

Deliberation 2022-013 of February 10, 2022 Commission Nationale de l'Informatique et des Libertés Nature of the deliberation: Opinion Legal status: In force Date of publication on Légifrance: Saturday August 20, 2022 NOR: CNIX2217205V Deliberation n° 2022-013 of February 10, 2022 providing an opinion on a draft decree relating to the National Register of Companies and adapting the other registers of companies (request for opinion no. the relaunch of a request for an opinion concerning a draft decree relating to the National Business Register and adapting the other business registers; 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 (General Data Protection Regulation); Considering the law n° 78-17 of January 6, 1978 modified relating to data processing, files and freedoms; Having regard to Ordinance No. 2021-1189 of September 15, 2021 creating the National Business Register; On the proposal of Mr. Philippe-Pierre CABOURDIN, Commissioner, and after hearing the observations of Mr. Benjamin TOUZANNE, Government Commissioner, Issues the following opinion: The Commission has been asked for an opinion, on the basis of a 4° of I of article 8 of the law of January 6, 1978 as amended, of a draft decree in Council of State relating in the National Business Register and adapting the other business registers. Taken for the application of Article 2 of Law No. 2019-486 of May 22, 2019 relating to the growth and transformation of businesses (hereinafter the PACTE law), Ordinance No. 2021-1189 of September 15, 2021 created a National Register of Companies (hereinafter the RNE) whose purpose is to collect, store and disseminate information concerning companies. The RNE, to which companies operating in the territory will be registered. ire French an activity of a commercial, craft, agricultural or independent nature, will be held by the National Institute of Industrial Property (hereinafter the INPI). Registration in the register will be carried out through the single organization mentioned in Article L. 123-33 of the Commercial Code created by Article 1 of the PACTE law. The ordinance creating the RNE provides that a decree in Conseil d'Etat determines the terms of application of the provisions of section 5 which it inserts in chapter III of title II of book 1 of the legislative part of the commercial code. On this basis, this draft the purpose of the decree is in particular to: describe the information and documents making up the RNE declared by companies subject to registration or automatically registered by authorized authorities; describe the role of the authorities in charge of validating the data declared by the companies subject to for registration in the RNE, specifying the information and documents that are subject to validation; define the procedures for keeping the RNE, by fixing in particular, in this context, the list of entities having access to all the i register information for the exercise of their missions. In addition, the draft decree before the Commission intends to modify:

the provisions relating to other existing registers and directories - and in particular the national directory for the identification of companies and their establishments, maintained by INSEE (hereinafter the SIRENE directory); the provisions relating to the single body provided for in Article L. 123-33 of the Commercial Code; and Article 2 of Decree No. 2019-341 of April 19, 2019 relating to the implementation of processing involving the use of the registration number in the national identification directory of natural persons (hereinafter the NIR) or requiring consultation of this directory. In this context, the draft decree calls for the following observations. On the categories of data processed Articles R. 123-243 and R. 123-253 of the Commercial Code created by the draft decree list the data personal data which are registered, on the declaration of the natural person or the company on the occasion of its registration, within the RNE. Firstly, the Commission notes that the list of personal data communicated by the declarant and covered by the aforementioned articles is exhaustive, so that no other category of data can be entered in the register. Secondly, the draft decree provides for the entry in the RNE of the NIR upon declaration of the natural person or company on the occasion of his registration. In this context, it adds an 18° to D of article 2 of the decree of April 19, 2019 relating to the implementation of processing involving the use of the registration number in the national directory for the identification of natural persons or requiring the consultation of this directory (hereinafter the RNIPP) to allow the use of the NIR or the consultation of the RNIPP by the content of the RNE (the INPI) in order to ensure, with regard to business leaders, their spouses and all the natural persons making up the management of the company, the exchanges of information provided for in Articles R. 123-239 et seq. of the Commercial Code between the keeper of the National Register of Companies and the organizations in social security charge. The Commission takes note of the clarifications provided by the Ministry according to which this amendment authorizes the National Register of Companies to register the NIR within it, and that this latter data makes it possible to identify, within the framework of the exchanges necessary for automatic registrations, the individual concerned among those registered under the company's SIREN number. the GDPR), the personal data recorded in the register must be limited to what is necessary in relation to the purposes for which they are processed. It thus considers that, insofar as the processing of other data, including civil status data, entered in the register, makes it possible to identify the persons concerned, the entry of the NIR in the RNE as well as the access of the content of the register to this data are not justified. On access to data contained in the RNE Firstly, the draft decree specifies on the one hand the information and documents whose registration and filing in the RNE are subject to validation, and on the other hand the procedures for monitoring compliance, by companies, with the conditions necessary for access to their activity or the exercise thereof. In this

