

# Data Protection reform — the French perspective

---

**Thierry Bernard, Partner at Paris-based law firm, Quadrigé, outlines the response of the French data protection authority and government on the draft Data Protection Regulation, giving the areas of support as well as the points of contention**

---

The Commission Nationale Informatique et Libertés ('CNIL'), the French data protection authority, welcomed the introduction of new rights for citizens in the European Commission's Data Protection Regulation published on 25th January 2012. Such new rights include the right to be forgotten, the right to 'data portability', and the clarification of rules on consent, with the resulting strengthening of that requirement.

The CNIL also approved the reduction of the administrative burden for organisations which the draft Regulation would reportedly bring, the strengthening of the powers of national data protection authorities to sanction organisations found to be breaching data protection rules — with penalties up to 2% of worldwide sales — and the requirement for further cooperation of the supervisory authorities at the European level.

Only few days after the publication of the European Commission proposals, the CNIL, along with the French Parliament and government, officially asked for changes to the draft Regulation in respect of certain important provisions that they consider entirely counterproductive. Those disputed provisions, and the French objections, are:

- that the 'competent supervisory authority' is the one where the main establishment of an organisation is located, regardless of the location of the citizens that are affected by its activity. The CNIL claims that the provision "will reduce the national DPAs role to that of a mailbox";
- the planned mechanisms for cooperation between national supervisory authorities, for example, with regard to notification of breaches or of 'high risk' processing. The French object that the burdens are at once too heavy and too restricted in their scope;
- the concentration of powers in favour of the European Commission, to the disadvantage of national supervisory authorities. The objection is that the Commission has excessive powers, particularly in relation to its sole responsibility for drawing guidelines relating to the Regulation, and for defining detailed rules for implementing its new provisions;

- the simple process of self-assessment by the data controller of international data transfers. The objection to this centres on that fact that such transfers would no longer be subject to the national supervisory authorities' authorisation.

According to the French authorities, the above provisions raise the risks of increased distance between European citizens and their national authorities and the development of 'forum shopping' practices. As is arguably already the case for tax purposes within the EU, organisations would be encouraged to install their main establishment in the least demanding Member States. The French authorities say this would lead to a real regression for citizens' rights.

The alternatives to the contested provisions proposed by the French authorities are:

- in the case of data processing targeting the population of a Member State, that Member State should retain the responsibility as supervisory authority, whatever the location of the data controller's main establishment;
- the intended new powers of the European Commission should be rebalanced in favour of the national supervisory authorities, which have the technical expertise, experience and a greater proximity to citizens.
- the powers of supervision and authorisation of international data transfers should be maintained in the hands of the national supervisory authorities.

The debates and lobbying actions about the draft Regulation should continue to be intense for at least a year — the period for which the Vice President of the European Commission, Viviane Reding, has set for the adoption of the reform by European authorities.

---

**Thierry Bernard**

Quadrigé

bernard@quadrigé-avocats.com

---