Deliberation 2019-055 of May 9, 2019National Commission for Computing and LibertiesLegal status: In force Date of publication on Légifrance: Tuesday June 04, 2019NOR: CNIX1915826Deliberation No. 2019-055 of May 9, 2019 providing an opinion on a draft decree taken the application of law n° 78-17 of January 6, 1978 relating to data processing, files and freedoms (referral n° AV 19008103) The National Commission for Data Processing and Freedoms, Seized by the Keeper of the Seals , Minister of Justice, of a request for an opinion concerning a draft decree issued for the application of Law No. 78-17 of 6 January 1978 relating to data processing, files and freedoms; Having regard to the 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 relating to the protection of natural persons 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 Directive (EU) 2016/680 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 by competent authorities for the purposes of prevention and detection of criminal offences, investigations and prosecutions in this area or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA; Having regard to Law No. 78- 17 of January 6, 1978 amended relating to data processing, files and freedoms, in particular its article 71; Considering the ordinance n ° 2018-1125 of December 12, 2018 taken in application of article 32 of the law n ° 2018 -493 of June 20, 2018 relating to the protection of personal data and amending law n ° 78-17 of January 6, 1978 relating to data processing, files and freedoms and various provisions concerning the protection of personal data ; Considering the decree n° 2005-1309 of 20 October 2005 amended taken for the application of law n° 78-17 of January 6, 1978 relating to data processing, files and freedoms; After having heard Mrs Marie-Laure DENIS, commissioner, in her report, and Mrs Nacima BELKACEM, Government Commissioner, in his observations, Issues the following opinion:1. On April 17, 2019, the Commission was asked for an opinion on a draft decree issued for the application of Law No. 78-17 of January 6, 1978, in the wording resulting from Ordinance No. 2018-1125 of December 12, 2018.2. The purpose of this draft decree is to continue bringing national law into line with Regulation (EU) 2016/679 (hereinafter the Regulation or the GDPR) and Directive (EU) 2016/680 (hereinafter the Directive ) of April 27, 2016. At the legislative level, the adaptation of French law to the new European framework was finalized by the adoption of the aforementioned ordinance of December 12, 2018, which rewrote the Data Protection Act, and of which it is provided that the provisions come into force at the same time as the decree implementing the Data Protection Act in its new wording, and no

later than June 1, 2019. This draft decree thus aims to complete, at the regulatory level, this work of adaptation to Union law, by repealing decree no. 2005-1309 of October 20, 2005 referred to above and by rewriting all the regulatory provisions for the application of the Data Protection Act .3. As a preliminary point, the Commission considers that this draft decree achieves the necessary consistency of these regulatory provisions with regard to European law and the national legislative provisions adopted in its application. In addition, it substantially improves the readability of the different applicable regimes depending on the nature of the processing concerned, in particular by distinguishing between the provisions common to all processing and the requirements specific to the scope of the Regulation, to that of the Directive and to processing not falling not within the scope of EU law. This draft decree thus usefully completes, at the regulatory level, the work of rewriting and clarifying the state of the law resulting from the entry into application of the new European texts carried out by the aforementioned ordinance of December 12, 2018. 4. It nevertheless calls for the following observations on the part of the Commission, it being specified that, to make them easier to read, they only refer to the amended law of 6 January 1978 in the wording resulting from the aforementioned ordinance.On the provisions relating the functioning of the Commission 5. In general, the provisions of Section 1 of Chapter I of Title I of the draft decree usefully clarify the procedures for carrying out the Commission's missions and provide the necessary clarifications and adaptations to the rules of procedure applicable to the composition and its operation. The Commission nevertheless considers that they would usefully be supplemented by the following two points.6. Firstly, the Commission considers that it would be appropriate for the draft decree to clarify and harmonize the conditions for the publication of certain decisions of the plenary formation, in particular concerning its opinions on the Government's draft texts. Indeed, the legislative and regulatory provisions in force already provide for the publication of Commission opinions on draft laws relating to the protection of personal data or the processing of such data, on draft regulatory texts relating to the processing which must be the subject of prior formalities with the Commission, as well as on the draft decrees or orders provided for by a law requiring an opinion from the Commission on these texts, mentioned in the last sentence of article 8-I -4°-a) of the amended law of 6 January 1978.7. In view of the need for transparency in the action of the Commission, reaffirmed by several recent legislative initiatives, it would be useful for the draft decree to also provide for the publication of the other opinions of the Commission, with the exception of those not not be the subject of a publication pursuant to III of article 31 of the Data Protection Act, and in particular of opinions on draft decrees relating to the protection of personal data or the processing of such data , within the meaning of the first sentence of article 8-I-4°-a) of the law of 6 January 1978 as

