

Decrees, Orders, Circulars

General texts

Ministry of Justice

Decree No 2005-1309 of 20 October 2005 enacted for the application of Act No 78-17 of 6 January 1978 on Data Processing, Files and Individual Liberties amended by Act No 2004-801 of 6 August 2004

NOR: JUSC0520586D

The Prime Minister,

Upon the report of the Keeper of the Seals, the Minister of Justice,

Having regard to Directive 95/46 EC of the European Parliament and the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;

Having regard to the Criminal Code;

Having regard to the Commercial Code;

Having regard to the Code of Judicial Organisation;

Having regard to the New Code of Civil Procedure;

Having regard to the Code of Administrative Courts;

Having regard to Act No 78-17 of 6 January 1978 on Data Processing, Files and Individual Liberties amended by Act No 2004-801 of 6 August 2004 on Protection of Individuals with regard to the Processing of Personal Data;

Having regard to Act No 95-73 of 21 January 1995 on Orientation and Planning on Security, amended by Act No 2003-239 of 18 March 2003 on Internal Security, in particular its Article 17-1;

Having regard to the amended Decree No 62-1587 of 29 December 1962 on General Regulation of Governmental Accounting;

Having regard to Decree No 89-271 of 12 April 1989 setting out the conditions and procedures for payment of travelling expenses to civilian personnel travelling within the overseas administrative departments, between mainland France and the administrative departments and for travel from one overseas administrative department to another;

Having regard to the amended Decree No 90-437 of 28 May 1990 setting out the conditions and procedures for the payment of travelling expenses of civilian personnel travelling within

mainland France whenever these are to be paid by government funds, by national publicly-owned bodies of an administrative nature or by some subsidised organisations;

Having regard to Decree No 98-608 of 17 July 1998 on the Protection of National Defence Secrets;

Having regard to Decree No 98-844 of 22 September 1998 setting out the conditions and procedures for the payment of expenses arising from civil servants travelling within an overseas territory, between mainland France and an overseas territory, between two overseas territories and between an overseas territory and an overseas administrative department, Mayotte or the local authority of Saint-Pierre-and-Miquelon;

Having regard to Decree No 99-487 of 11 June 1999 on the payment of allowances to the Members of the “Commission nationale de l’informatique et des libertés” (CNIL) and to people who assist it;

Having regard to the opinion of the Government of New Caledonia of 4 May 2005;

Having regard to the opinion of the Government of French Polynesia of 18 May 2005;

Having regard to the opinion of the General Council of Mayotte of 19 May 2005;

Having regard to the deliberation No 2005-049 of 24 March 2005 stating the opinion of the CNIL;

The Council of State (Home Affairs Section) having been heard,

Enacts:

PART I

COMMISSION NATIONALE DE L’INFORMATIQUE ET DES LIBERTES (CNIL)

Article 1

Meetings of the members of the CNIL shall be called by its Chairman. A meeting shall be called when requested by one third of the members of the Commission. The notice shall state the agenda.

Article 2

The Commission may validly deliberate only if the majority of its members in exercise take part in the meeting.

Article 3

The decisions of the Commission shall be made by an absolute majority of the members present.

However, the following decisions shall be made by an absolute majority of the members of the Commission meeting in a plenary session:

1. the election of the Chairman and the Vice-Chairmen and the nomination of the delegated Vice-Chairman;
2. adoption of the rules of procedure;
3. authorisations delivered by the Commission upon an application for the creation of data processing mentioned under Article 25 of the Act of 6 January 1978 referred to above;
4. opinions given by the Commission upon an application for the creation of data processing mentioned under Articles 26 and 27 of the same Act;
5. decisions made under the Commission's regulatory powers and those made according to Article 11(2) (b) of the same Act;
6. authorisations delivered by the Commission upon an application for the creation of data processing mentioned under Articles 53 and 62 of the same Act.

Article 4

The Government Commissioner shall be invited to all the meetings mentioned under Article 18 of Act of 6 January 1978 referred to above under the same conditions as the members of the Commission.

When absent or unable to attend, he will be replaced by an Assistant Government Commissioner.

Article 5

Expenditure shall be scheduled by the Chairman of the Commission or the delegated Vice-Chairman.

Article 6

Commission members shall be refunded for the expenses that they incur in performing their duties, in accordance with the conditions provided for by the Decree of 28 May 1990 referred to above.

Staff members who are called to assist the Commission shall be refunded for the expenses they incur while carrying out assignments on behalf of the Commission, in accordance with the preceding indent.

PART II

PRELIMINARY FORMALITIES FOR THE IMPLEMENTATION OF A PROCESSING OF PERSONAL DATA

CHAPTER I

GENERAL PROVISIONS

Article 7

In order to facilitate the fulfilment of the preliminary formalities for the implementation of the processing of personal data, the Commission shall define the model notification form, application for an opinion and application for an authorisation, and set out the list of any appendices that must be attached.

Article 8

The notifications, applications for an opinion and applications for an authorisation shall be presented by the data controller or the person having the capacity to represent him. If the data controller is an individual or a department, the legal entity or the public authority to which he belongs must be mentioned.

The notifications and applications shall be sent to the Commission by:

1. registered letter with acknowledgement of receipt;
2. delivery to the secretariat of the Commission against receipt; or
3. electronic means, with acknowledgement of receipt sent by the same means.

The date of the notice of receipt, of the receipt or of the electronic acknowledgement of receipt shall determine the starting point of the two-month period available to the Commission to notify its opinions and authorisations, according to Article 25(III) and Article 28 of the Act of 6 January 1978 referred to above. The decision by which the Chairman renews this period shall be notified to the data controller by registered letter with acknowledgement of receipt.

Article 9

Where an application for an opinion or for an authorisation is presented on behalf of the State, a legal entity governed by public-sector law or a private legal entity managing a public service, or where it is subject to examination by the plenary meeting of the Commission or of the Executive Committee, a copy of the application will be sent to the Government Commissioner before any deliberation.

The Government Commissioner may upon his request receive a copy of any notification, application for an opinion or application for an authorisation.

The communication of documents provided for under the first two paragraphs may be made, if necessary, by electronic means.

Article 10

Where a notification, an application for an opinion or an application for an authorisation are subject to examination by the plenary meeting or by the Executive Committee, the Government Commissioner will present his observations.

The data controller or any person whose testimony is required by the Commission or the Government Commissioner may be heard.

