Deliberation 2021-035 of March 25, 2021 National Commission for Computing and Liberties Nature of the deliberation: Opinion Legal status: In force Date of publication on Légifrance: Thursday June 17, 2021 Deliberation No. 2021-035 of March 25, 2021 providing an opinion on Articles 40 , 41 and 42 of the bill relating to differentiation, decentralization, deconcentration and on various measures to simplify local public actionThe National Commission for Computing and Liberties,Seized by the Ministry of Territorial Cohesion and relations with local authorities of a request for an opinion on articles 40, 41 and 42 of the bill relating to differentiation, decentralization, deconcentration and carrying various measures to simplify local public action; Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data personal nature and the free movement of such data, and repealing Directive 95/46/EC (general regulations on data protection; Having regard to law no. 78-17 of 6 January 1978 as amended relating to data processing, files and freedoms, in particular its article 8-I-4°-a); After having heard the report of Mrs. Sophie LAMBREMON and Mr. Alexandre LINDEN, commissioners, and the observations of Mr. Benjamin TOUZANNE, government commissioner. following opinion: The Commission was seized, on March 4, 2021, on the basis of Article 8□I□4° a) of the law of January 6, 1978 as amended, Articles 40, 41 and 42 of the draft law relating differentiation, decentralization, deconcentration and various measures to simplify local public action (hereafter the 4D bill). On Article 40 relating to the sharing of user data between administrationsThe Commission has already ruled on several occasions on the procedures for exchanging data between administrations within the framework of the Tell us once (DLNUF) system. It has consistently felt that these exchanges of data, which are governed by the code of relations between the public and the administration (CRPA), contribute to the simplification of administrative formalities for users when they have for the purpose of exempting users, natural or legal persons, from providing the same supporting documents several times. the limitation of the data exchanged to those strictly useful for the process initiated by the user; the possibility, for the only administrations acting within the framework of their legal missions and regularly authorized to know this data, to benefit from these exchanges. In general, the Commission recalls that, while the simplification of administrative procedures and the improvement of relations between the public and the administrations constitute legitimate objectives, the implementation of exchanges of personal data in this context must be limited to strictly necessary data and guarantee respect for the rights of individuals as well as the security and confidentiality of their personal data. It considers that a distinction must be made between the exchanges of data carried out for the purpose of responding to user requests, which do not pose any difficulty in principle when the invasion of privacy appears slight, and

those carried out for the purpose of administrative police, surveillance or detection of fraud, for which particular vigilance is required. The Commission points out that the exchanges envisaged do not fall under this last hypothesis. In all cases, exchanges must take place in strict compliance with the regulations relating to data protection and privacy. It thus recalls the importance of ensuring the effectiveness of the rights of the persons concerned. In this respect, the Commission notes that if the rules in force regarding prior information for the user, the right of access and rectification, and the limitation of exchanges to data strictly necessary for the processing concerned are not modified by the bill, the rights to limit processing and to object provided for in Articles 18 and 21 of the GDPR are not mentioned in paragraph 3 of Article L. 114-8 of the CRPA. that the ministry intends to exclude the exercise of these rights, it recalls that such an option must meet the conditions provided for in article 23 of the GDPR and article 56 of the law of January 6, 1978 as amended. The Commission recalls in particular that the exclusion of the rights to restriction of processing and opposition must be expressly provided for and that this exclusion should be accompanied by the necessary safeguards. Under these conditions, the Commission considers that the bill will have to be supplemented on this point if the Ministry actually intends to apply Article 23 of the GDPR. The Commission also recalls the importance of ensuring that the information of users is complete and of high quality with regard to the requirements set out in Article 14 of the GDPR. In particular, it considers that the information provided should thus indicate the alternative methods for carrying out a procedure without benefiting from the Tell us once mechanism in the event of the exercise of the person's right of opposition. In view of the foregoing, the Commission makes the following observations on the changes envisaged. Firstly, point 1 of article 40 of the 4D bill provides for the modification of article L. 113-12 of the CRPA in order to extend the possibility of exchange of data between administrations to any request or declaration produced by a user. As a result, the procedures concerned will no longer be set by an exhaustive list in a Conseil d'Etat decree taken after consulting the Commission, but that by default, data sharing will be established in the event of a request or declaration by the user.The Commission has no objection to this extension, for this purpose, as long as it contributes to compliance with the principle of data minimization. The possibility of setting up standardized programming interfaces (API) allowing the exchange of data, for the purposes and under the conditions provided for by law, must be read in conjunction with the fact that Article L. 114-9 of the same code provides that the exchange of data is prohibited for certain types of data, in particular health. RCAP. This repeal has the consequence of removing the obligation, for the person or his representative, to attest on his honor to the accuracy of the information declared and also allowing him to request the use of the DLNUF device as a substitute. , 3° of article 40 of the 4D bill provides