context, draft article R. 123-267 provides, in its third paragraph, that information relating to the registration number in the national identification directory of natural persons as well as telephone and electronic contact details are not subject to validation. Without prejudice to the observations previously made on the processing of the NIR, the Commission takes note of the clarifications made according to which this data will not be communicated within the framework of the validation and the telephone and electronic contact details will only be transmitted to the authorities in charge of the validation for allow an exchange between the latter and the companies. Secondly, the draft decree adds to the Commercial Code an article R. 123-311 which lists the authorities, administrations, legal persons and professions having access, for the exercise of their missions, to all the information entered in the RNE, including personal data relating to the identity and domicile of the natural persons mentioned in the register which are not made available to the public. In this respect, the Commission notes that this access will only be granted in the exercise of certain missions specific to each of these entities, and that the data accessible to them will only be used for the sole purpose of identifying and contacting company managers, except with regard to INSEE and the single body. It invites the managers of the accessing entities to take the necessary measures to guarantee that the data protected from the processing will be accessible only to the agents entrusted with these missions and used for the sole purposes mentioned above. In general, the Commission recalls that the access of each entity to RNE data not made available to the public must be limited to the need to know, and stresses that each of these entities must ensure that its processing complies with the regulations relating to the protection of personal data, and in particular the principle of minimization of data. With regard to the methods of access to this data, the Commission notes that an authorization will be necessary within each entity to designate the persons having of access, and that it will be transmitted to the INPI when opening the account dedicated to the extended consultation with a control of the server address for electronic address filled in. Finally, the draft decree specifies that information relating to the NIR is only disseminated to the authorities, administrations, legal persons and professions authorized to know it in accordance with the provisions of article 2 of the decree of 19 April 2019 cited above. With regard to the measures put in place to guarantee that only these entities will be able, in practice, to access the NIR, and without prejudice to the comments previously made on the processing of this data, the Commission notes that the NIR will only be disseminated on justification, provided by the authority concerned, of the relevant authorization. Thirdly, it appears from the clarifications provided by the Ministry that INPI service providers will have access to the data contained in the RNE. The Commission stresses that the services must be carried out under the conditions provided for in Article 28 of the GDPR and that

agreements must be concluded before any processing is carried out. On the rights of the persons concerned The draft decree provides that the opposition of the declarant to the provision of his data for prospecting purposes pursuant to Article 21-2 of the GDPR is brought to the attention of the administrations and the public. The Commission observes that, in accordance with the recommendations it made in its deliberation n° 2021-098 of September 2, 2021, it is planned to integrate into the RNE functionalities making it possible to exercise this right of opposition and to identify the data concerned to inform users of the opposition formed. In particular, it takes note that the declarant's opposition will be materialized either during the declaration by means of a checkbox, or subsequently by sending a form to the INPI. It emphasizes that in order to facilitate, in accordance with Articles 12 and 21 of the GDPR, the exercise of the rights of data subjects, declarants must be informed of the possibility of exercising at any time, including after the declaration procedure, their right to oppose the processing of their data for prospecting purposes, and that the form provided for this purpose must be easily accessible. On the other characteristics of the RNE Beyond the characteristics of the RNE described by the draft decree, the Commission notes that a circular will establish the retention periods and that an alignment of the retention periods between old registers and maintained registers is envisaged. Moreover, it recalls having considered, in its aforementioned deliberation no. , that in view of the nature of the processing envisaged, a data protection impact analysis (hereinafter DPIA) should be carried out prior to the implementation of the processing, conf in accordance with articles 62 of the amended law of 6 January 1978 and 35 of the GDPR. In this respect, it notes that the Ministry has undertaken to carry out a DPIA by the end of the fourth quarter of 2022, which will not allow the processing to be implemented before this date. It considers that the production of the DPIA at the same time as the publication of the decree constitutes good practice, which it is in favor of. Finally, the Commission observes that certain provisions of the draft decree are being drafted and that it has not , therefore not the full text has been captured. In this respect, it notes that these are provisions for adapting or deleting existing registers which do not involve the processing of personal data. The Commission regrets that these provisions for adaptation or deletion were not carried out before it was referred for an opinion. On the modification of the provisions relating to the national directory mentioned in Article R. 123-20 of the Commercial Code Firstly, the draft decree amends article R. 123-222 of the commercial code to add, among the information entered in the SIRENE directory, the indication that the address of the legal unit corresponds, where applicable, to the personal domicile of the natural person or the manager of the legal person or group. The Commission notes that the registration of the information on this address of the legal unit as specified above is personal data of company which must be considered as such with regard

