

De la relation

DELSOL AVOCATS
LA QUALITÉ DE LA RELATION

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The DELSOL Avocats
newsletter



Amaury
NARDONE

Chairman of
the Board of
Directors



Back to normal

Following the election of a presidential candidate not drawn from the so-called “governing” parties, a new era has opened up in politics. As yet, it is too soon to say what the practical consequences may be.

Nevertheless, the whole media circus of the presidential and legislative elections will soon be over, leaving everyone free to return to normal life.

While “normal” life may seem less attractive than life in the political arena, it is nonetheless the most fundamentally important,

Creation of the Data Protection department: an unavoidable and crosscutting issue

Today’s Internet users generate over 350,000 Tweets, 15 million text messages and 200 million e-mails every minute. 250 gigabytes of information is stored on Facebook. 1,740,000 gigabytes of information are published worldwide. Every day, Google handles over 24 petabytes of data, that’s 24 million billion bytes. By 2020, the number of connected objects worldwide will exceed 28 billion.

In the light of these figures, there is no denying digital’s impact on the economy: data is multiplying exponentially and is one of the key raw materials vital to business growth. No sector of activity is immune. Any organisation that gathers, organises, sorts, uses, transfers, communicates or gives out information regarding physical persons, be they subscribers, members, employees, leads, patients or service providers, is involved in the processing of personal data. The process of “datification” now under way in every field of activity makes the issue of data protection inescapable.

No sector of activity can ignore the need for compliance with the principles of data protection. Every individual has a fundamental right to have their data protected, and that data can only be processed in accordance with precise legal requirements. The subject is all the more sensitive nowadays given that the rules have evolved following the publication on 27 April 2016 of the EU General Data Protection Regulation (GDPR) on the protection of natural persons

with regard to the processing of personal data and on the free movement of such data. The new regulation, which revolutionises the approach to this issue, will ultimately replace the French data protection act (loi Informatique et Libertés), many of the provisions of which will become obsolete when the new regulation comes into force.

As of now, those organisations processing personal data must start preparing for the scheduled deadline of May 2018 when the regulation comes into force, by adapting their organisation and procedures.

It is noteworthy, also, that the healthcare sector, where digitization is more recent and more complex in view of the diversity of agencies concerned and the particular sensitivity of the data handled, occupies a very specific place in data protection. In addition, the law on the modernisation of the French health service, passed in 2016, coupled with a number of new regulations, has added to and at the same time

complicated the legal picture by making substantial changes to the data protection act.

In view of the fact that digitization is affecting every area of activity and given the need to adapt to a new and now broadly European legal framework, meaning that all involved in this field are in need of greater support than ever, Delsol Avocats made the strategic decision to position itself in this crosscutting area of law. Always keen to stay abreast of clients’ concerns by anticipating issues that might arise in the future, the firm has taken the full measure of their new requirements into account.

Following on from the creation of the Life Sciences department in 2013, Delsol Avocats has now added to its range of services a Data Protection department that will also provide support to the Life Sciences department through its expertise in e-health.

Faced with the major and irreversible changes affecting the economy, the firm is now in

a position to advise and support clients - businesses, not-for-profit organisations, local or regional authorities or public bodies - on the matter of personal data protection, which now forms an integral part of any business strategy.



Jeanne BOSSI MALAFOSSE,
partner in charge of
the new Data Protection
department.

because it is the most truly real life of all. Day after day, families raise their children, cherish them, help them to grow by passing on to them the knowledge of who and what they are. Week after week, businesses start up, innovate, grow, progress and, in some cases, expand overseas. Month after month, not-for-profit organisations pursue their purpose, reaching out to others, protecting, helping, organising and growing. Year after year, Delsol Avocats is fortunate enough to support its clients and partners in achieving their projects and resolving their many diverse and varied problems. In short, it is time to get back to the realities of life, which are often complex, requiring appropriate implementation. You are only too well aware that the field of possibilities is bounded by laws, some more restrictive than others. We can help you advance through this highly regulated environment, for example on matters of personal data management, where the arrival of Jeanne Bossi Malafosse puts us in a very strong position. We abide, as ever, by the maxim of the Roman philosopher Seneca that we hold dear - a maxim that could equally well apply to the recent presidential election: *“It is not because things are difficult that we do not dare, it is because we do not dare that they are difficult”*.

