

Deliberation 2020-020 of January 30, 2020 Commission Nationale de l'Informatique et des Libertés Nature of the deliberation:
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n° 2020-020 of January 30, 2020 providing an opinion on a draft decree modifying the decree of October 26, 2010 relating to
the file of incidents of repayment of credits to individuals (FICP) (request for opinion no. 19018908) The National Commission
for Computing and Liberties,

Seizure by the Ministry of the Economy and Finance of a request for an opinion concerning a draft decree amending the
decree of October 26, 2010 relating to the file of incidents of repayment of loans to individuals (FICP);

Having regard to Convention No. 108 of the Council of Europe for the protection of individuals with regard to 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;

Considering the law n° 78-17 of January 6, 1978 modified relating to data processing, files and freedoms;

Having regard to the Consumer Code in its articles L. 751-1 and L. 751-6 and L. 333-4;

Considering the monetary and financial code in its article L. 312-1-3;

After having heard Mr. Cabourdin, commissioner, in his report, and Ms. Nacima BELKACEM, government commissioner, in
her observations,

Gives the following opinion:

The draft amending decree of October 26, 2010 relating to the file of credit repayment incidents to individuals (hereinafter
referred to as FICP) referred to the committee aims, first, to update the legal references relating in particular to the protection
of data to take into account the rules introduced by 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 and on free movement of
this data (hereinafter referred to as GDPR).

It tends, secondly, to take into account the operational needs that have arisen within the framework of the implementation of
the procedure relating to the management of the file and in particular the clarification of the principle of uniqueness over time of
registration in the FICP. , to provide that in the event of an incident declared on a credit, no other declaration on this same

credit can be made.

Similarly, the obligation to keep the results of the consultation of the FICP by the establishments or organizations mentioned in I of Article 1 has been replaced by simple proof of this consultation without mentioning its result.

This amending decree specifies, thirdly, that the optional consultation which may take place before the allocation of means of payment must be carried out in particular with a view to identifying persons in a situation of financial fragility.

Fourthly, the draft decree modifies and standardizes the means of proof of FICP consultations produced by establishments or bodies, before the courts, in the event of litigation. The draft amending decree thus gives the possibility to the establishments or bodies mentioned in I of Article 1 to be issued, by the Banque de France, a certificate of consultation of the FICP, in cases where this consultation is compulsory.

1. On the purposes of the FICP (article 2)

The decree of October 26, 2010 sets the cases of mandatory and optional FICP consultations for institutions or organizations.

The draft amending decree brings, on the one hand, modifications relating to the cases of obligatory consultations and, in particular, an update of the legal references to the code of consumption, which do not call for observation of the commission.

The draft amending decree specifies, on the other hand, that the optional consultation which may take place before the allocation of means of payment must be carried out in particular with a view to identifying people in a situation of financial fragility, in order to be able to offer them the specific banking services provided for in the second paragraph of Article L.

312-1-3 of the Monetary and Financial Code (Article 2 [III-2°] of the draft decree). This addition does not call for any comments from the committee.

The committee observes, however, that the purpose attributed to the compulsory consultation of the FICP is not systematically recalled. In fact, article 2 (II) of the draft decree provides that when the mandatory consultation takes place before the granting of a credit (as governed by chapter II and III of title I of book III of the Consumer Code), the purpose of this must be to inform the final decision of the lending institution or organization (Article 2 [II-1° and 3°] of the decree). On the other hand, the mention of this purpose does not appear for the other case of compulsory consultation of the FICP, namely before proposing to a customer the annual renewal of his revolving credit contract (art. 2 [II-2°] of the draft decree).

Similarly, the draft decree does not specify the purpose of the optional consultation prior to the modification of the decree and provided for in Article 2 (III-1°) of the decree, namely that which may be carried out before the granting of credits other than

those provided for in Chapters II and III of Title I of Book III of the Consumer Code. For the purpose of clarity and to meet the requirements of Article 5 (1-b) of the GDPR, the committee considers that the purpose of the FICP consultations provided for in Article L. 751-2 of the Consumer Code, which specifies that the purpose of the FICP is to provide (...) an element of assessment of the solvency of the people who apply for a loan could usefully be recalled in addition to 1°-III of article 2 of the draft decree.

2. Procedures for justifying consultations (Article 13)

The draft amending decree in its article 13 (IV) adds the possibility for institutions or bodies to obtain from the Banque de France a certificate of consultation of the FICP when this is compulsory.

Establishments can request this certificate of consultation within a period of:

- 20 years for a loan under Chapter II of Title I of Book III of the Consumer Code as well as for the granting of an overdraft authorization reimbursable within a period of more than 1 month;
- 35 years for a credit falling under Chapter III of Title I of Book III of the Consumer Code;
- 5 years within the framework of the annual renewal of a revolving credit agreement in application of articles L. 312-57 and following of the consumer code.

The commission considers that these durations comply with Article 5 (1-e) of the GDPR requiring that the data retention period be limited to what is necessary with regard to the purposes pursued, provided that these durations correspond to the limitation of legal remedies applicable to the credit agreements to which this article refers.

3. On the retention of data relating to the results of consultations (Article 13)

Concerning the data relating to the results of the consultations, article 13 (III) modified by the draft amending decree provides for the possibility (and no longer the obligation) for establishments and organizations to keep the result of the last consultation of the FICP and to make it accessible only for the examination of the credit application file, the annual renewal of a revolving credit contract or the allocation of means of payment within the framework of which the consultation was carried out.

The committee observes that this article does not set a retention period for this data, which is not in accordance with Article 5 (1-e) of the GDPR.

The commission recalls that it is in any case up to the data controllers - establishments or organizations - to determine a precise maximum duration for the retention of the results of the consultations in the context of the examination of the file, and

that this should not not exceed that necessary in relation to the purposes for which they are processed, in accordance with Article 5 (1-e) of the GDPR.

Finally, the draft decree provides in its article 13 (III) that when the result of a consultation includes information relating to several people due to homonymy, all this information must be kept.

The commission recalls that this processing must respect the principle of minimization laid down by article 5 (1-c) of the GDPR requiring that personal data must be adequate, relevant and limited to what is necessary with regard to the purposes for which they are processed. In this case, the data not corresponding to the person concerned by the request cannot be kept even in the form of archives as described in the 3rd paragraph of III. They must be destroyed as soon as the institution has noted that the homonymy established from the Banque de France key reduced to the date of birth and the first five letters of the name has been lifted by the use of the form transmitted. The committee would like the draft decree to be clarified in this regard.

The other provisions of the draft call for no comments from the committee.

For the President:

Deputy Vice-President,

S. Lambremon