France – Data Privacy

The collection, processing, and transfer of personal data are regulated under the Data Processing, Data Files and Individual Liberties Law of 1978 (the "Law"). France, as a member of the European Union ("EU"), was required to implement the EU Data Protection Directive 95/46/EC (the "Directive") into its national legislation. Further amendments to the Law came into effect in August 2004, bringing the Law in line with the requirements of the Directive. The Commission Nationale de l'Informatique et des Libertés ("CNIL") is the national authority in charge of data privacy. In September 2010, the CNIL published guidelines on international data transfers and on 2010, the CNIL published a guide for employers and employees.

On 25 January 2012, the European Commission published a proposal for a new Regulation on personal data protection ("Draft Regulation"), which should replace Directive 95/46/EC and a proposal for a new Directive, which focuses mainly on personal data related to cooperation between judicial and police institutions in the EU.

The French Parliament made public its opinion on this proposal for a Draft Regulation through a parliamentary report dated 7 February 2012: the French Parliament disagrees with the measure, which should give powers only to the data processing authority in the country where the processor of data has its main establishment regardless of the country where the data subjects are located.

Collection and Processing of Personal Data	
Compliance Alternatives	Personal data collected must be necessarily and directly linked to the position offered, or the employee's professional qualifications to perform the job. Employees must be: 1) informed of the identity of the data controller and of the purpose of the processing; 2) informed of whether it is mandatory or not to provide his data and of any consequences of refusal to provide mandatory data; 3) informed of recipients of his data; 4) informed of the nature of the data to be collected and processed; and 5) given the right to access and rectify the personal data, or to withdraw consent. Data cannot be saved for an indefinite period of time (two years as from the last contact with a candidate applying for a position). Personal data also may be collected and processed without employee's consent in certain circumstances, including where it is necessary for the legitimate interests (e.g administrative purpose) of the company, unless such interests are overridden by the interests or fundamental rights and freedoms of the employee concerned. Employee express written consent, among other requirements, is required when processing sensitive data (e.g., racial or ethnic origin, political opinions, party affiliation, and religion) and for data transfer purposes.
Disclosure/ Registration	The Works Council must be informed/consulted before the introduction or modification of any system of the employer allowing the automated processing of employee data. The CNIL must be notified of certain mandatory information, as well as the commitment of the employer that the processing of data will comply/has complied with the provisions of the Law. The processing only can be implemented upon CNIL's acknowledgement that such notification has been received. Companies that choose to appoint a data protection officer are exempt from certain notification requirements.
Other Requirements	The employer as a data controller undertakes to take all necessary measures to secure data and keep it confidential.

Transfer of Personal Data	
Compliance Alternatives	The transfer of personal data from France to non-EU/European Economic Area countries is permitted to the extent that such countries provide an adequate level of protection. It is the case in Canada, Isle of Man, Switzerland, Argentina, Guernsey and Jersey. Although France has not expressly approved a standard contract for cross-border data transfers, the EU Commission ruled that certain standard contractual clauses offer sufficient safeguards. On February 5, 2010, the EU Commission issued a new set of standard contractual clauses effective as from May 15, 2010. France, as an EU Member state, recognizes these contractual clauses as adequate. Non-standard contracts or codes of conduct are acceptable, provided they contain adequate safeguards for privacy rights and the exercise of associated rights, and are authorized by the CNIL. The CNIL also encourages the use of binding corporate rules. For the transfer of data to the US, France will view compliance with the US/EU Safe Harbor principles as compliance with the cross-border transfer law in France. The cross-border transfer of personal data is allowed where: 1) the employee consents but the CNIL is reluctant to accept such consent because of the dependence relationship between the employee and the employer; 2) it is necessary for a contract between the employer and a third party that is in the interest of employee; 3) it is necessary or legally required on important public interest or legal grounds; 4) it is necessary to protect the vital interests of the employee; 5) the data is from a public register; or 6) it is necessary for the establishment, exercise or defense of legal claims. Employees must be informed by the employers of data transfer to countries outside the EU. An employee's social security number or privacy-related data cannot be transferred abroad under any circumstances for identification purposes.
Other Requirements	If data will be transferred outside of France, this fact, as well as the nature of the data, the purpose and conditions, and the country to which the data is to be transferred, must be included in the authorization request made to the CNIL. The employer and the third party recipient must conclude an agreement, whereby the third party recipient agrees to comply with the French laws on the protection of the data, and this agreement must be included in the filing with the CNIL. Employees' personal data collected outside the EU for a company established outside the EU may be processed in the French territory by services providers in the name of said company. In such case, in a deliberation n°2011-23 dated January 20, 2011 the CNIL exempted from prior authorization the transfer of personal data back to the data controller outside the EU.