Creation of a **Data Protection** department added value for our clients and

Jeanne BOSSI MALAFOSSE, partner in charge of the new Data Protection department



The role that data plays in today's economy and the definition of a strategy for its optimum management and deployment are now major concerns for all key political, economic and social players. These concerns are all the more significant in that they are affected by the significant changes introduced by the new EU General Data Protection Regulation (GDPR). Soon to affect every sector of activity, this new situation demands that all concerned start making the necessary preparations now.

Alive to the issues of an increasingly digital economy, Delsol Avocats has created a new department devoted to the issue of data protection. The department is headed by Jeanne Bossi Malafosse, an acknowledged expert in the field.

Jeanne BOSSI MALAFOSSE joined the firm in April with eighteen

years' experience at the French data protection agency, *Commission Nationale de l'Informatique et des Libertés* (CNIL), where she served in a number of roles, including that of Head of the Public and Social Affairs Division and Assistant Director of user relations and control.

In addition to her data protection expertise, Jeanne BOSSI MALAFOSSE is also extremely knowledgeable in the field of information systems and digital in the healthcare and medico-social sector, thanks to her time as Secretary General of the national agency for shared healthcare information systems (ASIP Santé), a position she held for five years.

During that time, she helped design a legal and operating framework for information systems tailored to the new and major issues confronting the healthcare sector today. Jeanne Bossi Malafosse is also an expert advisor to the Council of Europe on the drafting of its new Recommendation on health data protection.

Such specific expertise in the healthcare sector, where digitization is more recent and more complex in view of the diversity of agencies concerned and the particular sensitivity of the data handled, is essential now that a broader definition has been applied to health data and the proliferation of new legislation has made the legal situation more complex, leaving those involved in greater need of support than ever.

Alongside partner Thomas Roche, Jeanne Bossi Malafosse will also add to the strengths of the Life Sciences department, bringing to bear her e-health expertise.

"Data privacy can no longer be thought of as mere compliance with the letter of the law. Nowadays it is a dynamic reference base, common to all, that must be designed into projects from their inception. My decision to join Delsol Avocats to set up this new department was prompted by my eagerness to continue my legal career surrounded by teams setting exacting standards and demonstrating respect for the quality of human relationships," explains Jeanne BOSSI MALAFOSSE.

Amaury NARDONE, Chairman of the Board of Directors of Delsol Avocats, set out the reasons for the firm's decision: *"Our determination and our ambition is to provide support to our clients on a subject that nowadays concern us all. The arrival of Jeanne Bossi Malafosse, whose expertise is widely recognised in the data protection and digital healthcare sector, will enable us to offer our clients the services of a new department specialising in the protection of personal data. This department will enable us to assist them on matters of data privacy that will henceforth need to be an integral part of the strategy informing their projects."*



What is the role of the Data Protection Officer (DPO), a mandatory requirement for many businesses from 2018?

The EU General Data Protection Regulation (GDPR) will come into force on 25 May 2018. Among the many new measures it introduces, the Data Protection Officer (DPO) is a key figure. Businesses need to be planning for the appointment of their DPO as of now.

Alongside the data and processor controller, the role of the DPO is to implement GDPR compliance across all data processing carried out by the organisation. The DPO informs and advises the data and processor controller, assists the organisation in carrying out impact studies and verifies proper execution. The DPO is also the point of contact with the oversight authority.

The role of the DPO is all the more important in that one of the main changes introduced by the GDPR is that data controllers will, in principle, no longer be required to declare their processing activities to CNIL. The DPO must at all times be in a position to demonstrate compliance with GDPR provisions.

A stringent policy of compliance with GDPR provisions will be deployed, based on self-monitoring by the organisation, for which the DPO will stand as guarantor and facilitator. Appointment of a DPO is mandatory for public authorities and bodies and any organisations processing so-called "sensitive" data on a large scale. In other

Interview Pierre-Yves LASTIC, Associate Vice-President, Chief Privacy Officer,



Pierre-Yves LASTIC,
Associate Vice-President,
Chief Privacy Officer
at Sanofi

You are a widely recognized specialist in matters of data protection, a subject you have been involved in for many years. Why is it suddenly such a hot topic and why should it be a major concern for all concerned?