amended.8. In this respect, the Commission considers that the last sentence of this same article 8-I-4°-a), which provides that the opinions of the CNIL are published on the draft texts that a law provides for, cannot be read as only applying to opinions issued pursuant to a specific law and thus excluding consultations carried out solely on the basis of Article 8 of the law. Consequently, the decree could very usefully specify that opinions given on the basis of the first sentence of Article 8-I-4°-a) must also be published.9. Similarly, the publication of opinions on draft orders relating to these same matters would be usefully provided for. Finally, the Commission considers that the conditions of publication (exact methods, media, deadlines, etc.) of all the Commission's opinions would usefully be harmonized by the draft decree.10. Secondly, the Commission emphasizes the importance of the draft decree allowing it, when it requires an organization to provide the documents necessary for the performance of its missions, to require the latter a French translation of these documents. Indeed, organizations processing personal data, and in particular transnational groups, may have documents in a foreign language, mainly in English, which are nevertheless necessary for the performance of the Commission's missions, both upstream of the implementation processing (consultation on an impact analysis, data transfer tool, etc.) and downstream of it (on-site or documentary checks). However, the provisions of article L. 111-1 of the code of relations between the public and the administration, relating to the use of the French language in exchanges between the administration and the public in the context of the processing of requests from the latter, do not seem sufficient to require a translation of these documents if the body in question does not have them at the time of the request made by the Commission.11. Such a possibility could be based on the combined provisions of article 18 of the amended law of 6 January 1978, which provide that any organization processing personal data must take all useful measures to facilitate the task of the Commission, and of the second paragraph of article 1 of law no. 94-665 of 4 August 1994 as amended relating to the use of the French language.12. In order not to place an excessive burden on the bodies processing personal data, such a provision could limit this option of requiring a translation only to the documents required by the Commission which must in any case be available to the controller or the processor under the Regulation (log of processing activities, data breach documentation, impact analysis if required, etc.). On the provisions relating to the control of the implementation of processing13. The provisions of section 2 of chapter I of the draft decree, relating to the procedures for monitoring the implementation of processing, are broadly similar to the current provisions of the amended decree of 20 October 2005.14. It nevertheless seems necessary that all the consequences of the drafting of article 19 of the Data Protection Act be drawn in this draft decree concerning the opposition of professional secrecy to requests, copies, collections, access and

transcriptions of documents, information and justifications, computer programs and data in the event of control of the implementation of a treatment. For the sake of clarity, article 36 of the draft decree, which mentions the possibility of opposing any professional secrecy to these requests, should thus be modified to recall that this opposability only concerns the three secrets exhaustively mentioned in article 19 of the law, namely the secrecy applicable to the relationship between a lawyer and his client, the secrecy of the sources of journalistic processing and medical secrecy, under the conditions set by the same legislative provisions for the latter. On the provisions relating to corrective measures and sanctions15. On the whole, the provisions relating to the corrective measures and sanctions that the Chairman of the Commission and the restricted committee of the latter may impose, in the event of a breach of the provisions of the Regulations and of the law of January 6, 1978 as amended, draw all the consequences of the new legal framework. They nevertheless call for three series of observations. Firstly, the Commission considers that the provisions of Article 43 of the draft decree, relating to the periodic penalty payments which may accompany the compliance injunction decisions issued by the restricted committee, should be supplemented on two points.17. Concerning the procedure for liquidating the penalty payment, it would first of all be useful, for the purposes of better readability, to provide that the elements likely to justify that he has complied with the injunction, transmitted by the person in charge of the processing or the subcontractor under the second paragraph of the same article 43, must be so no later than the date set by the restricted committee in its decision .18. In addition, since the procedure for liquidating the penalty only involves, as the draft decree stands, only the restricted formation