to the right of opposition to the dissemination and the right of opposition to the reuse of data (about the exercise of these rights, see below). In addition, the draft decree plans to modify Article R. 123-232 of the Commercial Code to add the information that the address of the legal unit corresponds to the personal domicile to the data that can be communicated to the administrative authorities and legal persons governed by private law mentioned by the same provision. Although the Commission notes that this information will be made available to the administrations to avoid questioning the company on data already available within the administration, it nevertheless questions the need to transmit to the administrative authorities and aforementioned legal persons this information with regard, in particular, to the purpose of its registration in the register as specified by the Ministry (identification of personal data in the context of the exercise of the right of opposition). With regard to this purpose, the Commission invites the Ministry to ensure that this information will be accessible only to the holder of the register in his capacity as controller. Secondly, the draft decree provides for the addition to the Commercial Code of a new article R. 123-232-1 which provides, in its first paragraph, that INSEE may make the information contained in the directory available to the administrations, under the conditions defined in section 4 of chapter IV of title 1 of book 1 of the code of relations between the public and the administration (hereinafter the CRPA). The Commission notes that this provision will be made provided that each administration indicates the legal basis allowing it to use the data in question. Thirdly, paragraphs 2 to 4 of draft article R. 123-232-1 provide for and define the conditions for exercising a right of opposition to the provision of their data for prospecting purposes pursuant to Article 21-2 of the GDPR and a right of opposition to the provision of his data for reasons relating to his particular situation pursuant to Article 21-1 of the same regulation. As regards the scope of these rights, the Commission notes the clarifications provided by the Ministry that the second paragraph of Article R. 123-232-1 provides for a right of opposition to the reuse of personal data for prospecting purposes, and that the exercise of this right will lead to add to broadcast data within directory a marker for the public and potential reusers. Since in its current wording, the draft article provides for a right of opposition to the provision of this data for prospecting purposes, the Commission recommends clarifying this article to indicate, in accordance with the elements mentioned above, that the right of opposition is exercised with regard to the use of personal data for prospecting purposes, such data being available but not usable. Finally, it notes that Article A. 123-96 of the Commercial Code, which provides for a right of opposition to the use of personal data for prospecting purposes, will be brought into line by a text furthermore, the third paragraph of draft article R. 123-232-1 provides that a natural person may object to the provision of their data for reasons relating to their particular situation and, if where applicable, that the

provision of information relating to the identity of this person will be limited to the identifier within the directory and to the municipality. The continuation of the processing of these last data aims, according to the elements communicated by the ministry, to facilitate the relations between the companies and the third parties not having access to the data for which the right of opposition applies and, by the same , to allow knowledge of the company. In this respect, the Commission recalls that the processing of personal data to which the data subject has objected can only be continued if it is demonstrated, in accordance with Article 21-1 of the GDPR, that there are legitimate and compelling grounds for processing which prevail over the interests and rights and freedoms of the data subject, or for the establishment, exercise or defense of legal claims. Finally, the Commission takes note of the clarifications provided by the Ministry according to which the exercise of the rights of opposition deprives the administration of being able to request the information concerned under the first paragraph of the same article R. 123-232-1 (see above, point 30). It nevertheless notes that the data made available to the administrations under the conditions defined by the aforementioned articles of the CRPA are not, in accordance with the latter, intended to be processed for prospecting purposes. In general, the Commission wonders about the insertion of the provisions relating to the right of opposition in article R. 123-232-1, following a first paragraph whose purpose is to make data available to the administrations under the conditions provided for by the CRPA, insofar as this right would be intended to be exercised with regard to both the administrations and the public. the exercise of the right of opposition will only be ensured on the occasion of any formality for the creation, modification and termination of a business and by the provision of a free online procedure. In this respect, it recalls that the persons concerned must be informed of the possibility of exercising their right to object at any time to the processing of their data for prospecting purposes or for reasons relating to their particular situation (see above). , point 23).On the amendment of the provisions relating to the single body mentioned in Article L. 123-33 of the Commercial CodeThe draft decree amends Article R. 123-4 of the Commercial Code to authorize the single organization to transmit to the organizations to which business formalities are addressed the result of the consultation of the RNIPP, which aims to confirm, for registered individuals, the identical nature of the elements declared to those appearing in the directory. To enable this transmission, the draft decree also modifies point 6 of A of article 2 of the aforementioned decree of April 19, 2019. In this respect, the Commission notes that the transmission of the result of the RNIPP consultation may r will alert the organizations to which the business formalities are addressed to the lack of concordance between the elements declared and those appearing in the RNIPP. If the Commission observed, in its deliberation no. information relating to the identical nature or not of the compared

elements would be transmitted only to the social organizations, it notes today that it is also planned to communicate this information to the other organizations recipients of the formalities of companies referred to in the appendix to article R. 123-30 of the Commercial Code which may, in the event of information on a possible discrepancy, set up in-depth checks in conjunction with the declarants. In any case, the Commission invites the Ministry to provide the necessary measures to guarantee that only the result of the RNIPP consultation will be transmitted to the organizations to which this consultation is addressed, as provided for in Article R. 123-4 of the Commercial Code. The President, M.-L. Denis