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draft decree in Conseil d'Etat relating to various provisions relating to the posting of workers and strengthening the fight against illegal work (request for opinion no. Minister of Labor for a request for an opinion on a draft decree in Council of State relating to various provisions relating to the posting of workers and the strengthening of the fight against illegal work; Having regard to convention No. 108 of the Council of Europe for the protection of individuals with regard to the automatic processing of personal data; Having regard to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC; Having regard to Law No. 78-17 of January 6 1978 modified relating to data processing, files and freedoms; Having regard to law n° 2018-771 of September 5, 2018 for the freedom to choose one's professional future, in particular its articles 102 and 103; Having regard to the labor code; Having regard to decree n° 2005-1309 of October 20, 2005 amended taken for the application of law n° 78-17 of January 6, 1978 relating to data processing, files and freedoms; Considering the file and its supplements; On the proposal of Mrs Marie-France MAZARS, commissioner, and after having heard the observations of Mrs Eve JULLIEN, assistant to the government commissioner, Issues the following opinion: The Commission has received a request for an opinion from the Minister of Labor relating to a draft decree in Council of State relating to various provisions relating to ives to the posting of workers and the strengthening of the fight against illegal work. Articles 102 and 103 of this law specify that these measures are taken, under the conditions set by decree in the Council of State, taken after consulting the National Commission for Computing and Liberties. Firstly, Article 8 of the draft decree aims to bring the articles relating to the blacklist of companies condemned for illegal work into line, in accordance with the new provisions of article 102 of the aforementioned law. This article has in fact modified the conditions under which the criminal judge pronounces the additional penalty for displaying and disseminating information relating to natural or legal persons convicted of illegal work on the website of the Ministry of Labor. It made mandatory, unless the judge decides otherwise by a specially reasoned decision, the pronouncement of this additional sentence when the person found guilty is sentenced for acts of concealed work committed with aggravating circumstances (organized gang, underage victims, victims in a state of vulnerability). In this case, the law provides that the duration of display and distribution is fixed by the judge and cannot exceed one year. The draft decree draws the consequences of the legislative modification by correcting the references made to the

articles of the labor code legislation. It also removes the condition that the judge must have imposed a criminal fine for the additional sentence to be executed, the concealed work offenses in question being able to give rise to both fines and imprisonment. These modifications do not call for any particular comments. Secondly, article 9 of the draft decree provides for the measures of application of article 103 of the law relating to the reinforcement of the powers of investigation and the right of communication of labor inspection control officers in the fight against illegal work. It provides that the right to communicate documents or information to third parties provided for in Article L. 8113-5-2 of the work is carried out, within the framework of an investigation targeting one or more offenses constituting illegal work, by the control agents of the labor inspectorate or by the national monitoring, support and control group defined in article R.8121-15 or in one of the regional support and control units defined in article R.8122-8 of the same code. that the right of communication must be exercised on an ad hoc basis and motivated. In addition, requests for information made under this right must in principle relate only to identified persons. The Commission notes that when the communication relates to information relating to unidentified persons, the draft decree provides that the request must include the following information: - The nature of the legal or economic relationship between the person to whom the request is addressed and the persons who are the subject of the request; - Criteria relating to the activity of the persons who are the subject of the request, including at least one of the following three criteria: place of exercise of the activity; level of activity or level of resources received, these levels being able to be expressed in financial amount or in number or frequency or duration of transactions carried out or payments received; method of payment or remuneration; - The period, possibly split up, but not exceeding eighteen months, to which the request relates. The Commission emphasizes that these elements are cumulative in order to identify the persons concerned as precisely as possible .It observes that the criteria used are similar to those it had examined in its deliberation No. 2017-053 of March 9, 2017 providing an opinion on a draft decree by the Council of State relating to the conditions for exercising the right of communication mentioned in the fifth paragraph of Article L.114-19 of the Social Security Code. years from their receipt and until the exhaustion of the means and time limits for appeal against administrative sanctions or criminal convictions resulting from the checks carried out on the basis of this information. The retention period retained in the draft decree must therefore allow the processing of disputes that may arise within the framework of the procedures implemented following the exercise of the right of communication. In view of all of these elements, the Commission considers that the procedures provided for by the draft decree for the implementation of this right of communication relating to unidentified persons are based on sufficiently objective elements allowing the transmission of only

information. Finally, the draft decree specifies that at the request of the agents, the information is communicated on a computer medium, by a secure device. With regard to the possibility for unauthorized third parties to intercept communications between the requested organizations and the authorized agents, to read and alter the documents and data that would be transmitted, the Commission recalls that significant risks weigh on the persons concerned. It therefore recalls that measures likely to limit these risks must be implemented, such as using media encryption methods (for example asymmetric encryption) in order to ensure the confidentiality of information and to implement digital signature and fingerprint calculation to guarantee the authenticity and integrity of the documents and data exchanged. The Commission also recalls the importance of implementing technical and organizational measures guaranteeing that only authorized persons will have access to the documents transmitted. It recalls that a general password management policy must be implemented in accordance with its recommendation on the subject as well as adequate traceability measures on access, modification and destruction of these documents and data. Deputy Chairman Marie-France MAZARS