of the Commission, it may prove problematic that the latter does not have the powers allowing it , where applicable, to note the non-execution, total or partial, of its injunction, or its late execution. Provisions should therefore be made to allow the chairman of the restricted body, on behalf of the latter, to request that, with the assistance of the Commission services, all necessary steps be taken to liquidate the on-call.19. Failing this, the decree should provide that the decision pronouncing the liquidation of the penalty payment may be preceded by a written procedure during which a rapporteur appointed, at the request of the president of the restricted formation, under the conditions provided for in article 38 of the draft decree, performs the necessary due diligence and informs the restricted body as well as the controller or the subcontractor of the reasons for the liquidation and the amount proposed. This phase should not occur systematically, but only in the event that the chairman of the restricted committee considers that the elements spontaneously provided by the organization call for additional verifications.20. Similarly, the Restricted Committee should be able to hear the organization concerned in session when necessary, in particular to enable it to make an

informed decision taking into account the behavior of the organization in question and the difficulties in implementing the decision that he met.On European cooperation21. Secondly, the Commission considers that two provisions of section 4 of chapter I of the draft decree, relating to the methods of cooperation of the Commission with the counterpart authorities concerning the corrective measures and sanctions that it can impose, should be modified. 22. Amendments must first be made to the provisions of Article 51 of the draft decree, relating to the consequences to be drawn in the event of an objection from the supervisory authorities concerned with regard to a draft formal notice. of the President of the Commission, and more specifically in the event of an objection to the ordering of a measure falling within the competence of the Restricted Committee instead of such a formal notice. As they stand, these provisions seem to make automatic the appointment, by the President of the Commission, of a rapporteur and, consequently, a decision by the restricted formation of the Commission, once such objections are raised by the authorities concerned.23. However, the Commission points out that the President of the Commission is not required to uphold these objections, which may indeed be rejected, and that he must in this case refer the matter to the EDPS with a view to adopting a binding decision, in accordance to the provisions of Article 65 of the GDPR. This hypothesis must therefore imperatively be reserved by Article 51 of the draft decree, in addition to the planned provisions which only concern the case where the President of the Commission intends to follow the objections of the supervisory authorities concerned.24. This article should also include appropriate arrangements for adjusting the adversarial process in the event that the President of the Commission does not intend to follow such objections and where he therefore refers the matter to the EDPS. Indeed, the adoption of a draft formal notice from the President of the CNIL – which does not take the form of a sanction – is not preceded by an adversarial phase. Such a phase only exists, in the internal texts, before the pronouncement of the measures of the restricted formation, which can take on a repressive nature. However, this dualism of procedures, provided for by French law, does not exist at European level. Consequently, if the EDPS is seized, following the objection expressed by another national authority on a draft formal notice from the President of the Commission, the Committee is likely to issue a binding decision which would preempt in all or party the subsequent pronouncement of a measure by the restricted committee – if, for example, the Committee considers that the facts justify the pronouncement of a pecuniary sanction. Since the Regulation does not provide for the EDPS himself to organize contradictory exchanges with the bodies complained of, the Commission considers that referral to the Committee should, in this specific case, be preceded by a contradictory phase at the French level.25. The organization should thus receive, from the President of the Commission, all useful information relating to

the formal notice initially envisaged and the objections formulated by the authorities concerned. He would thus be able to present his observations, within a time limit to be defined, both on the initial draft and on its possible aggravation by the EDPS. Its observations would then be forwarded to the Committee when referred to it by the President of the Commission.26. Finally, Article 51 of the draft decree could usefully recall the rest of the procedure in the event of the adoption by the EDPS of a decision binding on the Commission, by specifying that the President of the latter is required, depending on what this decision entails, either to issue the formal notice himself, or to seize the restricted committee if the binding decision of the EDPS implied, in view of the distribution of competences chosen by the French legislator, that a measure falling within the exclusive competence of the Restricted Committee.27. Modifications of three kinds must also be made to the provisions of Article 54 of the draft decree, relating to the consequences to be drawn in the event of an