

Charter for the support of professionals

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Table of contents

Overview of the support provided by the CNIL	2
Appropriate methods for the digital era, proactive support for innovative actors or tools.....	2
The characteristics of sectoral support	3
Can professionals be offered individual support?	3
How is an individual support plan organised?	4
How to motivate a "request for advice"?	4
How will the CNIL respond?.....	5
Are exchanges with the CNIL confidential?	5
What is the articulation with the CNIL's role of investigation and sanction?	5

Charter for the support of professionals

Why this charter?

Under the GDPR rules, the leading player in data protection compliance is the professional himself, as data processing (except for certain sensitive data) is no longer subject to authorisation or declaration but to an ex-post control by the CNIL.

However, supporting professionals is **one of the CNIL's essential missions**; article 8 of [the French Data Protection Act](#) specifies that the CNIL "advises individuals and bodies that set up or intend to set up automatic processing of personal data". In this context, the CNIL must provide a precise doctrine and legal certainty to the actors.

In order to ensure transparency, and insofar as this mission is carried out in a context where its resources are limited, the CNIL has decided to publish its policy in this area through this charter.

Who is it for?

This support charter is intended for the "professional" public of the CNIL, namely:

- data **controllers or their processors**, as well as the professional associations representing them, subject to personal data regulations, whether public or private;
- **providers of technical**, technological or methodological **solutions** whose products and services are used to process data, without themselves being directly subject to regulations.

Its aim is to set out the main principles guiding the CNIL's support action, its method, but also its limits.

Citizens whose data is processed can call the CNIL's [legal information helpline](#) or even, if necessary, file a complaint with the CNIL.

Overview of the support provided by the CNIL

The support offered by the CNIL is provided at **three levels**: general, sectoral and individual.

General and sectoral support

It usually takes the form of the publication of so-called "soft law" instruments (reference frameworks, recommendations, guidelines, practical guides, etc.) and the posting of information on the [CNIL's website](#) and [its English version](#).

The CNIL's work programme will be published annually to allow relevant actors to express their interest in the ongoing work.

This support also takes the form of collaboration with "network representatives" (see the section "The characteristics of sectoral support"), whose purpose is to facilitate the ownership of GDPR by the professionals of a given sector. These partnerships allow for the joint drafting of practical guides, codes of good practices or certification mechanisms.

All these tools aim to ensure a better **understanding of** the GDPR and the **predictability** of the CNIL's regulation.

Individual support for professionals

Individual support is provided through the various phone hotlines offered by the CNIL:

- "general" legal hotline;
- DPO hotline;
- hotlines focused on the health and international sectors.

This support also takes the form of responses to individual requests for advice or in meetings that may be organised with the CNIL's services or through innovative support methods (such as a regulatory sandbox or "enhanced" support).

Appropriate methods for the digital era, proactive support for innovative actors or tools

Its modern approach to regulation allows the CNIL to assess the emerging issues regarding personal data protection.

Innovative methods

As far as possible, the CNIL carries out **public consultations** during the ex-ante phases of the development of its doctrine. It pays particular attention to the responses it receives in this context and strives to provide an overall report on them.

The CNIL also uses **innovative methods** such as:

- a regulatory sandbox and "enhanced" legal and technical support for specific actors;
- an analysis of the submitted cases that integrates an approach in favour of sustainable innovation;
- the use of experimentation, of a facilitating approach by resorting to the margins of flexibility allowed by the regulation;

- decentralised information collection ('data-based regulation');
- reputational incentives for organisations to comply.

The CNIL is also committed to a proactive policy of providing professionals **with innovative tools** ([PIA tool](#), [online training - MOOC](#), [register template](#), [certification schemes](#), etc.) and a technical analysis capacity.

Finally, the CNIL intends to promote the implementation of the **new compliance tools** provided by GDPR, codes of conduct and certifications in particular.

The start-up strategy

The CNIL wishes to make an ambitious contribution **in favour of innovation**. Since 2017, it has been deploying [a start-up strategy](#) in order to continue the implementation of exchange interfaces and support of start-ups on data protection issues.

The CNIL is equally interested in the innovative projects of traditional actors, who, however, have more resources to ensure their compliance. It pays **particular attention** to new services, new technologies, new business models or emerging players that may include technological elements (proof of concept, computer code, research paper, protected innovative process, etc.).

The characteristics of sectoral support

As part of the production of its soft law instruments, the CNIL relies primarily on professional federations or interest groups, privileged "**network representatives**" partners with whom it maintains relations on a regular basis.

Some sectors have maintained a sustained dialogue with the CNIL for many years; others have expressed a desire to establish long-term exchanges with the CNIL; others would benefit from establishing such a dialogue in order to progress in their approach to compliance.

The CNIL does not intend to favour the repressive approach over support: on the contrary, it promotes a fair balance between both approaches. In this context, the CNIL regularly organises meetings called "**compliance clubs**" with certain sectors. These meetings are an opportunity for open discussions of issues identified by professionals or CNIL's departments, including on the basis of complaints received, in the mutual interest and for the benefit of the data subjects, whose rights are thus better protected.

The CNIL encourages professionals to structure their data protection issues (in particular by reporting to their network representatives) in order to be able to establish a dialogue with each sector concerned and thus increase the scope of the exchanges and the answers provided.