Article 11

The data controller shall inform the Commission promptly in writing of any erasure of a processing.

In the event of substantial modification affecting the data mentioned under Article 30(I) of the Act of 6 January 1978 referred to above by the data controller, the Commission shall be informed promptly according to the conditions provided for under Article 8 of this Decree.

CHAPTER II

NOTIFICATIONS

Article 12

Where the notification contains the commitment provided for under Article 23(I) of the Act of 6 January 1978 referred to above and satisfies the requirements of Article 30(I) of the same Act or where the notified processing meets the standards established by the Commission under the terms of Article 24(I) of the same Act, the Commission or, by delegation, the Chairman or the delegated Vice-Chairman will deliver promptly the receipt provided for under Article 23(I), third indent of the same Act.

When the receipt is delivered by electronic means, the data controller may ask for a hard copy of it.

Article 13

The standards established by the Commission according to Article 24(I) of the Act of 6 January 1978 referred to above shall be published in the Official Journal of the French Republic.

Article 14

The categories of data processing that are exempt under Article 24(II) of the Act of 6 January 1978 referred to above from notification shall be published in the Official Journal of the French Republic.

CHAPTER III

APPLICATIONS FOR AN OPINION AND FOR AN AUTHORISATION

Article 15

The decision of the Commission containing the opinion, authorisation or refusal of authorisation shall be notified by registered letter with acknowledgement of receipt, within eight days, to the data controller who presented the application.

It shall be also sent to the Government Commissioner.

Article 16

The file produced in support of an application for opinion presented under Articles 26 or 27 of the Act of 6 January 1978 referred to above shall contain as an appendix a draft authorisation of the processing mentioned under Article 29 of the same Act.

Article 17

The commitment to comply with a single regulation taken under Article 26(IV) or Article 27(III) of the Act of 6 January 1978 referred to above shall be sent to the Commission according to the conditions provided for under Article 8 of this Decree.

Article 18

The reasoned opinions of the Commission issued under Articles 26 and 27 of the Act of 6 January 1978 referred to above and the deeds to which they relate shall be published on the same date by the data controller.

Article 19

The commitment to comply with a single authorisation taken under Article 25(II) of the Act of 6 January 1978 referred to above shall be sent to the Commission under the conditions provided for under Article 8 of this Decree.

CHAPTER IV

SPECIFIC PROVISIONS APPLICABLE TO APPLICATIONS FOR PROCESSING OF PERSONAL DATA FOR THE PURPOSE OF MEDICAL RESEARCH

SECTION 1

Composition and procedure of the Advisory Committee on data processing with respect to medical research

Article 20

The Advisory Committee on data processing with respect to medical research comprises fifteen members, including a Chairman, named by joint order of the Minister for Research and the Minister for Health. These persons are appointed on the basis of their knowledge of medical research, epidemiology, genetics and biostatistics.

The members and the Chairman of the committee are appointed for three years, and their appointment may be renewed once. Outgoing or deceased members shall be replaced for the remaining period of their appointment.

Article 21

Any application for the processing of personal data for the purpose of medical research shall be presented to the Advisory Committee before being submitted to the Commission.

The ministries involved, the Commission and any public and private bodies that undertake processing of personal data in this field, may consult the committee.

Article 22

The Advisory Committee will meet when meetings are called by the Chairman. There will be a quorum present only if at least half of its members are present.

The committee shall give its opinions by a majority vote of the members present. In the event of a tie in the voting, the Chairman will have the casting vote.

The committee's meetings shall not be held in public.

The committee may call upon external experts.

The Advisory Committee shall adopt its rules of procedure defining the methods of its operation and these rules shall be approved by the Minister for Research and the Minister for Health.

The Chairman may delegate the right of signature to a named member of the Advisory Committee.

Article 23

The appropriations necessary for the operation of the Advisory Committee shall be allocated with the budget of the ministry responsible for research.

Article 24

The members of the Advisory Committee and the experts shall receive an allowance for the performance of their duties, of which the amount shall be defined by a joint order of the Minister for the Budget and the Minister for Research. In addition, any expenses that they incur while carrying out their duties shall be refunded to them under the conditions provided for under the Decree of 28 May 1990 referred to above.

Article 25

All files, reports, decisions and opinions shall be archived by the committee in conditions ensuring their confidentiality for a minimum period of ten years before their delivery to the National Archives.

Article 26

The Advisory Committee shall draw up an annual report that is sent to the Minister for Research, Minister for Health and to the Chairman of the CNIL.

SECTION 2

Standard methodologies

Article 27

For the most usual categories of automatic processing of data that do not enable data subjects to be directly identified, the Commission or, by delegation, the Chairman or the delegated Vice-Chairman shall draw up standard methodologies, in agreement with the Advisory Committee and the representative public and private bodies. The list of these bodies shall be determined by a joint order of the Minister for Research and the Minister for Health.

The Commission or, by delegation, the Chairman or the delegated Vice-Chairman shall approve these standard methodologies, which shall be published in the Official Journal of the French Republic.

SECTION 3

Presentation and examination of applications for an opinion submitted to the Advisory Committee

Article 28

Applications for an opinion, signed by the person authorised to represent the public or private bodies that carry out the processing, shall be sent to the Chairman of the Advisory Committee either by registered letter with acknowledgement of receipt or by delivery to the secretariat of the committee against receipt.

The file produced in support of the application shall contain:

1. the identity and the address of the data controller and the person responsible for research, their titles, experience and functions, categories of individuals who will carry out the processing and of those who will have access to the data;
2. the research protocol or the main points of the research, in particular stating the research objective, the categories of interested persons, the selected method of observation or investigation, the origin and nature of the personal data obtained and the reasons for using it, the length and the methods of organisation of the research, and the method of analysing the data;
3. opinions given before by scientific or ethical authorities, and in particular, if necessary, by the national committee of registers.

Any modification of these points shall be brought to the attention of the Advisory Committee.

Article 29

The Advisory Committee may hear the representatives of the body making the application as well as the data controller.

Article 30

The Advisory Committee shall notify the interested body, by registered letter with acknowledgement of receipt, of its reasoned opinion within one month from receiving the file. At the expiry of this period, the opinion of the Advisory Committee shall be considered positive.

If the file submitted is incomplete, the Advisory Committee will send a reasoned request for additional information to the interested body. The starting point of the period set in the preceding paragraph shall be deferred in this case to the date of receipt of the additional information by the Advisory Committee.