for the modification of article L. 114-8 of the CRPA by adding a new purpose which is to authorize the exchange of data for information purposes. the user concerning his rights, or to grant him services or advantages. The Commission notes that these modifications lead to an evolution of the essential characteristics of the DLNUF system. It notes in particular that, in this case, the a priori intervention of the user would no longer be required to initiate the exchange of data between administrations. The Commission notes that this change aims to speed up the exchange of data between administrations for the benefit of the user and to fight against the phenomenon of non-use of rights, particularly in terms of social benefits. In particular, it notes that this new purpose aims to enable an administration to proactively inform a user. Without calling into question the objectives pursued, the Commission considers that it is important to ensure that such a device is precisely limited to such use, to the exclusion of any other, and does not allow, in particular, to detect possible cases of fraud by means of cross-referencing of information. It considers that the provisions envisaged should specify this explicitly. Insofar as the sharing of data implemented, independently of any request from the user, can present certain dangers, the Commission considers that it must be surrounded by guarantees. safeguards to be implemented, the Commission also considers that consideration must absolutely be given to the retention periods of data relating to potential rights, services or advantages of users, by the administrations participating in this proactive information so that these are precisely framed by regulation. A balance should be struck between the need to keep the information that the benefit of a right has been offered to a person and that he or she has, if necessary, refused it, without soliciting it excessively, while not constituting, alongside the file of beneficiaries of this right, a permanent list of people who meet the conditions for granting them but who did not wish to use it. Moreover, the Commission recalls that any user concerned may object, at any time, to the processing of this data in this context, under the conditions provided for in Article 21 of the GDPR.Fourthly, 4° of Article 40 of the 4D bill deletes the provisions of 1° and 2 ° and modifies the current 3° of article L. 114-9 of the CRPA by replacing the current formula the criteria of security and confidentiality by the conditions of implementation of the exchanges and in particular the criteria of security, traceability and confidentiality. This deletion implies that the areas and procedures concerned by the exchange of data between administrations, and the list of administrations to which the request for communication is made according to the type of data, will no longer be determined by decree in Council of State. taken after consulting the Commission. In this respect, it takes note of the clarifications provided by the Ministry according to which in the spirit of the accountability of data processing managers promoted by the general regulations on data protection, it is proposed to abandon the logic of an exhaustive list and set a priori of data that can be