I have spent a long time working on data protection in a healthcare company. We process patient data in order to learn more about diseases and find appropriate treatments for them. The explosion of information technology brought about by Internet, combined with progress in medicine and the development of gene therapies, is opening new doors for the treatment of diseases such as cancer or neurodegenerative diseases, but these technologies also represent a major risk to

patient privacy because genetic data directly identifies individuals. Add to this the emergence of more personalized medicine, which seeks to apply a treatment tailored to the individual on the basis of precise genetic traits. This means we need very detailed patient profiles to work with, and it is imperative that we protect them.

Jeanne BOSSI MALAFOSSE recently joined DELSOL Avocats to set up and head the Data Protection department. You know Jeanne, having worked with her at CNIL. Can you tell us more about what you worked on together?

I first met Jeanne when CNIL

joined forces with pharmaceutical industry federation LEEM and other public health agencies to develop a benchmark methodology for biomedical research. I got to know Jeanne through this working group. Since then, we have met on numerous occasions. I have called on her experience on subjects relating to data protection in the healthcare field.

How important do you think it is for a business law firm such as Delsol Avocats to have skills of this type on board?

Medicine is making progress in leaps and bounds, but this also creates risks regarding the protection and confidentiality of patient data, through the

opening up of public data, the publication of hospital data and the collection of health data via a not inconsiderable number of mobile apps and connected objects. It is vital for a law firm to have a department that specializes in matters of data protection.

Can you tell us more about your role as DPO, and about the data protection issues for an international group like Sanofi?

With the arrival of the European Regulation, we have on the one hand a harmonization of European regulations and, on the other, a global group selling pharmaceutical products in 170 countries. Compliance with European rules in all of these countries thus poses a real



ent:

as GDPR implementation nears

Alex TÜRK, Senator for the Nord department and former Chairman of CNIL

Interview



You chaired CNIL from 2004 to 2011 during a key period for data protection, a period of huge expansion in Internet use and the massive development of surveillance techniques.

In your view, are the existing principles of data protection still appropriate in an increasingly digital world?

The situation has evolved and the level of data protection has, of necessity, regressed. The first reason for this is the problem of lowered levels of personal data security in response to the terrorist threat. We are now much more willing to accept far more intervention, more controls. The security services need more data, to the detriment of data protection. The nature of the relationship between security, data protection and privacy has changed, and the balance has undeniably shifted away from individual liberties. The second reason is a matter of consumer responsibility. The development of digital has led us into a willingness to provide commercial companies with information we would not think of sharing with our neighbours. All of which means that data protection is weaker than it was 10 years ago.

Jeanne Bossi Malafosse recently joined Delsol Avocats to set up and head the Data Protection department. You know Jeanne, having worked with her at CNIL. Can you tell us more about what you worked on together?

Jeanne quickly made a good impression. First and foremost, through her knowledge of the legal issues involved in data protection and the healthcare field, although I was also struck by another aspect of her personality. On taking up the reins at CNIL, I established a practice of visiting every region of France for two or three days to meet all those involved in data protection: doctors, attorneys, magistrates, business leaders, but also chambers of commerce and prefectures. On these occasions, Jeanne was often called upon to speak in public and I found her to be very much at ease in this role. Whether in a business or public service environment, Jeanne has all the basic skills and a great ability to put her messages across.



How important do you think it is for a business law firm such as Delsol Avocats to have skills of this type on board?

Jeanne has a highly specific skillset that few others share. In France, I think you could count on the fingers of one hand the number of people with real, hands-on experience of data protection in the healthcare field. This kind of competence, acquired over more than a dozen years handling cases for CNIL, is not something you can make up. 98% of world trade now relies on digital data, and everyone is now very well aware it is essential to have this card in their hand. Hiring Jeanne is therefore a big advantage.

With a new European Regulation bringing sweeping changes to the data protection framework, what do you see as the major European and international issues currently facing businesses when it comes to data protection?

There are a number of underlying problems. The first is that it is difficult to find a way for Europe and the USA to arrive at a shared vision of data protection, especially when it comes to trade. The second, directly related to the legal profession, is that the English-speaking countries have a decisive influence on such matters. We know they tend towards much “softer” law, i.e. law based on regulation, standards, agreements and contracts, whereas the Latin and Germanic countries tend to prefer a conception based on State regulation. In the context of the new Regulation, we need to find a way to establish a balance between the two. And here there is a particularly vital role to play for a business law firm, which will be engaged in practicing both hard law, based on legislation, and soft law, based on contractualisation. It is a very subtle balance to arrive at. Jeanne was involved in working on these two visions when we were both at CNIL.