objection from the supervisory authorities concerned with regard to a draft decision of the training restricted by the Commission.28. First of all, as well as the aforementioned objections with regard to the draft formal notice, these objections may be rejected by the Restricted Committee, which must then seize the EDPS. This hypothesis must imperatively be recalled in article 54 of the draft decree, it being specified that this referral is independent of the nature of the discrepancy between the draft decision of the restricted committee and the nature of the objections of the counterparts: it is made mandatory by the GDPR when this panel wishes to reject these objections, whether they are aimed at reducing or aggravating the draft decision.29. Furthermore, the Commission considers that the reopening of the investigation is only necessary, for the purposes of ensuring the rights of the defence, in the event of an objection seeking to deviate from the draft decision within a unfavorable to the body in question, and not in other cases, for example when European cooperation leads to a softening of the measure envisaged. In other words, the rights of the defense cannot systematically impose a reopening of the investigation. Article 54 of the draft decree would therefore be usefully clarified on this point.30. Finally, in the event that the rights of the defense require the reopening of the investigation, significantly simplified procedures for the implementation of adversarial proceedings should be provided for. In fact, the Restricted Panel must only, in order to rule under conditions consistent with the rights of the defence, know the point of view of the body in question in the face of objections tending to deviate from the decision initially proposed in a way which is unfavorable to him. The only issue of the contradictory, at this stage, is the difference between the initial proposal, on the one hand, and the most serious decision likely to result from European cooperation, on the other. The other aspects of the procedure, on the other hand, have already been the subject of a full adversarial hearing. Similarly, in the event of a referral to

the EDPS, he only needs to have the initial draft decision, the objections of the supervisory authorities concerned and the body's responses to them to make a decision.31. In both cases, the necessary defense of the organization in no way imposes the implementation of a procedure as long and iterative as that provided for in articles 39 and following of the draft decree, except to prolong the procedure unreasonably. Relaxed procedures for the implementation of adversarial proceedings must therefore imperatively be provided for in Article 54 of the draft decree, for example by allowing the data controller or the subcontractor to have a period of fifteen days, renewable once times if necessary, to address its written observations on these objections. On the proposed wording of certain other provisions 32. Thirdly, the provisions of the draft decree relating to corrective measures and sanctions call for the following two remarks.33. The term decision should be preferred to the formula sanction decision in article 42 of the draft decree, in order to include all the decisions that the restricted committee of the Commission may adopt, and in particular the corrective measures not constituting sanctions in the strict sense of the term as well as the decisions of this panel pronouncing neither corrective measure nor sanction.34. Article 39 of the draft decree should also be corrected for a clerical error in the fifth paragraph, which refers only to the time limits provided for in the second and third paragraphs, thus excluding the extension of the time limits newly provided for in the fourth paragraph. Consequently, Articles 45 and 57 of the draft decree, which refer to all of these deadlines, should also be amended on this point. On the rights of individuals within the scope of the GDPR35. Firstly, the Commission notes that the provisions of Article 78 of the draft decree relating to requests for the exercise of a right presented by a person specially authorized for this purpose seem, literally, to be reserved for the exercise a right on the spot, to the exclusion of other means of exercising the rights of individuals – in practice much more frequent (exercise by form, by email, etc.).36. The Commission wonders about such confinement. Indeed, the use of such mandates is likely to promote the exercise of the rights of the persons concerned, and in particular of persons placed in particular situations (vulnerable persons or persons who are unfamiliar with digital practices, for example), and should not therefore not only concern the exercise of these rights on the spot. In addition, this restriction is not required by the Regulation: the mandate for the exercise of a right with the data controller is not expressly provided for by the GDPR, without the latter seeming to oppose it.37. Furthermore, the Commission notes that certain companies specializing in data recovery already make extensive use of such mandates to obtain the communication of personal data, on behalf of the persons concerned, from data controllers and that these requests raise questions of these.38. For these reasons, the Commission considers that the draft decree could usefully be amended in order either to expressly provide for such powers of