Article 31

In urgent cases, the Minister for Research or the Minister for Health may ask the Advisory Committee to make its decision within a period of time that may be reduced to fifteen days and shall inform the applicant of this.

Article 32

Where the processing of personal data complies with one of the standards approved in accordance with Article 27, the Chairman of the Advisory Committee may deliver, in the name of the committee, an opinion on such processing. The committee shall be regularly informed of such opinions.

Article 33

Where, according to Article 54, last indent of the Act of 6 January 1978 referred to above, the Advisory Committee determines the categories of processing for which its opinion will no longer be required, there will be quorum present only if at least eleven of its members are present.

The Advisory Committee shall notify its decision to the CNIL.

This decision shall be published in the Official Journal of the French Republic.

SECTION 4

Presentation and examination of applications for an authorisation by the CNIL

Article 34

The file produced in support of the application for authorisation shall contain in addition to the details provided for under Article 30 of the Act of 6 January 1978 referred to above:

1. the documents and information listed in Articles 28(1) to (3) of this Decree;

2. the opinion given by the Advisory Committee or the acknowledgement of receipt or the receipt of the application for an opinion where the Advisory Committee has tacitly given a positive opinion;
3. the steps under consideration to communicate individually with data subjects of the data processing referred to under Article 57 of the same Act as well as the proof of the application for exemption from this obligation to provide information;
4. the characteristics of the processing;
5. if necessary, the scientific and technical reasons for the application for exemption from the obligation to encode data enabling interested individuals to be identified and the proof of any application for exemption from the prohibition of permanent data storage with the names of the data subjects beyond the time needed for the research.

Article 35

Where the processing complies with one of the standard methodologies referred to under Article 27, only a commitment of conformity to one of them shall be sent to the Commission according to the conditions provided for under Article 8.

The authorisation delivered or the refusal of authorisation decided by the Chairman or the delegated Vice-Chairman, by delegation, for the implementation of data processing governed by Article 54 of the Act of 6 January 1978 referred to above shall be notified according to the conditions of Article 15 of this Decree. It shall be sent to the Government Commissioner.

SECTION 5

Methods of informing interested parties

Article 36

Except in the case of an exemption granted by the Commission, the sending of the particulars provided for under Article 57 of the Act of 6 January 1978 referred to above, before the start of the processing, to individuals from whom the personal data are obtained or in respect of whom such data are transmitted, shall take place according to the following conditions:

1. where the personal data are obtained directly from the interested individuals through a written questionnaire, the questionnaire or failing this, the covering letter, will include a legible reference to these particulars;
2. where the personal data are obtained orally, the investigator will first give or forward to the interested individuals a document containing this information;
3. where the personal data are initially obtained for a different purpose than the processing under consideration, the health professional who is in direct contact with the interested individual and actually in charge of the individual's therapeutic care will inform him in writing.

Article 37

Individuals accommodated in premises or centres that carry out preventative, diagnostic and treatment activities leading to the transmission of personal data to be processed for medical research purposes, shall be informed of the particulars provided for under Article 57 of the Act of 6 January 1978 referred to above by delivery of a document or any other suitable means.

Article 38

Data subjects who intend to object to the processing of personal data relating to them for medical research purposes may express their refusal by any means either to the person responsible for the research or to the premises or the health professional that keeps these data.

Article 39

Where the research requires the taking of identifiable biological samples, the assent of the data subject or his legal representatives must be obtained in writing, before the processing. Where it is impossible to obtain this assent in this form, a third party unconnected with the body that carries out the processing will attest to the data subject's express assent.

Article 40

Articles 74 to 78 of this Decree shall apply where a sanction is likely to be imposed under Article 60 of the Act of 6 January 1978 referred to above.

CHAPTER V

SPECIFIC PROVISIONS APPLICABLE TO APPLICATIONS FOR AUTHORISATION OF THE PROCESSING OF PERSONAL MEDICAL DATA FOR PURPOSES OF EVALUATION OR ANALYSIS OF CARE AND PREVENTION PRACTICES AND ACTIVITIES

Article 41

The file produced in support of the application for authorisation shall contain:

1. the identity and the address of the data controller or, if he is established neither on the national territory nor on that of another Member State of the European Community, the identity and the address of his representative in France; the duties or the object of the body which he represents; the categories of individuals who will have access to the data;
2. a description of the purpose of the processing and the population to which it relates; the nature of the data of which the processing is under consideration and the reason for its use; the desired period of storage and methods of analysis; the identification of the individuals, departments or bodies that keep and could transmit it to the applicant if authorised to implement the processing; if necessary, the type of diffusion or publication by the applicant of the results of the processing under consideration;
3. the technical characteristics of the processing;

4. the alignments and combinations considered or any other form of linking data;
5. the steps taken to ensure the safety of the processing and data and the confidentiality provided for by law;
6. if necessary, reference of any transfer of personal data towards a State that is not a Member State of the European Community;
7. if necessary, the list of any processing corresponding to the characteristics provided for under Article 65, second indent of the Act of 6 January 1978 referred to above; in this case, the file shall specify the categories of data, the recipients or the categories of recipients.

Any modification of these particulars shall be brought to the attention of the Commission.

PART III

DATA PROTECTION OFFICERS

CHAPTER I

DATA PROTECTION OFFICER

Article 42

The appointment of a data protection officer by the data controller under the formalities provided for under Articles 22 to 24 of the Act of January 1978 referred to above shall be notified to the CNIL by registered letter with acknowledgement of receipt or by delivery to the secretariat of the Commission against receipt or by electronic means with acknowledgement of receipt which may be sent by the same means.

Article 43

The notification provided for under Article 42 of this decree shall state:

1. the name, first name, profession and professional address of the data controller, if necessary, those of his representative, as well as those of the data protection officer. For legal entities, the notification shall state their legal form, their name, their registered office as well as the body that represents them legally;
2. where the data protection officer is a legal entity, the same particulars relating to the employee that the legal entity appoints to perform the duties of data protection officer;
3. if the appointment is made only for specific processing or categories of processing, a list of these;
4. the nature of the legal bonds between the data protection officer and the person, the public authority, the department or the body for which or where he carries out his functions;

5. any material relating to the qualifications or professional references of the data protection officer and, if necessary, its employee in connection with this function;

6. the steps taken by the data controller so that the data protection officer may carry out his tasks as regards data protection.