In addition, the CNIL works in close interaction with French sectoral regulators and supervisors or other relevant authorities (the Competition authority, the Prudential Supervisory and Resolution Authority, the Electronic Communications, Postal and Print media distribution Regulatory Authority, the Superior Audiovisual Council, or the Energy Regulatory Commission, or the Financial Markets Authority, etc.) in order to achieve **coherence between the different dimensions** of regulation.

Can professionals be offered individual support?

The GDPR has enshrined accountability as a principle for the actors with regard to personal data protection: it is primarily up to them to put in place the internal organisation that will enable them to assess the compliance of the personal data processing that they set up or design; it is not the CNIL's role to take over the accountability of each actor - or its advisors - which could assist them.

Nevertheless, the CNIL has chosen, for many years, to offer an individualised information and advice service both to individuals and to regulated bodies.

As such, a professional or a group may submit a **"request for advice"** to the CNIL on an individual basis and free of charge, concerning a specific issue, when the general or sectoral tools have not enabled them to respond and when its own data protection officer (DPO) or legal counsel does not feel able to respond. Similarly, a solution provider may contact the CNIL to obtain its opinion on the appropriateness of the solution provided in accordance with the personal data protection rules.

Given its limited staff resources, the **CNIL cannot respond to all individual requests**. It may therefore **be led to focus on requests submitted by a sectoral group or requests that are of particular interest** from a legal, societal, economic or technological point of view.

It should be noted that professionals in the legal sector (e.g. lawyers) have legal expertise which does not make the processing of their request a priority.

Enhanced support for digital companies with strong economic development potential

The CNIL wishes to provide a few companies (selected on the basis of transparent criteria) with pragmatic and concrete answers and, therefore, with legal security for their activities involving personal data.

[This support](#) is articulated around 3 main modalities:

- legal and technical support within a short period of time (answers to legal questions, training and assistance in preparing DPIAs, recommendations on cyber security, etc.);
- a compliance review of the data processing operations, which result in the issuing of legal and technical recommendations;
- awareness-raising actions on data protection issues (aimed at employees and/or managers).

How is an individual support plan organised?

Would you like to receive individual support?

First of all, make sure that you have asked your **data protection officer (DPO)**. The CNIL organises free training courses for DPOs several times a year and has adopted a certification scheme of DPO skills and knowledge.

If your organisation does not have a DPO, or if they have not found the useful information on the CNIL's website or via our hotline, you need to **refer your question to** a professional federation, group, representative professional association or, if necessary, to your legal counsel. These bodies are usually competent to advise their members on compliance and can, if necessary, contact the CNIL, which has set up a specific support and assistance structure dedicated for them.

Finally, if your request is of particular importance to your sector, your employees, your users or your customers, and if your request is precise and documented, you can submit a **request for advice** directly to the CNIL services (by post or electronic means).

How to motivate a "request for advice"?

If you are a professional wishing to benefit from individualised support (requests for advice or meetings), it is necessary to:

- **demonstrate a certain maturity** in your approach to compliance on the subject in question, which may consist of presenting the legal and technical analysis that has been made on the basis of your research or the opinion of the DPO, which will enable the CNIL to confirm or refute it;

- **give precise reasons for your request** based on clear, concrete and established elements, showing why the issue may be of particular importance to your sector, your employees or your customers.

How would the CNIL respond?

Depending on the identified level of difficulty, individual support from the CNIL can take several forms: a phone conversation, a meeting with the CNIL's departments, an e-mail or a letter, or even an examination of the request by the CNIL's plenary session.

Whatever its form, the advice given by the CNIL is **not a "rescript"** in the sense that the support does not "protect" from a complaint or a sanction later on. **Each organisation remains accountable, at all times, for its own compliance.**

Finally, where appropriate, the analysis produced can be used to provide general information to all professionals concerned.

Are the interactions with the CNIL confidential?

The CNIL's agents are bound by **secrecy** as part of their duties, both in their control mission and in the exchanges that take place in the context of compliance support. These exchanges are therefore confidential to third parties (e.g. competitors, customers or employees).

Nevertheless, like any administrative document, responses to requests for advice are in principle communicable to the public within the meaning of the Act of 17 July 1978, but it is specified that "*third parties may not access information covered by **industrial and commercial secrecy***". In order to preserve the confidentiality of this information, the CNIL could then be led to conceal all information covered by a secret.

What is the articulation with the CNIL's enforcement role?

The success of the support provided by the CNIL is largely based on the **trust** that must be established between the regulator and the professionals concerned in order to be able, in particular, to discuss the difficulties encountered in full transparency. Professionals requesting support from the CNIL thus benefit from a "Chinese wall" with **the investigation and sanction departments** regarding the elements communicated in the context of this support. To this end, the agents in charge of legal support under this charter are not authorised by the CNIL to perform control missions.

It must be emphasised that the individualised support offered by the CNIL focuses on a global analysis (how to correctly apply GDPR to my activity?) or a **future data processing project**. Thus, **under no circumstances should the compliance support described in this charter be used to "regularise" current or past behaviour** infringing the regulations.

The CNIL does not conduct "on-site compliance audits": the CNIL only carries out on-the-spot checks to assess the compliance of data processing with the regulations.