Privacy Officer, many

instances, the appointment of a DPO is strongly recommended. The DPO is the person best placed to identify and coordinate the actions required for GDPR compliance. The DPO may be a member of the organisation itself or external to it. The DPO must combine a thorough knowledge of how the organisation operates with total independence from that organisation. A law firm is thus the partner of choice for this task.

Thomas ROCHE
Partner,
Life Sciences department

, Sanofi

challenge for us. The role of DPO also takes on a whole new dimension, as businesses now devote more resources to data protection. The responsibilities are greater and the financial stakes higher, and I think that, in terms of the challenges businesses face, data protection is now very much on a par with the fight against corruption and fraud, a longstanding battle that still continues.

The EU GDPR and the protection of health

The EU General Data Protection Regulation (GDPR) introduces a definition of health data that reflects the current reality of how personal healthcare is provided. It allows Member States the possibility of adapting the conditions under which such data is processed, an option initiated by France in recent years.

The healthcare sector is no exception to the new paradigm created by the GDPR but the characteristics specific to each country will continue, in part, to be governed by the sovereign law of each Member State in accordance with Recital 53 of the GDPR: “Member States should be allowed to maintain or introduce further conditions, including limitations, with regard to the processing of genetic data, biometric data or data concerning health.”

The GDPR introduces into the positive law of each EU Member State two major new provisions, offering new technical possibilities for data analysis: a definition of health data and recognition of the concept of compatible purpose (article 6.4). Health data henceforth covers all information pertaining to the identification of the patient in the healthcare system or the mechanism used to gather and process health data, all

information derived from medical testing or examination, including from genetic data and biological samples, and any medical information on, for example, a disease, disability, disease risk,



medical history, clinical treatment or the physiological or biomedical state of the data subject independent of its source, for example from a physician or other health professional, or from an in vivo or in vitro diagnostic test.

This new definition reflects a much broader concept of health data. It takes into account the fact

that the healthcare treatment of the individual also involves knowledge of that individual’s family or social situation and involves a large number of actors, including health professionals

and social welfare staff. It is consistent with the new rules on health data exchange and sharing (article L1110-4), which are now linked to a broader concept of the healthcare team (article L1110-12).

Furthermore, the recognition of compatible purpose, which may henceforth allow data to be used for purposes other than that for

which it was gathered, will need to align with the new provisions of the French data protection act on processing for the purposes of research, studies or evaluation, and conditions of access to medico-administrative databases. The growing needs of agencies in the sector for access to data under the appropriate guarantees must also now be incorporated into an oversight process based on the principles that henceforth govern personal data protection across all the EU countries (Privacy by design and Accountability). These changes now appear to be essential to ensure that health data generated at the time of treatment can contribute to research in real time and thus serve to raise the level of public health.

In the press...

Camille ROUSSET, a partner in the Employment Law-Social Welfare Law department, is currently acting as counsel to the employee representatives on the Works Council of French-based firm SAIRA SEATS. Her involvement has been widely reported in the press, including *Les Echos*, *Le Figaro*, *L'Usine Nouvelle* and *L'Essor*.

Benoît BOUSSIER, a partner in the Real Estate Law department, set out the advantages of commercial leases in an article published in the May edition of magazine *Acteurs de l'économie*: "Negotiating a commercial lease: a good investment?"

Xavier DELSOL, a partner in the Not-for-profit Organisations department, was quoted in the press on several occasions over recent months: in an interview with *Le Figaro* entitled "Become a philanthropist: yes, but how?"; in *Wansquare*, reporting on the firm's study of corporate foundations; in *L'Age* on the occasion of his participation in a conference on shareholder foundations, and in *Tennis Magazine* on the subject of philanthropy in the tennis world.

Thomas ROCHE, a partner in the Life Sciences department, writing



in the March edition of *La Tribune de l'Assurance* outlined the various controversies the Jardé law was likely to trigger.

Henri-Louis DELSOL, gave his commentary on one of the new provisions arising from the recent reform of contract law, in an article entitled "*Contract law reform: impossibility for the promisor to revoke consent*", which appeared in the 20 February issue of *Acteurs de l'économie*.



Renaud-Jean CHAUSSADE, a partner in the Public Law department, wrote an article published on website WEKA on 20 January, explaining how the transfer of local planning powers would take place at the intercommunal (EPCI) level, entitled "Interaction between PLUi powers and EPCI mergers: the thorny questions".