The written agreement of the individual appointed as data protection officer shall be attached to the notification.

The appointment of a data protection officer shall take effect one month after receipt of the notification by the CNIL.

Any substantial modification affecting the particulars referred to under points 1 to 6 shall be brought to the attention of the CNIL in the manner defined in Article 42.

Article 44

Where more than fifty persons are in charge of the implementation or have a direct access to the processing or categories of automatic processing for which the data controller intends to appoint a data protection officer, only a data protection officer who serves exclusively the individual, public authority or body, or who is attached to the department that implements such processing, may be appointed.

Notwithstanding the first paragraph:

a) where the data controller is a company that is a controlling or controlled company within the meaning of Article L. 233-3 of the Commercial Code, the data protection officer may be appointed among the individuals serving the controlling company or one of the companies it controls;

b) where the data controller is a member of an Economic Interest Group within the meaning of Part V of Book II of the Commercial Code, the data protection officer may be appointed among the individuals serving the aforesaid group;

c) where the data controller is a member of a professional body or a body grouping data controllers of the same branch of industry, he may appoint a data protection officer appointed for this purpose by this body.

Article 45

Prior to its notification to the CNIL, the appointment of a data protection officer shall be brought to the attention of the competent employees' representative body by the data controller, by registered letter with acknowledgement of receipt.

Article 46

The data protection officer shall carry out his mission in direct contact with the data controller.

The data protection officer shall receive no instructions regarding the performance of his duties.

The data controller or his legal representative may not be appointed as data protection officer.

Other functions or activities carried out simultaneously by the data protection officer must not lead to conflicts of interest in the performance of his duties as a data protection officer.

Article 47

The data controller shall provide the data protection officer with all the material that may help him draw up and regularly update the list of automatic data processing implemented within the premises, department or the body for which he is appointed and which, in the absence of appointment of a data protection officer, would fall under the notification formalities provided for in Articles 22 to 24 of the Act of 6 January 1978 referred to above.

Article 48

Within three months of being appointed, the data protection officer shall draw up the list referred to under Article 47. The list shall state for each automatic processing of data:

1. the name and addresses of the data controller and, if necessary, his representative;
2. the purposes of the data processing;
3. the department(s) responsible for implementing it;
4. the function of the individual or the department where the right of access and the right to request rectification may be exercised, and their address;
5. a description of the categories of processed data as well as the categories of data subjects of the processing;
6. the recipients or categories of recipients entitled to receive the data;
7. the retention period of the processed data.

The list shall be updated in the event of substantial modification of the processing in question. It shall state the date and the object of these updates during the last three years.

The data protection officer shall make the list available to any individual who requests it.

A copy of the list shall be delivered to any interested individual on request. The data controller may make payment of a fee, which may not exceed the reproduction cost, a condition of delivering such a copy.

Where the list does not include all the processing implemented by the data controller, it will state that other processing carried out by the same data controller will be mentioned on the national list made available to the public according to Article 31 of the Act of 6 January 1978 referred to above.

Article 49

The data protection officer shall ensure compliance with the requirements of the Act of 6 January 1978 referred to above for the processing for which he has been appointed.

For this purpose, the data protection officer may make recommendations to the data controller.

The data protection officer shall be consulted about any new processing to be mentioned on the list referred to under Article 47, before their implementation.

The data protection officer shall receive requests and complaints from the data subjects mentioned on the list provided for under Article 47. When they do not fall under his area of responsibility, the data protection officer will send them to the data controller and inform the data subjects of this.

The data protection officer shall inform the data controller of the failings noted before any notification to the CNIL.

The data protection officer shall prepare an annual report on his activities that shall be presented to the data controller and made available to the CNIL.

Article 50

The data controller may entrust the data protection officer, subject to his agreement, with the duties mentioned under Article 49 in respect of all data processing for which the data controller is responsible.

If this is the case, it will be stated in the notification provided for under Article 43.

Article 51

The data protection officer or the data controller may refer any difficulty encountered while carrying out the missions of the data protection officer to the CNIL at any time. The applicant must demonstrate that he has first informed the data protection officer or the data controller, as the case may be.

The CNIL may request the comments of the data protection officer or of the data controller, at any time.

Article 52

Where the CNIL establishes, after having obtained his comments, that the data protection officer is failing in the performance of his duties, it will request the data controller to remove the data protection officer from his functions according to Article 22(III) of the Act of 6 January 1978 referred to above.

Article 53

Except in the case referred to under Article 52, whenever a data controller plans to put an end to the functions of the data protection officer on the grounds of failure in the performance of his duties, the data controller shall present an application for opinion, with all details relating to the facts of the case, to the CNIL by registered letter with acknowledgement of receipt.

The data controller shall inform the data protection officer of this application in the same manner, and inform him that he may submit his comments to the CNIL.

The CNIL shall inform the data controller of its opinion within one month from receipt of his application. This period may be renewed once upon a reasoned decision of its Chairman.

No decision to put an end to the functions of the data protection officer may be made before the expiry of the period referred to in the preceding paragraph.

Article 54

Where the data protection officer resigns or is removed from his functions, the data controller will inform the CNIL in the manner provided for under Article 42.

The notification of this decision shall state moreover the reason for the resignation or the removal. The document notifying the data protection officer of the decision shall be attached instead of the agreement provided for in Article 43, eighth indent.

This decision shall take effect eight days after the date of its receipt by the CNIL.

Except in the case of the replacement of the data protection officer, the data controller must then complete, within one month, the formalities provided for under Articles 23 and 24 of the Act of 6 January 1978 referred to above for any processing from which the data controller had been exempt because of the appointment that has thus been terminated.

Article 55

Where the data controller does not comply with his legal obligations relating to the data protection officer, the CNIL will enjoin the data controller by registered letter with acknowledgement of receipt to carry out the formalities provided for under Articles 23 and 24 of the Act of 6 of January 1978 referred to above, stating the processing to which the injunction relates as well as the period of time within which the data controller must comply with it.

CHAPTER II

DATA PROTECTION OFFICERS IN THE MEDIA

Article 56

The data protection officer referred to in Article 67, fourth indent of the Act of 6 January 1978 referred to above shall be appointed by the data controller for the purposes of journalism implemented by a newspaper or other media firm. Such data protection officers shall be appointed from among that firm's staff.

