Crypto, TradFi & Digital

Two topics: Trackers and algorithmic training, and Pontes in operation and the Appia architecture

Decoding financial, AI and data regulation to anticipate, comply and decide

The CNIL sanctions algorithmic training without consent, and the Eurosystem gets tokenised finance running

Previous editions of the Regulatory Brief have documented the European framework for trackers, from the CNIL's recommendation on tracking pixels (Edition #19) to the EDPB guidelines on the interplay between the DSA and the GDPR (Edition #26), as well as the construction of the European settlement infrastructure, from the Pontes/Appia strategy (Edition #22) to the launch of Pontes (Edition #26) and the tooling phase of the digital frameworks (Edition #30). This thirty-first edition extends both threads with, on one side, a sanction that moves tracker doctrine from guidance to enforcement and, on the other, a consultation report that moves tokenised finance from strategy to operation.

In a decision dated 22 October and published on 29 October, the CNIL imposed two fines totalling EUR 7 million on Fnac Darty Participations et Services (EUR 6 million) and Fnac Direct (EUR 1 million) for operating, after the user had selected “Continue without accepting” in the Fnac mobile app, a tracker feeding personalisation and the training of the recommendation algorithm. On 28 October, the Eurosystem published the report on its consultation on the Appia roadmap, which confirms that Pontes has been operational since 21 September 2026 and charts the path towards the blueprint expected in 2028.

This edition devotes its main focus to the CNIL sanction and covers the Eurosystem developments in a tokenised finance section.

The main signal

Classifying a technology as a personalisation or algorithmic training tool does not qualify it for the exemption applicable to strictly necessary trackers.

This is the central lesson of the CNIL's decision, and it extends well beyond the case at hand. A tracker that feeds a recommendation engine or the training of an algorithm does not become "strictly necessary for the service requested" because personalisation improves the user experience: it remains subject to prior consent under Article 82 of the French Data Protection Act (Loi Informatique et Libertés). The decision is therefore directly relevant to mobile apps, recommendation engines and AI systems fed by behavioural data, well beyond the retail sector.

The Appia consultation report belongs to a different register, but the 127 responses received by the Eurosystem converge on questions of the same nature: the legal finality of on-chain settlement, the allocation of liability where a smart contract fails to execute properly, key custody, and the balance between confidentiality, auditability and anti-money laundering. In both fields, the question is no longer whether the technology is acceptable in principle, but under which precise legal conditions it may operate.

Main focus: algorithmic training, the CNIL reminds us that personalisation does not dispense with consent

In a decision dated 22 October 2026 and published on 29 October, the CNIL imposed two fines totalling EUR 7 million on Fnac Darty Participations et Services (EUR 6 million) and Fnac Direct (EUR 1 million).

The facts established

The CNIL's inspection concerned the Fnac mobile app. It revealed that, after the user had selected "Continue without accepting", a tracker transmitted a user identifier and information on the products viewed to a third-party domain. These data were used to personalise recommendations and to train the recommendation algorithm.

The legal reasoning

The CNIL considers that these operations were neither necessary for electronic communication nor strictly necessary for the service requested. They therefore required prior consent under Article 82 of the French Data Protection Act, the provision that transposes Article 5(3) of the ePrivacy Directive into French law and that already underpinned the CNIL's recommendation on tracking pixels (see Edition #19). The refusal expressed by the user via "Continue without accepting" made

the placing and reading of trackers, which continued despite that choice, all the more clearly established.l'article 5(3) de la directive ePrivacy et qui fondait déjà la recommandation de la CNIL sur les pixels de suivi (cf. Édition #19). Le refus exprimé par l'utilisateur via « Continuer sans accepter » rendait d'autant plus caractérisé le dépôt et la lecture de traceurs qui se poursuivaient malgré ce choix.

The injunction and next steps

Beyond the fines, an injunction requires the companies to demonstrate their compliance within one month of notification, subject to a penalty of EUR 10,000 per day of delay. The decision may be appealed before the Conseil d'État within two months of its notification. Fnac Darty disputes the legal analysis and is considering an appeal.

The implications for AI systems fed by behavioural data

The decision confirms that classifying a technology as a personalisation or algorithmic training tool does not qualify it for the exemption applicable to strictly necessary trackers. It directly concerns mobile apps, recommendation engines and AI systems fed by behavioural data: the chain running from the tracker to the trained algorithm falls, from its very first step, under the consent regime.

Two caveats are in order. This is not a sanction based on the AI Act, nor a ban on recommendation algorithms: the breach concerns the placing and reading of trackers without consent. And the decision is not final in its litigation effects, as Fnac Darty disputes the legal analysis and is considering an appeal.