attorney for the purposes of exercising all of the rights of individuals, regardless of the exact terms, or to delete any provision that could be interpreted a contrario as prohibiting the use of these mandates outside the case provided for in article 78 of the draft decree. In the first hypothesis, it would also be appropriate to regulate this practice in order to secure its exercise, by providing for additional conditions to those which currently appear in said article (as well as in article 136 of the draft decree on concerning processing falling within the scope of the Directive), such as the exact purpose of the mandate or the limitation of its duration.39. Secondly, the Commission requests that the notion of an imprecise request to exercise a right be deleted from Article 79 of the draft decree. Indeed, this concept does not appear in the Regulation and these provisions could allow data controllers not to respond, in violation of their obligations, to requests from data subjects for vague and indeterminate reasons. It is therefore appropriate to limit the requests for additional information from these managers to the sole cases, on the one hand, of reasonable doubts as to the identity of the applicant, provided for by Article 12 of the GDPR, and, on the other hand , of a request that does not include the elements making it possible to respond to it, as provided for in article 143 of the draft decree concerning the requests that the CNIL may make when seized of a request for the indirect exercise of a right. The same changes should be made to the provisions of Articles 136, concerning processing falling within the scope of the Directive, and 147 of the draft decree, concerning processing involving State security and defence.40. Thirdly, the Commission notes that Article 82 of the draft decree maintains in national law obligations regarding the rectification of personal data expressly provided for in Article 19 of the Regulation, even though similar obligations are not recalled concerning other rights of persons than the right of rectification. These provisions should therefore be deleted. On the processing of data in the field of health41. The provisions of Section 2 of Chapter III of Title II of the draft decree only call for the following three comments.42. Firstly, the Commission notes that the provisions of Article 94 of the draft decree require that the referral to the National Institute for Health Data (INDS), for it to rule on the public interest nature that presents research, a study or an assessment, either carried out by the commission or the minister responsible for health. As the intervention of the plenary session of the Commission appears neither necessary nor proportionate in this context, it asks that this referral be made by the President of the Commission and that the draft decree, the purpose of which is in particular, in accordance with the provisions of the second paragraph of article 72 of the amended law of January 6, 1978, to define the conditions for referral to the INDS, be amended accordingly on this point. In addition, it would like this assignment of the President of the Commission to be subject to a delegation of signature under the conditions provided for in I of Article 2 of the draft decree and that these provisions

therefore be supplemented in meaning.43. Secondly, Article 114 of the draft decree provides for individual information of persons accommodated in establishments or centers where prevention, diagnosis and care activities are carried out giving rise to the transmission of personal data with a view to processing of personal data in the field of health, in application of the provisions of article 69 of the law of January 6, 1978 as amended. In this regard, the Commission recalls that these legislative provisions are only applicable to processing covered by Articles 64 et seq. of the aforementioned law, and not to all data processing in the field of health. In particular, are excluded, under 1° of Article 65, the treatments mentioned in 1° of Article 44 of the same law, which include in particular the treatments necessary for the purposes of preventive medicine, medical diagnoses , the administration of care or treatment, or the management of health services . Therefore, it is only in the event that such processing effectively falls under the provisions of Articles 64 and following of the Data Protection Act, for example the processing implemented for research purposes by these establishments or centers, and not in the case where they are limited to medical care, that this individual information should be required.44. Thirdly, material errors in the draft decree should be corrected. Article 112 of the draft decree should thus refer to article 110 of the same text to designate the reference standards, standard regulations and reference methodologies, and not to article 109. The reference to biological samples identifying with the Article 116 of the draft decree should be replaced by the examination of genetic characteristics, in order to take note of the legislative changes made on this point. On the other obligations incumbent on controllers and processors45. The draft decree does not recall all the obligations incumbent on these bodies in direct application of the Regulation, and in particular the obligation to notify the Commission of any data breach, provided for by Article 33 of the GDPR. While these obligations could usefully have been recalled by reference to the applicable provisions of the Regulations, as provided for in the amended law of 6 January 1978 with regard to the rights of persons, the Commission considers in any event that two procedural provisions should be provided for these notifications, distinct from those provided for in Chapter IV of Title II of the draft decree, which concerns only the electronic communications sector.46. The obligation to notify the Commission by electronic means, already provided for in article 61 of the draft decree for declarations, consultations and requests for opinions and authorizations from professional users and to which it is already in practice widely used, would thus be usefully provided for by the draft decree. In addition, the latter should specify that the Commission's silence within two months constitutes a decision that there is no need to communicate the breach to the data subjects within the meaning of Article 34.4 of the Regulation.On the provisions governing processing data relating to deceased persons. The Commission considers that the