The data protection officer shall be subjected to the provisions of this Part, except as regards the rules relating to the appointment and duties of the data protection officer referred to under Article 43(2), Article 45, Articles 48(4) and (7), and Article 48, tenth, eleventh and twelfth indents, and Article 49, fifth indent of this Decree.

PART IV

THE COMMISSION'S POWERS

CHAPTER I

INSPECTIONS AND VERIFICATIONS

SECTION 1

Accreditation of the agents of the Commission's staff agents

Article 57

The authorisation provided for by Article 19, last indent of the Act of 6 January 1978 referred to above shall be delivered to agents of the Commission's staff belonging to Category A or equivalent grade, for a renewable period of five years.

Article 58

No agent of the Commission's staff may be authorised to carry out a visit or verification if he has been convicted for a crime or felony registered on Sheet 2 of the criminal record or on an equivalent document in respect of a national of a Member State of the European Union.

Article 59

No agent of the Commission's staff may be appointed to carry out a visit or verifications in a body in which the agent:

1. has a direct or indirect interest, carries out some function or an occupation or has an appointment;
2. has had a direct or indirect interest, carried out some function or an occupation or held an appointment during the three years preceding the visit or the verifications.

Article 60

Where the conditions provided for under Articles 57, 58 and 59 are no longer met, the authorisation will be withdrawn once the interested party has been given an opportunity to present his observations. In urgent cases, the Commission may suspend the authorisation for a maximum period of six months.

The authorisation will also be withdrawn when the interested party ceases to carry out the functions for which he has been authorised.

SECTION 2

On-site inspection

Article 61

Where the Commission decides to conduct an on-site inspection, it will first inform the Public Prosecutor in the territorial jurisdiction where the visit or verification is to take place, in writing.

The Public Prosecutor shall be informed at the latest twenty-four hours before the date on which the on-site inspection is to take place. This notice shall specify the date, time, place and purpose of the inspection.

Article 62

Where the Commission carries out an on-site inspection, it will inform, at the latest at the beginning of the inspection, the custodian of the premises of the purpose of the intended verifications as well as of the identity and capacity of the persons conducting it. Where the data controller is not present during the on-site inspection, this information will be sent to him within eight days following the inspection.

When carrying out their verifications, the persons in charge will, on request, show their instructions and, if necessary, their accreditation to carry out such inspections.

Article 63

Where, according to Article 49 of the Act of 6 January 1978 referred to above, the Commission carries out verifications at the request of an authority with similar functions to its own in another Member State of the European Union, it will inform the data controller. It shall also inform the data controller that the information obtained or held by the Commission may be transmitted to this authority.

Article 64

An official report shall be drawn up of on-site inspections.

The official report shall state the nature, the date, time and place of the verifications or inspections carried out. It shall also indicate the purpose of the mission, the members of the mission present, the persons met, if necessary, their testimonies, the requests formulated by the members of the mission as well as any difficulties encountered. The inventory of the exhibits and documents of which the persons in charge of the control have made copies shall be annexed to the official report.

Where the visit could not take place, the official report will mention the reasons which prevented or impeded its conduct.

The official report shall be signed by the persons in charge of the inspection who carried out the inspection and by the custodian of the premises or any person designated by him. The official report shall mention any refusal by or an absence of such persons.

The official report shall be notified to the custodian of the premises and to the data controller.

Article 65

Where the visit takes place with the authorisation and under the supervision of a judge in accordance with Article 44(II) of the Act of 6 January 1978 referred to above, a copy of the official report of the visit will be sent to him by the Chairman of the Commission.

SECTION 3

Hearing on notice

Article 66

According to Article 44(III), first indent of the Act of 6 January 1978 referred to above, the persons in charge of the inspection may call and hear any person likely to provide them with any useful information or any evidence for the performance of their duties.

The notice, sent by registered letter with acknowledgement of receipt or a letter given personally against receipt or by a bailiff's deed, must arrive at least eight days before the date of his hearing.

The notice shall remind the person called of his right to be assisted by a counsel of his choice.

An official report shall be drawn up under the conditions provided for in Article 64. If the interested party does not attend the hearing, this will be mentioned in the official report on the non-attendance to be drawn up by the persons in charge of the inspection.

SECTION 4

Recourse to experts

Article 67

Where, according to Article 44(III), second indent of the Act of 6 January 1978 referred to above, the Chairman of the Commission calls upon one or more experts, his request will state the purpose of the expert report and state the period within which it must be submitted.

Before starting their work, the appointed expert(s) shall attest before the Chairman of the Commission that they meet the conditions laid down under Articles 57 to 60.

Any allowances due to experts shall be defined in an agreement.

The experts shall inform the Chairman of the Commission of the progress of their work, which shall be carried out in the presence of all parties.

The report by the expert(s) shall be submitted to the Chairman of the Commission who shall send a copy to the data controller.

Article 68

Where verification operations require access to individual medical data, such as provided for in Article 44(III), third indent of the Act of 6 January 1978 referred to above, the Prefect in whose jurisdiction the inspection is to take place will indicate, at the request of the Chairman of the Commission, a Medical Inspector of Public Health or a Factory Medical Inspector authorised to require the disclosure of such data; the Chairman of the Commission may also appoint a doctor shown on a list of Court experts. The Chairman of the Commission shall set out the conditions for the exercise of the mission entrusted to the doctor in the manner prescribed in Article 67, first and second indents.

Before the required verification operations, the appointed doctor shall attest before the Chairman of the Commission that he meets the conditions laid down under Articles 57 to 60.

When requested, the doctor will show his instructions.

The doctor shall state his findings in a report without mentioning, in any manner, the personal medical data to which he had access.

The report shall be submitted to the Chairman of the Commission who shall send a copy to the health professional responsible for the processing.

Section 5

Professional secrecy

Article 69

Where a person questioned for the purpose of the verifications made by the Commission raises an objection on the grounds of professional secrecy, this objection will be mentioned in the official report drafted by the persons in charge of the inspection. Any legal or regulatory provisions to which the person questioned refers, and the nature of the data that he considers covered by these provisions, shall also be mentioned.

CHAPTER II

ADMINISTRATIVE SANCTIONS

Section 1

Competent meetings

Article 70

The Members of the Commission shall, by an absolute majority vote of the Commission's members, elect from among themselves the three members of the Restricted Committee who sit with the Chairman and the two Vice-Chairmen.

