

Deliberation 2023-049 of May 25, 2023 National Commission for Computing and Liberties Nature of the deliberation:

OpinionLegal status: In force Date of publication on Légifrance: Saturday June 03, 2023Deliberation n° 2023-049 of May 25, 2023 providing an opinion on a draft decree relating to the technical procedures for terminating contracts electronically Date of the opinion: May 25, 2023 No. of deliberation: 2023-049 No. of request for opinion: 23006100 Text concerned: draft decree relating to the technical procedures for terminating contracts electronically. Topics: termination of contracts by electronic means; consumer law Basis for the referral: article 8.I.4.a of law n° 78-17 of January 6, 1978 relating to data processing, files and freedoms The main point: The CNIL invites the ministry to specify, in the draft decree, that professionals should not be entitled to request information that they have not already collected within the framework of the contractual relationship, except in cases where termination depends on the existence of a legitimate reason that the consumer must provide.THE COMMISSION NATIONALE DE L'INFORMATIQUE ET DES LIBERTIES,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 the free movement of such data, and repealing Directive 95/46/EC (general data protection regulations); information technology, files and freedoms, in particular its article 8.I.4.a; Having regard to law n ° 2022-1158 of August 16, 2022 on emergency measures for the protection of purchasing power, in particular its article 15 ;On the proposal of Mr. François PELLEGRINI, commissioner, and after having heard the observations of Mr. Benjamin TOUZANNE, government commissioner, ADOPTS THE FOLLOWING DELIBERATION:I - ReferralA . The context In order to facilitate the termination of consumer contracts that can be concluded electronically (for example, press subscriptions, energy supply contracts or even telephone contracts), Article L. 215-1-1 of the Consumer Code, introduced by Article 15 of Law No. 2022-1158 of August 16, 2022 on emergency measures for the protection of purchasing power, provides for an obligation for professionals to make available to consumers a simplified online termination system for their contracts. This system must be put in place by the professionals concerned when they offer the possibility of concluding contracts electronically; this method of termination may therefore be used regardless of whether the contract in question was taken out electronically or not.B . The subject of the referralThe Commission has received a referral from the Ministry of the Economy, Finance and Industrial and Digital Sovereignty for a draft decree relating to the technical procedures for terminating contracts electronically.The draft decree, object of this referral, sets the terms of access and use of the electronic contract termination functionality, pursuant to Article 15 of Law No. 2022-1158 of August 16, 2022. It provides that From June 1, 2023 at the latest, professionals shall provide

consumers with a contract termination functionality directly and easily accessible from their online interface. It then mentions the information making it possible to identify the consumer, to formulate the request and to receive the notification of the termination. II - The opinion of the CNIL. On the procedures for identifying the applicant Draft article D. 215-2 of the Consumer Code mentions the data that the consumer is required to provide or confirm in order to identify himself and designate the contract to be terminated. in the very particular case where the consumer terminates the contract early, the draft article provides specific conditions for the implementation of this termination, which is conditioned by the existence of a legitimate reason. The consumer has a section allowing him to specify this legitimate reason and informing him of the proof that he must produce for this reason. The draft decree provides that the section mentions an e-mail address or includes a functionality allowing the professional to be sent, in a dematerialized form, proof of the legitimate reason for termination and also mentions the postal address to which the consumer can send him this proof. Firstly, the CNIL notes that, apart from the cases where the termination depends on the existence of a legitimate reason, the professionals concerned are not entitled to request information that they would not have already collected within the framework of the contractual relationship. The CNIL invites the ministry to recall this principle in the draft decree. Secondly, the CNIL notes that the persons concerned will have a section allowing them to specify the legitimate reason justifying early termination. Free text entry areas increase the risk of entering inappropriate or irrelevant information in relation to the privacy of the persons concerned. It is recommended, where possible, to limit the use of such areas and to favor the use of drop-down menus or check boxes offering a list of legitimate reasons. If it were not possible to provide an exhaustive list, the input interface (drop-down menu or selection to tick) could list the grounds recognized by a text as well as by case law and provide the possibility of selecting the basis "Other " in order to indicate, by specifying it, a reason other than those already predetermined. The CNIL reminds that it is necessary to implement measures in order to limit the recording to the data strictly necessary for the instruction of the file (limitation of the number of characters, specific mention intended for the users to raise their awareness, rapid deletion of the data irrelevant, etc.). Thirdly, the creation of a personalized online space should not be imposed for the termination of the online contract, except to prove that there is no less intrusive way to carry out this secure verification. The online transmission, if necessary, of the proof of the legitimate reason for termination could thus take place via a secure form (in particular by using the HTTPS protocol) allowing the collection of the personal data necessary for the termination of the contract. confirmed that the professionals concerned must not impose the creation of such a space at

the time of termination. The CNIL therefore recommends specifying this in the draft decree, without prejudice to the possibility, for the consumer who already has one, of going through his space to proceed with the termination. A copy of the information provided could be sent to the person concerned. , for example by sending an acknowledgment of receipt (email, SMS, etc.), allowing the person in particular to keep a time-stamped trace of his request.B . On the information of the persons concerned The CNIL reminds that the persons concerned must be informed of the elements concerning the processing of termination, in accordance with Articles 12 and 13 of the General Data Protection Regulation (GDPR). This information must in particular specify that the personal data collected will only be used for the purpose of identifying the applicant and taking into account the request for termination, and mention the retention period of the data thus communicated. The President Marie-Laure DENIS