second paragraph of Article 125 of the draft decree does not comply with the provisions of the Data Protection Act concerning this processing. Article 84 of the said law provides that the processing of data relating to deceased persons is governed solely by the provisions of Chapter V of the law of 6 January 1978 as amended and specifies in particular that the rights of the persons concerned are extinguished at their death. The draft decree, by providing that the rights and obligations mentioned in Title II of the decree, relating to the processing falling within the scope of the Regulation, apply to the processing of data of deceased persons, therefore misapplies the legislative provisions cited above.On data transfers to States that do not belong to the European Union48. The Commission considers that Chapter VI of Title II of the draft decree, relating to data transfers, should be supplemented with new provisions concerning the administrative arrangements mentioned in Article 46 of the Regulation. In accordance with these provisions, such arrangements must provide enforceable and effective rights for the data subjects to constitute appropriate safeguards allowing the transfer of data to a third country. Insofar as such enforceability vis-à-vis the natural persons concerned can only be ensured by means of publication of these arrangements, if necessary according to appropriate procedures, the Commission considers that the draft decree should provide for the principle of such publication, which could take place on the website of the Commission or the national body concerned. On the provisions applicable to processing covered by the Directive and to processing relating to public security, State security or defense 49. The provisions of Titles III and IV of the draft decree, respectively concerning processing falling within the scope of application of the Directive and processing not covered by Union law, are substantially unchanged from the provisions currently in force by virtue of the amended decree of 20 October 2005. They nevertheless call for the following observations.On the possibility of a common impact assessment within the scope of the Directive50. The Commission notes first of all that the draft decree does not provide for the possibility of carrying out an impact analysis relating to the protection of personal data (DPIA) common to several similar processing operations covered by the Directive and likely to create a high risk for the rights and freedoms of individuals.51. If this possibility is not expressly provided for by the Directive, contrary to what is provided for by the Regulation for similar processing involving high risks, the Commission considers that a provision authorizing such a common analysis would not be incompatible with the text European. On the contrary, insofar as it establishes a baseline of minimum guarantees to be implemented by all the data controllers concerned, it could constitute an appropriate way of transposing the Directive to certain categories of processing, called upon to be deployed on a large scale without substantial adaptation of their specific characteristics (apart from security measures). It could also constitute, at national level, a more extensive guarantee for the

protection of the rights and freedoms of individuals within the meaning of Article 1 of the Directive.52. In addition, the singularity of national law with regard to processing covered by the Directive, which provides in particular that such processing may be authorized by a single regulatory act within the meaning of IV of article 31 of the law of January 6, 1978, as amended from then on. that they serve identical purposes and methods of implementation, justifies that these same processing operations can be the subject of a common DPIA comprising a minimum set of measures to be implemented by each data controller concerned. It would thus facilitate the implementation of certain processing operations while guaranteeing control adapted to their specificities. 