The Commission may validly carry out this election only if the majority of the serving members of the Commission take part in the meeting.

Where one of the elected members of the Restricted Committee ceases his functions during his mandate, he will be replaced in the manner laid down in the preceding paragraphs.

The Restricted Committee may validly deliberate only if at least four of its members, including the Chairman or the delegated Vice-Chairman, are present.

Article 71

The Commission, meeting in a plenary session, may empower the Executive Committee to make, in urgent cases, all or part of the decisions mentioned under Article 45(I), first indent of the Act of 6 January 1978 referred to above. The minutes shall indicate the nature of the decisions that may be made by the Executive Committee and the period during which it is empowered to make such decisions.

Article 72

Where the Commission, meeting in a plenary session, adopts one of the decisions provided for under Article 45(II)(2) and (3) of the Act of 6 January 1978 referred to above, it will deliberate subject to the conditions referred to under Article 2 of this Decree.

Section 2

Ordinary procedure

Article 73

An injunction shall be sent to the data controller against whom a sanction other than a warning is likely to be pronounced.

The injunction shall state the failure(s), established by the Commission, in the legal obligations incumbent on the data controller.

The injunction, decided by the Restricted Committee or the Executive Committee, shall state the period of time within which the data controller must cease such failure(s). This period may not, except in urgent cases, be less than ten days. It may not exceed three months. It shall start on the day of receipt of the injunction by the data controller.

This injunction shall be sent to the data controller by registered letter with acknowledgement of receipt.

Article 74

Where a sanction could be pronounced, the Chairman of the Commission will appoint a rapporteur who may not be a member of the Restricted Committee and who must meet the requirements mentioned under Article 14(II) of the Act of 6 January 1978 referred to above.

The rapporteur shall carry out all useful steps with the assistance of the Commission's departments. The data controller may be heard if the rapporteur considers it useful. The hearing of the data controller shall be noted in an official report, which he signs. Any refusal

to sign shall be mentioned by the rapporteur. The persons heard may be assisted by a counsel of their choice. The rapporteur may hear any other person as he considers useful.

Article 75

The report provided for under Article 46 of the Act of 6 January 1978 referred to above shall be notified to the data controller by registered letter with acknowledgement of receipt or a letter given personally against receipt or by a bailiff's deed.

The data controller has one month within which to submit his comments to the Commission in writing. If he is not a French resident, this period will be increased to two months. The notification of the report shall mention this period and shall state that the data controller may consult and copy the documents of the file in the departments of the Commission and be assisted or represented by any counsel of his choice.

Article 76

The data controller shall be informed, by registered letter with acknowledgement of receipt or a letter given personally against receipt or by a bailiff's deed, of the date of the Commission's meeting considering his case and of his right to be heard, either personally or through a representative. This letter must be sent to the data controller at least one month before the date of the hearing.

Article 77

At the time of the meeting, the rapporteur and the Government Commissioner may present oral observations on the case. The data controller and, if necessary, his counsel shall be invited to present their defence arguments. The Commission may hear any person it considers useful. In every instance, the data controller and, if necessary, his counsel must be able to speak after the others. Where the Commission considers that it has not received sufficient information and clarification, it may ask the rapporteur to continue his inquiry.

The Commission shall make its decision without the rapporteur and Government Commissioner being present.

Article 78

The sanction decision shall state the legal and factual considerations on which it is founded. It shall indicate the manner and time-limits for review actions.

The sanction decision, where it is decided by, if necessary, the Commission, will be published within one month from the day on which the sanction becomes final.

The sanction decision shall be notified to the data subject by registered letter with acknowledgement of receipt or a letter given personally against receipt or by a bailiff's deed. This decision shall be notified to the Government Commissioner.

Section 3

Emergency procedure

Article 79

Subject to the provisions that follow, Articles 74 to 78 of this Decree shall apply to the procedure leading to the sanctions taken under Article 45(II) (1) and (2) of the Act of 6 January 1978 referred to above.

The data controller has fifteen days in which to submit his observations to the Commission in writing.

The data controller must receive his notice at the latest fifteen days before the date of his hearing before the Commission.

Article 80

Where the Commission establishes that the implementation of data processing as mentioned under Article 26(I) and(II) of the Act of 6 January 1978 referred to above involves an infringement of the rights and liberties mentioned under Article 1 of the same Act, it will inform the data controller by any means.

The data controller has eight days in which to submit his observations to the Commission in writing on the infringements that have been noted. This period is brought to his attention.

The Chairman of the Commission shall inform the Prime Minister of this infringement, if necessary.

Section 4

Summary procedures

Article 81

In Part V of Book V of the Code of Administrative Court Procedure (regulatory part) a Chapter V entitled *Summary procedure as regards data processing and liberties* is inserted, including the following Article R. 555-1:

Art. R. 555-1. - Where the Chairman of the CNIL brings an action for summary procedure concerning the implementation of data processing or the use of personal data by the State, a local authority, any other public body as well as any private entity in charge of public utility services, to the Administrative Court, on the grounds of Article 45(III) of Act No 78-17 of 6 January 1978 on Data Processing, Files and Individual Liberties, it will be ruled upon according to the procedure for summary procedure instituted by the provisions of Article L. 521-2.

Article 82

In Chapter II of Part I of Book III of the Code of Court Procedure (regulatory part) the following Section IV is inserted:

Section IV

Specific provisions relating to data processing, files and liberties

Art. R. 312-4. - Where it is directed against persons or organisations other than those mentioned under Article R. 555-1 of the Code of Administrative Court Procedure, the application, based on Article 45(III) of Act No 78-17 of 6 January 1978 on Data Processing, Files and Individual Liberties, will be brought before the President of the High Court in whose jurisdiction the defendant has his domicile. The President of the High Court or the judge appointed by him shall rule upon the case according to the terms of Articles 484 and following of the New Code of Civil Procedure.

PART V

SPECIFIC PROVISIONS ON DATA PROCESSING BASED ON ARTICLES 26 AND 42 OF THE ACT OF 6 JANUARY 1978

Article 83

Where a processing is governed by a Decree authorising the exemption from publication of the decision by which the processing has been authorised according to Article 26(III) of the Act of 6 January 1978 referred to above, the nature of the Commission's opinion may be expressed only by the words *positive opinion*, *positive with reservations* or *negative opinion*.

