



Issuer	Professional Background Screening Association
Author	Alice Quinones, Europe Council Member
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Key principles recap. Accountability / Privacy-by-design

Accountability calls the data controller's awareness and responsibility.

- what personal data are being collected and processed?
- why are these personal data being collected and processed?
- how are these personal data being collected and processed?

Privacy-by-design means that before developing a new service, new technology, you should take into consideration data protection. Privacy-by-design should be extended to compliance-by-design; taking into consideration the several laws applicable to the industry: labor laws, individual rights and freedom, consumers laws.

Background Screening in France snapshot. There are four articles in the labor Code framing the recruitment of an employee. In order to be legal, the recruiting methods should be: Pertinent in light of the purpose, Transparent, Confidential; Any question regarding private life is prohibited; Any question regarding sensitive data (political views, religion) are prohibited.

More specifically:

1. Are allowed: **ID checks, Education checks, Experience checks.**
2. Is prohibited: **Credit check.** The Bank of France maintains files which are only available to financial institutions holding a license delivered by the Bank of France itself to check bad/bounced checks, participation in fraudulent activities, bankruptcy declaration.¹
3. Are limited **Medical checks** unless (i) the doctor has established an incapacity for the job or (ii) the nature of the job requires is and **Criminal record checks.** No law either allows or prohibits criminal checks in the context of pre-employment. France has 3 types of criminal records for one person: Bulletin N°1 with all convictions and decisions of justice, which access is limited to judges and penitentiary establishments; Bulletin N°2 with most convictions but for those committed if the person was minor, those committed a long time ago, which access is limited to administrative, military and private institution where there is access to sensitive positions such as working with minors; and Bulletin N°3 where the most recent and serious condemnation are reported and which is only accessible to the subject of inquiry. Criminal checks can either be a legal obligation, or a right for the Employer. Where checking the criminal record is a right – but not a requirement –, the check is regulated by the data privacy regulation, the employer

¹ Some employers, mainly outside of France, must perform credit check for compliance and regulatory purposes. An alternative offered by certain firms is a bankruptcy check, which can be performed on the BODACC website, *Bulletin Officiel des annonces civiles et commerciales*, a government database which purpose is to provide economic and financial transparency and, more particularly, it provides information regarding bankruptcy.



must have a legitimate interest to check a criminal record of the candidate. (Purpose) Are you processing personal data in pursuit of a legitimate interest? (Necessity) Do you need to process this personal data? (Balancing) do the person's interests override the legitimate interest?

The French data protection authority raises an interesting point in a recommendation: the candidate can be requested to present at the interview a copy of his or her criminal certificate (hard copy) but the processing per se of such criminal record is not allowed. Quid of online interviews? How do you check a criminal certificate during an online interview? Technology should make possible to reconcile the interests of the candidate and the need of the business to make an informed decision.