53. In view of the aforementioned considerations of good administration, the Commission therefore considers it desirable that the draft decree, without disregarding the provisions of Article 90 of the law of 6 January 1978 as amended, which provide that the impact analysis is carried out by the data controller, opens the possibility of establishing, by means of a common impact analysis or a general reference which can be supplemented in the development of the DPIA according to the specificities of each processing, such a common base of minimum guarantees. On the communication to the Commission of impact assessments relating to certain processing operations54. Impact analyzes may relate not only to processing covered by the Directive, but also certain processing covered by the Regulation and subject to prior formality with the Commission, such as certain processing relating to public security. While Article 90 of the Data Protection Act expressly provides for this with regard to processing covered by the Directive, the Commission considers that Article 66 of the draft decree should, for the second category of processing, provide for the obligation to send this impact analysis, if it is necessary in application of the provisions of the GDPR, in support of the request for an opinion from the Commission. It could also recall this obligation provided for by law with regard to processing covered by the Directive.55. It is indeed imperative to have such an impact analysis in order to issue an informed opinion on the treatment envisaged, unless this compromises the proper examination of this request for an opinion. In this respect, the Commission considers that the provisions of Article 33 of the law of January 6, 1978 as amended, which establishes the elements which must, in all circumstances, be communicated to the Commission on the occasion of a request for an opinion , cannot be interpreted as excluding the possibility of providing, by regulation, for additional information to be provided to the Commission in certain specific cases. Finally, it recalls that the deadlines for examining the request for an opinion, governed by the law of January 6, 1978, were specifically modified by the aforementioned order of December 12, 2018 to correspond to the deadlines for examining the DPIAs for which consultation of the Commission is mandatory. In view of these elements, the Commission

requests that Article 66 of the draft decree be supplemented on this point.56. In addition, it considers it useful to provide for the possibility that such an analysis may also be attached to the commitment to comply with a single regulatory act, provided for in Article 67 of the same draft. Such clarification would make it possible to usefully complete the provisions of the amended law of 6 January 1978 which are not, by definition, intended to govern all cases.57. Indeed, the second paragraph of Article 90 of the amended law of January 6, 1978 provides for an obligation to send the DPIA to the Commission in support of the request for an opinion for processing covered by the Directive and implemented on behalf of the State. The third paragraph of the same article provides for consultation of the Commission on such a DPIA when the processing is not implemented on behalf of the State, insofar as this impact analysis cannot then be based on a request for an opinion from the CNIL. Thus, the legislative provisions do not provide for the cases of processing covered by the Directive implemented on behalf of the State and governed by a single regulatory act, which are therefore not the subject of a request for an opinion. as well as processing covered by the Regulation and likewise the subject of such a single regulatory act. For these processing operations which present high risks, insofar as they are subject to a prior impact analysis, it would be consistent for the Commission also to have, as for the other processing operations mentioned above, the DPIA carried out by the controller .58. Finally and in any event, with regard to the impact analysis mentioned in Article 131 of the draft decree, which concerns only the processing operations covered by the Directive, the Commission recalls that it must provide a written opinion to the controller and, where applicable, to the subcontractor in the event that it considers that the processing would constitute a violation of the provisions of Titles I and III of the law of 6 January 1978 as amended, and not of its title III alone. For example, breaches of the principles relating to the processing of data (purpose, relevance, appropriate retention period, etc.), established within Title I of the aforementioned law and applicable to processing covered by the Directive, can indeed naturally justify the adoption of such an opinion by the plenary session of the Commission. The fourth paragraph of article 131 of the draft decree must therefore be amended on this point. On the rights of data subjects59. With regard to the rights of persons, and in addition to the observations already made concerning the mandate, for the processing operations covered by the Directive, and the notion of imprecise request, for the same processing operations as well as those relating to State security and the defence, the Commission considers that the readability of Title IV of the draft decree should be improved. It is indeed necessary to better distinguish, for example by creating two separate subsections, the provisions applicable to processing for which requests to exercise a right can only be made indirectly, through the intermediary of the Commission , which in practice represents the

vast majority of cases, provisions applicable to processing for which no restriction of rights, including the indirect exercise of these rights, is provided for. 60. Finally, it would be useful to clarify the wording of the last paragraph of Article 144 of the draft decree, relating to the mention, by the Commission, of the remedies and time limits open to the persons concerned by the processing affecting the safety of the State. The current wording leads to repeating in extenso the provisions of Article R. 841-2 of the Internal Security Code in the notification letters sent to applicants, even though the reference to the said provisions could be made in a language more understandable for these people.The PresidentMarie-Laure DENIS