What to watch

- The **possible appeal before the Conseil d'État**, within two months of notification, and the position the supreme administrative court will take on the boundary of what is strictly necessary.
- The **compliance process under injunction**: demonstration expected within one month of notification, subject to a penalty of EUR 10,000 per day of delay.
- The **extension of this doctrine to other players** combining trackers, personalisation and algorithmic training, following on from the tracking pixels recommendation and the inspections announced by the CNIL (see Edition #19).

Tokenised finance: Pontes is operational and the Eurosystem prepares the Appia architecture

On 28 October, the Eurosystem published the report on its consultation on the Appia roadmap. The 127 responses express general support for a European tokenised finance ecosystem based on central bank money.

What respondents are asking for

Respondents emphasise in particular: interoperability with traditional infrastructures; the harmonisation of legal and regulatory frameworks; the legal finality of on-chain settlement; the treatment of smart contract execution failures and the allocation of liability; key custody and the governance of updates and forks; and the balance between confidentiality, auditability and anti-money laundering obligations. These demands tie in directly with the work on the legal status of tokens, long identified as the missing piece of the edifice, by the ECB in the context of Appia as well as by the MiCA consultation (see Editions #22 and #26).

A timeline taking shape

The report now envisages public-private cooperation, more complex experiments in 2027 and the delivery of the Appia blueprint in 2028. It also confirms that Pontes has been operational since 21 September 2026, enabling the settlement in central bank money of wholesale transactions in tokenised assets. In a speech on 29 October, the ECB stated that Pontes operating hours should be significantly extended by mid-2027, ahead of continuous operation in 2028. Immediate settlement finality on the Eurosystem's DLT platform is also envisaged from 2027.

The topic marks the transition of the European tokenisation strategy to an operational infrastructure. The questions of finality, ownership, liability, custody and compliance raised by respondents could subsequently feed into regulatory developments. One caveat is nevertheless in order: the report presents the responses to the consultation. It does not yet reflect a choice by the Eurosystem between the different architectures, and it constitutes neither a regulation nor a legislative proposal.

What to watch

- The **more complex experiments announced for 2027** and the terms of the envisaged public-private cooperation.
- The **scaling up of Pontes**: significant extension of operating hours by mid-2027, continuous operation in 2028, and immediate settlement finality on the Eurosystem's DLT platform envisaged from 2027.
- The **delivery of the Appia blueprint in 2028** and the possible translation of the questions of finality, liability and custody into regulatory developments.

Key takeaways

Six structuring points to bear in mind:

- The **CNIL imposed EUR 7 million in fines on Fnac Darty Participations et Services and Fnac Direct** (decision of 22 October, published on 29 October): after "Continue without accepting", a tracker transmitted a user identifier and the products viewed to a third-party domain, serving personalisation and the training of the recommendation algorithm.
- **Personalisation and algorithmic training do not fall within strictly necessary trackers**: these operations require prior consent under Article 82 of the French Data Protection Act.
- The **injunction requires compliance to be demonstrated within one month** of notification, subject to a penalty of EUR 10,000 per day; Fnac Darty disputes the legal analysis and is considering an appeal before the Conseil d'État.
- The sanction **is not based on the AI Act and does not prohibit recommendation algorithms**: the breach concerns the placing and reading of trackers without consent.
- The **Eurosystem confirms that Pontes has been operational since 21 September 2026** for the settlement in central bank money of wholesale transactions in tokenised assets, with operating hours significantly extended by mid-2027 and continuous operation targeted for 2028.
- The **127 responses to the Appia consultation** support a tokenised ecosystem anchored in central bank money and highlight settlement finality, smart contract liability, key custody and compliance; the blueprint is expected in 2028, with no architecture choice settled at this stage.
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Conclusion

Both topics in this edition mark a move from words to action. On the personal data side, the tracker doctrine built by the recommendation on tracking pixels is entering its enforcement phase: the chain linking a tracker, a behavioural profile and a trained algorithm falls under consent from its very first step, and the personalisation argument creates no exemption. Players combining mobile apps, recommendation engines and AI systems fed by behavioural data now have a quantified decision against which to calibrate their compliance. On the tokenised finance side, the public infrastructure is operational and the long-term architecture is being designed together with the market: the 127 responses to the Appia consultation place legal finality, liability and custody at the centre of the work, exactly where the MiCA consultation and the institutional contributions had left them. In both fields, the Regulatory Brief will continue to follow the transformation of these open questions into established rules.

Main sources

- CNIL, *decision of 22 October 2026 against Fnac Darty Participations et Services and Fnac Direct*, published on 29 October 2026 (Légifrance).
- French Act No. 78-17 of 6 January 1978 (Loi Informatique et Libertés), Article 82; Directive 2002/58/EC (ePrivacy), Article 5(3).
- TF1 Info, reaction from Fnac Darty disputing the legal analysis and considering an appeal.
- Eurosystem, *report on the consultation on the Appia roadmap*, 28 October 2026 (ecb.europa.eu).
- ECB, *speech of 29 October 2026* setting out the timeline for the extension of Pontes (ecb.europa.eu).

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