

THIRD EDITION

DATA PROTECTION & PRIVACY

INTERNATIONAL SERIES

General Editor: Monika Kuschewsky
Covington & Burling LLP

MOROCCO

Moulay El Amine El Hammoumi Idrissi | Hajji & Associés

1. LEGISLATION

1.1 Name/title of the law

In Morocco, the collection and processing of personal data is regulated by Law No 09-08 relating to the protection of individuals with regard to the automatic processing of personal data promulgated by Dahir (Royal Decree) No 1-09-15 of 18 February 2009 (the Law), as well as by Decree No 2-09-165 of 21 May 2009 implementing the Law.

The Moroccan data protection legal framework is also based on the Council of Europe's Convention No 108 of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention 108), which came into force in Morocco by virtue of Dahir (Royal Decree) No 1-14-150 of 22 August 2014 enacting Law No 46-13 approving the above-mentioned Convention 108.

Its entry into force contributes to the reinforcement of the protection towards personal data processing, as Convention 108 was the first binding international legal instrument for data protection in Morocco.

1.2 Pending legislation

A proposed new law, Bill of Law No 67-13 relating to the Numeric Code (Bill of Law), has the potential to affect the Law.

Indeed, in its article 26, the Bill of Law anticipates that service providers, in accordance with the Law, will have the obligation to hold and retain data that will allow the identification of anyone who helped to create any of the content of services they provide. According to article 26, service providers will be bound by professional secrecy in all matters concerning the disclosure of such personal identifiers or any information identifying the persons concerned. However, this professional secrecy is not enforceable against the judiciary, or against the administrative authorities (such as the Public Prosecutor, the Moroccan Data Protection Authority and the Moroccan Authority for Telecommunications) that are especially empowered for this purpose who may require communication of the information.

At the time of writing, the Bill of Law is still in draft form, and has not yet been approved by the government council or the Parliament. We anticipate that it will be adopted during the course of 2016 or early in 2017, although we do not have any further specific information at this point.

1.3 Scope of the law

The Moroccan legislator believes that as computing serves the citizen and is evolving in the context of international cooperation, it should neither affect human rights nor be a way to disclose citizens' secrets. In order to ensure a sufficient level of protection, the necessity of protecting individuals with regard to the processing of their personal data is essential. Therefore, the Moroccan legislator decided to adopt the Law.

1.3.1 The main players

The main players under the Law are as follows:

- "Data controller": any natural or legal person, public authority, agency or other body which alone or jointly with others determines the purposes and means of the processing of personal data. Each time legal provisions

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determine the processing means and purposes, the data controller shall be indicated in the organisational law or in the statutes of the entity legally or statutorily competent to deal with personal data.

- “Data processor”: any natural or legal person, public authority, agency or other body which processes personal data on behalf of the data controller.
- “Data subject”: any identified or identifiable natural person.
- “Recipient”: any natural or legal person, public authority, agency or other body receiving data reports, whether or not a third party. However, persons or bodies that are likely to receive personal data in the framework of a legal provision are not regarded as recipients.
- “Third party”: any natural or legal person, public authority, agency or body other than the data subject, the data controller, the data processor and the persons who, under the direct authority of the data controller or the data processor are authorised to process the personal data.

1.3.2 Types of data

“Personal data” is defined as any information of any kind relating to an identified or identifiable natural person, regardless of its media/support, including the sound and images relating to an identified or identifiable individual. A person is deemed identifiable when he/she can be identified directly or indirectly, especially by reference to an identification number or one or several specific elements of his/her physical, physiological, genetic, psychological, economic, cultural or social identity.

“Sensitive data” includes personal data revealing racial or ethnic origin, political opinions, religious and philosophical beliefs or trade union membership of the data subject or which relate to his/her health, including genetic information. Sensitive data is subject to stricter processing conditions, such as prior authorisation.

It should be noted that legal persons are not covered by the Law since its scope is limited specifically to the protection of individuals.

1.3.3 Types of acts/operations

The Law covers both automatic and certain manual processing of personal data.

The “processing” of personal data is defined as including any operation or set of operations which are performed upon personal data, wholly or partly by automatic means (meaning by computers) and any processing other than by automatic means, of personal data which forms part of a filing system.

Under the Law, a “filing system” represents any structured set of personal data that is accessible according to specific criteria, whether centralised, decentralised or dispersed on a functional or geographical basis, such as records, a database or a census file. Thus, the Law covers any operation such as collection; recording; organisation; storage; adaptation or alteration; retrieval; consultation; use; disclosure by transmission; dissemination or otherwise making available; alignment or combination; blocking; erasure; and destruction of personal data.

1.3.4 Exceptions

The Law does not apply to the processing of personal data by a natural person in the course of a purely personal or household activity, or to processing operations concerning public security, defence and state security.

