theme on commercial prospecting in 2022. It found that TAGADAMEDIA collected prospective customers' data via forms on its sites for participation in competitions or product testing, but that the appearance of the forms did not allow for free, informed, and unambiguous consent to be obtained from the user. Finally, the CNIL noted a failure in the implementation of the record of processing activities. The record, which was shared with a second company, did not specify which of the two companies was acting as data controller.

Against PAP

Deliberation SAN-2024-002 of January 31, 2024

The CNIL has imposed a penalty of 100,000 euros on De Particulier à Particulier (PAP), publisher of the pap.fr website, notably for having set a ten-year retention period for certain customer account data, without any justification for this period. The company also provided information to individuals in the form of an incomplete and imprecise privacy policy. The CNIL also noted that the rules governing the complexity of passwords for the site's user accounts were insufficiently robust to ensure the security of personal data.



LATEST NEWS - DATA PROTECTION

HEALTH DATA IN THE CROSSHAIRS OF THE CNIL

CNIL investigations into health data breach

At the end of January 2024, Viamedis and Lamerys, two operators ensuring the third-party payment for many complementary healthcare and mutual insurance companies, suffered a cyber-attack that compromised the personal data of 33 million people. The data concerned would include civil status, date of birth, social security number, name of health insurer and contract cover. Following this incident, the CNIL initiated investigations to verify whether the security measures put in place before and after the attack complied with the requirements of the RGPD.

To be continued...



CNIL issues formal notices to several healthcare establishments

After being informed of illegitimate access to patient data contained in the computerized patient record (dossier patient informatisé - DPI), the CNIL carried out 13 inspections of healthcare establishments between 2020 and 2024, which revealed shortcomings in IT security measures and authorization management, notably enabling healthcare professionals not involved in a patient's care to access patient information. Against this backdrop, the CNIL has given formal notice to several healthcare establishments to strengthen the security of their DPI by implementing robust authentication for access to the system, defining specific authorizations to ensure that each healthcare professional or agent of the establishment only has access to the files he or she is responsible for, and ensuring that access to the DPI is traced.

Protest against award of EMC2 hosting contract to Microsoft

On December 21, 2023, the CNIL authorized the creation of a health data warehouse called "EMC2", based on the automated processing of personal data. This warehouse will host health data from the French Assurance Maladie on a European scale, in response to a call for projects launched by the European Medicines Agency (EMA). The CNIL has awarded a three-year hosting contract to Microsoft Azure.

This decision has been challenged before the Conseil d'Etat by the NGO Internet Society France, which hopes that it will force the parties concerned to meet to find a balanced solution that respects French and European technological sovereignty.

LATEST NEWS - DATA PROTECTION



Compensation for non-material damage based on the fear of a potential misuse of personal data

CJEU, December 14, 2023, C-456/22

In a ruling dated December 14, 2023, the Court of Justice of the European Union (CJEU) held that the fear of potential misuse of personal data could, on its own, constitute non-material damage. In 2019, the media had revealed the existence of a cyber-attack against the Bulgarian National Public Revenue Agency (NAP). The incident resulted in personal data being leaked and published on the Internet. Numerous victims filed claims for compensation for moral damages arising from their fears of the potential misuse of their data.



INTERNATIONAL FOCUS

Dutch CNIL sanctions Uber B.V. and Uber Technologies Inc.

Press release from the Dutch Data Protection Authority (AP)

After receiving a collective complaint from the association La Ligue des droits de l'Homme, representing more than 170 drivers of the Uber platform - the Autoriteit Persoonsgegevens - the Dutch data protection authority, in cooperation with the CNIL, imposed a fine of 10 million euros on December 11, 2023, for several failures to inform drivers. Indeed, the companies did not provide drivers with the data requested as part of their right of access in an accessible format and did not make the online form enabling them to exercise these rights sufficiently accessible. In addition, the privacy statement contained incomplete information on data processing, and did not explicitly mention the right to data portability.



Italy's CNIL could ban ChatGPT again

Following an investigation opened by the Garante per la Protezione dei Dati Personali, the Italian privacy regulator, the latter declared, based on the evidence in its possession, that the ChatGPT tool as well as the techniques used to collect user data were in breach of the GDPR. OpenAI may submit its counterclaims regarding the alleged violations within 30 days. The Garante per la Protezione dei Dati Personali states that it will consider the work in progress within the working group set up by the European Data Protection Board (EDPB) in its final decision on the case.

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