In the cases referred to under the first indent and for the implementation of Article 31(II) of the Act of 6 January 1978 referred to above, the Commission may make only the nature of its opinion available to the public.

Article 84

The Commission's agents and the persons assisting it who may, in the performance of their duties, have access to information that is classified for the protection of national defence secrets, must be authorised by the Prime Minister according to the conditions defined by the Decree of 17 July 1998 referred to above.

The Commission's agents and the persons assisting it, who may conduct the visits or verifications relating to data processing provided for under Article 26 of the Act of 6 January 1978 referred to above, must be authorised by the Prime Minister, upon the proposal of the Chairman of the Commission, after a civil service investigation, according to the conditions provided for by the Act of 21 January 1995 referred to above, ensuring that these persons' character or behaviour is not incompatible with the performance of their duties and the consultation of such files.

Article 85

The Chairman of the CNIL shall inform the Prime Minister annually of the name and capacity of the members, of the Commission's agents and of the persons assisting it, appointed to carry out any investigation relating to a processing provided for under Article 26 of the Act of 6 January 1978 referred to above.

Article 86

Any request for access or rectification of information appearing in a processing involving State security, defence or public safety, authorised under Article 26(I)(2) of the Act of 6 January 1978 referred to above, shall be sent to the Commission in writing.

The request must be signed and accompanied by a photocopy of an identity card showing the signature of the holder. It must specify the address to which the reply must be sent. Whenever there is a doubt about the address indicated or the applicant's identity, the Commission's reply may be dispatched by registered post without acknowledgement of receipt; the verifications of the applicant's address or identity shall be carried out at the time of the delivery of the post.

Any obviously abusive request may be rejected.

Article 87

When a case is referred to it under the conditions provided for under Article 86, the Commission will notify the applicant of the result of its investigations, within four months of the date of the request. If the application does not contain all the material that the Commission needs to carry out the requested investigations, it will ask the applicant to supply all the necessary material. The four-month period will start on the date of receipt of the additional information by the Commission.

The data controller shall have three months in which to carry out his investigations as from the date of receipt from the Commission of the request for access. This period shall not postpone the four-month period.

Where the Commission requests the opinion of an authority with similar functions to its own in another Member State of the European Union or a State that is not a Member State of the European Union, the four-month period will run from the receipt by the Commission of the information that it has requested.

Article 88

On completion of its investigations, the Commission shall establish, with the consent of the data controller, the information likely to be notified to the applicant in so far as their disclosure does not undermine the purposes of the processing, State security, defence or public safety. It shall send this information to the applicant. If necessary, the applicant shall be notified according to the terms and conditions agreed by the Commission and the data controller.

Where the data controller objects to the disclosure to the applicant of all or part of the information relating to him, the Commission will inform the applicant that the necessary verifications have been carried out.

The Commission may establish with the consent of the data controller that the information relating to the applicant must be rectified or removed and that it is necessary to inform the applicant. In the event of opposition by the data controller, the Commission will restrict itself to informing the applicant that the necessary verifications have been carried out.

Where the processing does not contain any information relating to the applicant, the Commission will inform the applicant with the consent of the data controller.

Where the data controller objects to the disclosure, the Commission will restrict itself to informing the applicant that the necessary verifications have been carried out.

The Commission's reply shall refer to the manner and period for an appeal that are available to the applicant.

Article 89

The provisions of Articles 86, 87 and 88 will apply to data processing implemented by government bodies and private entities in charge of carrying out public services whose purpose is the prevention, investigation or proof of offences or tax inspection and recovery, if the authorisation mentioned in Articles 25, 26 or 27 of the Act of 6 January 1978 referred to above has mentioned that the right of access would be exercised according to the conditions of Article 41 of the same Act.

Where the information contained in a data processing referred to under the first indent is in litigation, it may be disclosed only when the litigation is over and with the consent of the Public Prosecutor.

PART VI

CRIMINAL PROVISIONS

Article 90

The following provisions shall be inserted after Article R. 625-9 of the Criminal Code (second part: Decrees in Council of State):

Section VI

On infringements of the rights of the person caused by files or data processing

Art. R. 625-10. – Where such information is required by the law, the data controller of automatic processing of personal data will be sentenced to pay the fines provided for petty offences of the fifth class for:

1. not informing persons from whom personal data are obtained relating to them of:
 - a) the identity of the data controller and, if necessary, of the data controller's representative;
 - b) the purpose of the processing for which the data are intended;
 - c) the compulsory or optional nature of the answers;
 - d) the possible consequences for the person of not answering;
 - e) the recipients or categories of recipients of the data;
 - f) their right to object, right of inquiry, right of access and right of rectification;

g) if necessary, the transfers of personal data under consideration to a State that is not a Member State of the European Community;

2. where the data are obtained by using questionnaires, not mentioning on the questionnaire particulars relating to:

a) the identity of the data controller and, if necessary, of the data controller's representative;

b) the purpose of the processing for which the data are intended;

c) the compulsory or optional nature of the answers;

d) the right to object, right of inquiry, right of access and right of rectification of the persons from whom the data are obtained;

3. not informing in a clear and precise manner any persons who use electronic communication networks of:

a) the purpose of any action giving access, by electronic transmission means, to stored data in their terminal connection equipment or to record, by the same way, data in their terminal connection equipment;

b) the means that they have to object;

4. not giving data subjects, whenever the personal data were not obtained from them, the particulars listed under points 1 and 2 above as of the time of recording the data or, if a dissemination of data to third parties is considered, at the latest at the time of the first dissemination of data.

Art. R. 625-11. – The data controller of automatic processing of personal data shall be sentenced to pay the fines provided for petty offences of the fifth class for not answering to the requests of an individual who proves his identity intended to obtain:

1. confirmation on whether his personal data are subject to data processing;

2. information on the purposes of the processing, the categories of the personal data processed and the recipients or the categories of recipients to whom the data are disclosed;

3. if necessary, information on the transfer of personal data under consideration to a State that is not a Member State of the European Union;

4. disclosure, in an accessible form, of the personal data relating to him and any information available as to the origin of the data;

5. information that helps to know and question the logic underlying the automatic processing on which a decision has been founded that has legal consequences for the interested party.

Refusing to deliver, at the request of the interested party, a copy of the personal data relating to him, if necessary for a fee not exceeding the cost of reproduction, shall lead to the same sentence.