shared between administrations. If the publication by decree of the list of administrations benefiting from the exchange of data (recipients) for the processing of requests concerning them constitutes a guarantee, the Commission notes that its deletion constitutes the logical consequence of the generalization of the principle . This generalization must be accompanied by appropriate guarantees, which are of two kinds. Firstly, it considers it necessary to maintain, as the draft does, a regulatory act fixing the list of administrations communicating each type of data to the others. In this respect, 4° d) of Article 40 of Bill 4D provides for the addition of a paragraph to Article L. 114-9 of the CRPA providing that an order of the Prime Minister determines, for each type information or data, the list of administrations responsible for making them available to other administrations. It notes that this list will make it possible to establish reference administrations for the provision of each data sought by a third administration, thus making it possible to ensure that the data is indeed collected directly from the administration holding the data. origin, reliable and unique, and not with any other administration which would also have it. It considers that this measure is likely to avoid errors in the data exchanged and the dissemination of inaccurate or outdated data to the administrations.Secondly, the Commission considers it essential that precise traceability of the exchanges be ensured, allowing the exercise of the right of access to data describing what exchanges took place, between which administrations, at what time. In this respect, it recommends, on the one hand, the use of APIs to carry out these exchanges in order to guarantee the necessary minimization of the data exchanged and the traceability of these exchanges and, on the other hand, the implementation of 'extended traceability, called for by the modification of 3° of article L. 114-9 of the CRPA, and allowing each user to be informed, in a simple and consolidated manner, of all the exchanges of data concerning him. Finally, the Commission, which will be particularly attentive to the actual conditions of implementation relating to such mechanisms for the exchange of personal data, also recalls the importance of ensuring that the envisaged modifications of the CRPA are properly coordinated with the experiment, still in progress, provided for by article 40 of law n° 2018-727 of August 10, 2018 for a State serving a trust society (ESSOC law). Fifthly, point 3 of article 40 of bill 4D amends article L. 114-8 of the CRPA by adding a paragraph providing that The list of administrations which obtain data directly from other administrations within the framework of this article, of the data thus exchanged and the legal basis on which the processing of the procedures mentioned in the first paragraph is based, is the subject of public dissemination under the conditions provided for by article L. 312-1 -1 . The Commission considers that this information is important and contributes to the balance of the system, since it will provide an exhaustive view of the exchange systems put in place, which will no longer be listed by decree. It considers that the

implementation of simplified data sharing circuits should be based on a standardized data exchange infrastructure, the maintenance and management of which are coordinated at interministerial level based, in particular, on great transparency concerning the mechanisms used for these exchanges and recommends, as such, a real-time dissemination of this information. On article 41 relating to the amendments made to the provisions of the amended law of 6 January 1978 Article 41 of the draft law aims to simplify and complete the procedures relating to the pronouncement, by the CNIL, of the corrective measures provided for by the GDPR and the Data Protection Act in the event of a breach of these provisions. More specifically, the purpose of the bill is to adjust the police powers of the President of the Commission, who can pronounce corrective measures alternative to sanctions in the event of violation of the rules relating to the protection of personal data. It also aims to complete the procedure applicable in terms of sanctions, by giving the president of the CNIL's restricted training body new powers, the exercise of which does not require the intervention of this training as a whole, and by creating a simplified procedure for the imposition of financial penalties of a limited amount, applicable only to simple and low-severity cases. In general, the Commission very much welcomes the Government's project, which will simplify and enrich the procedures available to the CNIL to pronounce corrective measures in the event of a breach of the provisions of the GDPR and the Data Protection Act. Such an adaptation is indeed necessary to allow a satisfactory investigation and in accordance with these provisions of the complaints received by the CNIL, in a context of constant and substantial increase in the volume of complaints addressed to it, and therefore contributes to a better guarantee of the rights of data subjects with regard to the processing of personal data. In addition, the Commission considers that the proposed provisions are surrounded by the necessary guarantees for those involved in the sanction procedures pronounced by the CNIL. Article 41 of the bill also calls for the following additional observations on the part of the Commission. Firstly, point 1 of I of the said article provides for the possibility for the President of the Commission to remind of his legal obligations a data controller or a subcontractor who does not comply with the legal framework for the protection of personal data. personal data. The Commission observes that this measure, which is similar to the call to order provided for in Article 58.2.b) of the GDPR and which the Council of State has already validated for the benefit of the CNIL (EC, June 21, 2018, no. 414139), does not present in this context a repressive nature and can therefore be taken by the President of the Commission. It also considers that it will make it possible, for minor breaches which do not justify the pronouncement of public measures or financial sanctions, to promote the compliance of data controllers and subcontractors who have disregarded the legal obligations imposed on them.Secondly, 2° of I of Article 41 of