The Law also does not apply to processing operations with respect to the activities of the state in areas of criminal law, such as preventing crimes, except under the conditions provided for by the law or the regulation creating the concerned file. The said regulation shall specify the identity of the data controller, the conditions of legitimacy of the processing, the purpose of the processing, the category or categories of persons concerned and the data or data categories relating thereto, the origin of these data, third parties or third categories to whom the data may be communicated, and measures to ensure the security of the processing. It is subject to the prior opinion of the Moroccan Data Protection Authority.

The Law does not apply either to the processing of personal data collected pursuant to special legislation. In this regard, bills of law setting up files on the above-mentioned data shall be disclosed to the Moroccan Data Protection Authority stating the information listed above.

1.3.5 Geographical scope of application

The Law distinguishes between whether the data controller is established in Morocco or not.

The Law applies to any processing carried out by a data controller who is established in Morocco.

If a data controller is conducting an activity on Moroccan territory through or in the context of an installation or a stable arrangement, regardless of its legal form, it is considered as established on Moroccan territory.

If the data controller is not established in Morocco, the Law still applies to the processing of personal data if, for purposes of processing personal data, it makes use of equipment such as automatic or manual means situated on Moroccan territory. In this case, the data controller should inform the Moroccan Data Protection Authority about the identity of its local representative.

However, the Law will not apply if such equipment is used only for purposes of transit through the Moroccan territory or through the territory of a state whose regulations are considered equivalent to those of Morocco in respect of personal data processing protection. In this specific case, the data controller should mandatorily inform the Moroccan Data Protection Authority about the identity of its local representative.

1.3.6 Particularities

Not applicable.

2. DATA PROTECTION AUTHORITY

Moroccan Data Protection Authority

(Commission Nationale de Contrôle de la Protection des Données à Caractère Personnel/
National Control Commission for the Protection of Personal Data)

Angle Boulevard Annakhil et Avenue Mehdi Ben Barka,
Immeuble Les Patios, 3^{ème} étage

- List the countries where the legislation is adequate for the protection of individuals with respect to personal data processing.
- Allow data transfers abroad.
- Decide whether to authorise a data processing that is legally subject to declaration.

Receiving complaints from data subjects considered to be harmed by the publication of personal data, instructing them and ordering amendments to the personal data or referring the complaints to the public prosecutor for prosecution are also included in the DPA's field of competence. Finally, the DPA's tasks may also include assisting the government in the preparation and definition of the Moroccan position during international negotiations in the field of personal data protection, as well as cooperating with similar organisations controlling personal data processing in foreign countries.

The Law specifies that, in order to ensure the proper application of personal data protection, the DPA has a permanent mission to inform the public and the data subjects about their prerogatives provided for by the Law.

2.2 Powers

The powers of the DPA that are provided for in the Law include:

- Investigative powers, such as those enabling its agents, who are regularly commissioned for this purpose, to: (i) access the data undergoing processing; (ii) require direct access to the premises in which the processing is undertaken; and (iii) collect and enter all the information and documents required to complete the control functions.
- Powers to obtain documentation, such as requesting the submission of relevant documents of any kind to enable it to examine facts with respect to complaints pending before it members.
- Ordering the blocking, erasure or destruction of personal data.

2.3 Priorities

The DPA's priorities for 2015 and 2016 have not been publicly announced. However, the DPA's main goal for 2016 is to popularise the enforcement of the Law on Moroccan companies, especially with respect to the personal data of personnel and consumers.

The DPA intends to publish an annual report each year. At present, the only annual report available is the one relating to 2014.

3. Legal basis for data processing

All processing of personal data must satisfy one of the legal grounds for data processing set out in the Law (see *Section 12 below*).

3.1 Consent

Processing of personal data requires the prior consent of the data subject.

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Hay Riad
Rabat
Morocco
t +212 537 57 11 24
f +212 537 57 21 41
w www.cndp.ma

2.1 Role and tasks

The Moroccan Data Protection Authority (DPA) is the only data protection authority in Morocco. It is responsible for implementing the Law and ensuring compliance with its provisions.

The DPA is entrusted with several tasks, such as:

Advising the government or Parliament about propositions of law and bills or draft regulations on the processing of personal data as it is submitted to it.

Giving its opinion to the competent authority on draft regulations, creating files related to collected and processed personal data for the purposes of prevention and prosecution of crimes, as well as on propositions of law and bills on the creation and processing of data for investigations, and statistical information collected and processed by public authorities.

Advising the government on procedural rules and data protection with respect to processing security files (that is, files relating to the national and international security of Morocco) to be registered.

The DPA is also charged with receiving:

- Notification of the identity of the representative installed in Morocco, which replaces the data controller residing abroad.
- Prior declarations in some personal data processing cases.
- The identity of the data controller for records to be opened to the public.

Under the Law, the DPA is empowered, among other things, to:

- Allow data retention beyond an expected duration.
- Give the data controller more time to answer requests made by the data subject.
- Carry out the justified corrections/amendments when the data controller refuses to proceed with the applicant's request.
- Instruct and issue the required authorisations for some personal data processing cases.
- Determine the list of processing categories benefiting from a simplified declaration, as well as the list of non-automated processing subject to simplified declaration.