The offences mentioned in this Article shall not however be regarded as existing if the refusal to reply is authorised by the law either in order not to infringe copyright or because they are obviously abusive requests, in particular with respect to their number, their repetitive or systematic nature or because the personal data are stored, in a form obviously excluding any risk of infringement of privacy of the data subject, for a period of time not exceeding the period necessary only for statistics or scientific or historical research purposes.

Art. R. 625-12. – The data controller shall be sentenced to pay the fines provided for petty offences of the fifth class for not carrying out, at no expense for the applicant, the operations requested by an individual proving his identity and who seeks to have personal data related either to himself or to a deceased person of whom he is an heir rectified, supplemented, updated, blocked or erased whenever these data are inaccurate, incomplete, ambiguous, out-of-date, or where their collection, use, dissemination or storage is prohibited.

Art. R. 625-13. – Legal entities may be criminally liable according to the conditions provided for under Article 121-2 for the offences provided for under this Section.

Repetition of offences provided for under this Section shall be punished in accordance with Articles 132-11 and 132-15.

PART VII

PROVISIONS RELATING TO OVERSEAS REGIONS

Article 91

The provisions of this Decree shall apply in Mayotte, in the Wallis and Futuna Islands, in French Polynesia, in New Caledonia and in the Southern and Antarctic French Territories, subject to the following adaptations:

1. the refunding of the expenses provided for under Article 6 shall be carried out according to the conditions provided for by Decrees of 12 April 1989 and 22 September 1998 referred to above;
2. in Article 30, first indent, the words *within one month* shall be replaced by the words *within two months*;
3. in Article 31, the words *within a period that may be reduced to fifteen days* shall be replaced by the words *within a period that may be reduced to one month*;
4. in Articles 61 and 89, the words *Public Prosecutor* shall be replaced by the words *Public Prosecutor attached to the Court of First Instance*, except for the Southern and Antarctic French Territories;

5. in Article 66, second indent, the words *at least eight days before the date of his hearing* shall be replaced by the words *at least a month before the date of his hearing*;

6. in Article 68, the words *the Prefect in whose territorial jurisdiction the inspection is to take place* shall be replaced by the words:

a) *the High-Commissioner of the Republic*, in French Polynesia and New Caledonia;

b) *the Supreme Administrator of the Wallis and Futuna Islands*, in the Wallis and Futuna Islands;

c) *the Supreme Administrator of the Southern and Antarctic French Territories*, in the Southern and Antarctic French Territories;

7. in Article 75, the words *has one month* shall be replaced by the words *has two months*.

Article 92

In the Wallis and Futuna Islands, French Polynesia, New Caledonia and the Southern and Antarctic French Territories, the registered letters with acknowledgement of receipt laid down to this Decree may be replaced by simple letters against signature by the data subject.

Article 93

In the Wallis and Futuna Islands, in French Polynesia, in New Caledonia and in the Southern and Antarctic French territories, the power given to bailiffs for the delivery of the deeds provided for in this Decree may be exercised by a representative of the administrative or military authority.

Article 94

Article R. 555-1 of the Code of Administrative Courts shall apply in Mayotte, in the Wallis and Futuna Islands, in French Polynesia, in New Caledonia and in the Southern and Antarctic French territories.

Article 95

In Chapter I of Part III of Book IX of the Code of Court Organisation (legislative part), after Article R. 931-10-3, the following Article R. 931-10-4 shall be inserted:

Art. R. 931-10-4. – The provisions of Article R. 312-4 shall apply in French Polynesia and New Caledonia, subject to the replacement of the reference to Articles 484 and following of the New Code of Civil Procedure by a reference to the provisions of civil procedure applicable locally.

Article 96

In Chapter V of Part III of Book IX of the Code of the Court Organisation (legislative part), after Article R. 935-2, the following Article R. 935-3 shall be inserted:

Art. R. 935-3. – The provisions of Article R. 312-4 shall apply in the Southern and Antarctic French Territories subject to the replacement of the reference to Articles 484 and following of the New Code of Civil Procedure by a reference to the provisions of the civil procedure applicable locally.

Article 97

In Chapter III of Title IV of Book IX of the Code of the Court Organisation (legislative part), after Article R. 943-3, the following Article R. 943-3-1 shall be inserted:

Art. R. 943-3-1. – The provisions of Article R. 312-4 shall apply in Mayotte.

Article 98

Independently of their application in Mayotte, Articles R. 625-10 to R. 625-13 of the Penal Code shall apply in the Wallis and Futuna Islands, in French Polynesia, in New Caledonia and in the Southern and Antarctic French Territories.

PART VIII

FINAL PROVISIONS

Article 99

I – The following are repealed:

1. Decree No 78-774 of 17 July 1978 taken for the application of the Chapters I to IV and VII of Act No 78-17 of 6 January 1978 on Data Processing, Files and Liberties;
2. Decree No 79-1160 of 28 December 1979 setting out the conditions on the application to the processing of personal data involving State security, defence or public safety of Act No 78-17 of 6 January 1978 on Data Processing, Files and Individual Liberties;
3. Decree No 81-1142 of 23 December 1981 on police offences in the event of violation of certain provisions of Act No 78-17 of 6 January 1978 on Data Processing, Files and Individual Liberties.

II - Article 4 of the Decree of 11 June 1999 referred to above is repealed.

Article 100

The Minister of State, Minister of the Interior and Regional Development, the Minister of Defence, the Minister for Employment, Social Cohesion and Housing, the Minister for the Economy, Finance and Industry, the Minister for National Education, Higher Education and Research, the Keeper of the Seals, Minister of Justice, the Minister for Health and Solidarity, the Minister for the Civil Service and the Minister for Overseas France are required, each in their own area of responsibility, to execute this Decree, which will be published in the Official Journal of the French Republic.

Done in Paris on 20 October 2005

Dominique de Villepin

By the Prime Minister:

The Keeper of the Seals, Minister of Justice,

Pascal Clement

The Minister of State, Minister of the Interior and Regional Development,

Nicolas Sarkozy

The Minister of Defence,

Michele Alliot-Marie

The Minister for Employment, Social Cohesion and Housing,

Jean-Louis Borloo

The Minister for the Economy, Finance and Industry,

Thierry Breton

The Minister for National Education, Higher Education and Research,

Gilles de Robien

The Minister for Health and Solidarity,

Xavier Bertrand

The Minister for the Civil Service,

Christian Jacob

The Minister for Overseas France,

François Baroin