Amaury NARDONE, a partner in the Company Law-Mergers & Acquisitions department, writing in the February edition of *Finance & Gestion* magazine, set out the new provisions arising from the recent reform of contract law in an article entitled "*Contract law reform: points for CFOs to watch out for*".

Frédéric SUBRA, a partner in the Tax Law department, analysed the impacts of the race for transparency in international tax law in an article for *Finance & Gestion* magazine entitled "Exchange of information and fiscal transparency: the great leap forward".



Mathieu LE TACON, a partner in the Tax Law department, appeared a number of times in print recently, in the journal *Les Nouvelles Fiscales* on the subject of the new anti-abuse provision in the ISF (wealth tax), on *Les Echos.fr* on pre-trading expenses, and in *Finance & Gestion* magazine on the subject of income tax withholding at source and on international taxation.

Delphine BRETAGNOLLE, a partner in the Employment Law-Social Welfare Law department, explained the reasons for the lack of interest in union voting in micro-businesses in an article posted on the *Acteurs de l'économie - La Tribune* website on 13 January, entitled "Union elections in micro-businesses: the issues are indirect and highly technical".



Philippe PACOTTE, a partner in the Employment Law-Social Welfare Law department, featured regularly in the journal *Jurisprudence Sociale Lamy* discussing the framework for the status of protected employee and flat-rate pay agreements, and in *Chef d'Entreprise Magazine* on the introduction of the personal activity account (CPA).

Events



Laurent BUTSTRAËN, a partner in the Not-for-profit Organisations department, addressed a meeting of the Club Patrimoine on 25 January on the subject of "*The realities of corporate patronage*".

Xavier DELSOL, a partner in the Not-for-profit Organisations department, spoke on 15 March in company with Virginie Seghers, Chair of Prophyl, at the conference of ANSA (the national association of joint stock companies) and the European Savings Observatory (ESO) on shareholdership, setting out how the status of shareholder foundation works, and its many advantages.



Camille ROUSSET, a partner in the Employment Law-Social Welfare Law department, and lawyer Carine MERIAU gave a training course in Lyon on Thursday 30 March, entitled "*Collective bargaining and business ownership transfer*".

Benoît BOUSSIER, a partner in the Real Estate Law department, **Alexandra GOUMOT-NEYMON**, of counsel, and lawyer Virginie Delannoy organised a working breakfast on the theme of "*Commercial leases: adapting your lease to the latest legal and regulatory reforms*", held in Paris on 21 March and in Lyon on 23 March.

Henri-Louis DELSOL, a partner in the Company Law-Mergers & Acquisitions department, gave a presentation on the "Say on Pay" mechanism, at the invitation of the M2/MBA Business Law and Management department of the University of Paris II Panthéon-Assas.



Delphine BRETAGNOLLE, a partner in the Employment Law-Social Welfare Law department, and lawyer Mickaël PHILIPONA organised a working breakfast in Lyon on 31 January on the topic of "Economic redundancy: new aspects emerging from the El Khomri law and review of administrative case law on employment protection plans".

Frédéric SUBRA and **Mathieu LE TACON**, partners in the Tax Law department, held a working breakfast in Lyon on 24 January, and in Paris on 26 January, on the finance bills passed at the end of the year: "2017 Finance Bill/2016 Amending Finance Bill".



A new Board of Directors for DELSOL Avocats

At the beginning of March 2017, the Board of Directors of Delsol Avocats was appointed for a term of two years. The directors appointed to the Board were: Benoît Boussier, Xavier Delsol, Pierre Gougé, Emmanuel Kaepelin and Amaury Nardone. Amaury Nardone was reappointed Chairman of the Board of Directors, a position he has held since 2011.

Working closely with all the partners, the new Board will devote its efforts to the continued development of Delsol Avocats, in its various fields of practice, its specialist departments and the issues addressed, acting both as counsel and in litigation.



Benoît BOUSSIER



Xavier DELSOL



Pierre GOUGÉ



Emmanuel KAEPELIN



Amaury NARDONE



In conjunction with Novances Corporate Finance, **DELSOL Avocats** organised a training course in Lyon on Thursday 16 March, on the theme of "Valuing a business".

Partner **Camille ROUSSET**, payroll manager Céline COELHO and lawyer Fanny CHEKHAR gave a training course in Lyon on 7 March on the subject of "Securing professional careers in the wake of the El Khomri law and the employer's obligations as regards professional training".