the bill aims to clarify and simplify the procedure for closing formal notices adopted by the President of the Commission in the event of disregard of the obligations arising from the GDPR or of the amended law of January 6, 1978. The draft provisions provide that the President of the Commission may, in the context of a decision of formal notice, ask the data controller or the subcontractor to justify its compliance, without this request being systematic. , and that it is only in the event of such a request that the president is required to close the formal notice if compliance is found. The Commission considers that these provisions will thus make it possible to make the formal notice procedure more flexible. It should indeed be emphasized that the instruction of the closure of formal notices is particularly cumbersome and time-consuming, whereas this instrument is often particularly appropriate for obtaining rapid compliance. Thirdly, II of Article 41 of the bill aims to entrust new powers to the president of the restricted formation of the CNIL, the body competent to pronounce sanctions, and in particular administrative fines, in the event of a breach of the rules relating to the protection of personal data . It is thus provided, in a new article 20-1 of the amended law of January 6, 1978, that the president of this restricted body may alone issue injunctions to produce, accompanied, if necessary, by a penalty payment not exceeding 100 euros per day of delay, in the event of no response to a previous formal notice to transmit the documents necessary for the investigation of the file, as well as dismissals in the case of a transmission of documents following injunctions previous. The Commission considers that these low-impact decisions, very frequently attributed to a judge ruling alone in administrative or judicial matters, do not require the intervention of the entire restricted formation and will make it possible to streamline and simplify the repressive action of the Commission when this is justified.Fourthly, III of article 41 of the draft law aims to create a specific and simplified procedure for sanctions, applicable to simple and low-severity cases. These provisions thus provide for the creation of a new article 22-1 of the Data Protection Act, under which reminders to order, injunctions accompanied by penalty payments and administrative fines, of low maximum amounts and which cannot be made public, may be pronounced by the Chairman of the Restricted Panel alone or a member of this panel designated by him, on the basis of a report drawn up by a Commission official, and that the respondent may ask to present oral observations in the context of this procedure. In this respect, the Commission considers first of all that the current sanction procedure is not suited to dealing with the volume of complaints received, which currently reaches 14,000 per year, and recalls that , as the texts currently stand, a single procedure applies to all cases regardless of their complexity or seriousness. The creation of a simplified procedure applicable to files which justify a low financial penalty and which present a great simplicity of the questions of fact or law asked therefore appears essential for the CNIL to be able to carry out its mission

of investigating the all complaints and provide them with the appropriate response each time. It also notes that such procedures already exist for administrative sanctions as well as for jurisdictional matters and that the implementation of a simplified procedure does not contravene the provisions of the GDPR relating to the imposition of sanctions. The Commission considers that no principle precludes the implementation of such a procedure based on a member ruling alone, provided that it is implemented under conditions that comply with the principles applicable to the imposition of sanctions by a independent administrative authority. With regard to these guarantees, the Commission observes that criteria are laid down for the initiation of proceedings under such a procedure. These are the only cases characterized, on the one hand, by a low level of seriousness, the maximum amount of financial penalties being low, and, on the other hand, by the absence of particular difficulties, in particular with to the decisions previously rendered by the restricted committee or to the simplicity of the questions of fact or law that they raise. The measures that may be pronounced under this simplified procedure are limited to a call to order, an administrative fine of at most 20,000 euros and compliance injunctions accompanied by a penalty payment (the amount of which cannot exceed 100 euros per day of delay). The other corrective measures falling within the competence of the Restricted Committee are therefore excluded from this procedure, as are the violations justifying the mobilization of the emergency procedure. It is also provided that the penalties imposed may not be made public, unlike the penalties that may be imposed by the restricted CNIL committee. the chairman of the restricted committee or the member designated by him is not always systematic, but that the possibility of being heard is always offered to the respondent, in accordance with common law in terms of administrative sanctions. The president of the restricted formation will in any event have the option of referring the file, for example if he considers that the criteria for initiating the simplified procedure are not satisfied, to the procedure provided for in article 22. of the Data Protection Act. In this case, a rapporteur will be appointed from among the members of the commission, who will be able to rely on the file already compiled but will render his conclusions in complete independence. Taking into account all of these elements, the Commission considers that the draft law contains sufficient legislative guarantees to authorize the implementation of a simplified procedure for pronouncing sanctions. application, in particular with regard to the simplified procedure which must be supplemented by guarantees falling within the regulatory level. orted to the provisions of article L. 2121-30 of the general code of local authorities Article 42 of draft law 4D modifies the current article L. 2121-30 of the general code of local authorities by giving competence to the municipal council to naming the streets and also providing that the municipality guarantees access to information concerning the naming of the streets and the numbering of the

houses under the conditions provided for by decree. This provision does not call for any comments from the Commission. The

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