

Deliberation 2019-132 of November 12, 2019 National Commission for Computing and Liberties Nature of the deliberation:

Opinion Legal status: In force Date of publication on Légifrance: Saturday August 01, 2020 Deliberation No. 2019-132 of November 12, 2019 providing an opinion on a draft decree relating to the methods of carrying out and the content of the social and financial diagnosis carried out in the context of legal proceedings for the purpose of terminating the lease (request for opinion no. 19017723)

The National Commission for Computing and Liberties, Seizure by the Minister for Territorial Cohesion and Relations with Local Authorities of a request for an opinion concerning a draft decree relating to the methods of carrying out and the content of the social diagnosis and financial information carried out in the context of legal proceedings for the purpose of terminating the lease; 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/CE; Having regard to law n° 78-17 of January 6, 1978 modified relating to data processing, files and freedoms, in particular its article 8-I-4°-a); Having regard to law n°86-1290 of 23 January 1986 tending to promote the rental investment, access to the ownership of social housing and the development of the land offer; Considering the law n ° 89-462 of July 6, 1989 tending to improve the local relations and modifying the law n ° 86-1290 of December 23, 1986, in particular its article 24; Having regard to law n ° 2018-1021 of November 23, 2018 on the evolution of housing, development and digital technology, in particular its article 119; Having regard to decree n ° 2015-1384 of October 30, 2015 relating to the commission for the coordination of actions to prevent rental evictions; Having regard to decree n ° 2019-536 of May 29, 2019 taken for the application of law n ° 78-17 of January 6, 1978 relating to data processing; to files and freedoms; On the proposal of Mrs. Sophie LAMBREMON, commissioner, and after having heard the observations of Mrs. Nacima BELKACEM, government commissioner, Issues the following opinion: The National Commission for Computing and Freedoms has been seized by the Minister for Territorial Cohesion and Relations with Local Authorities of a request for an opinion on a draft decree relating to the methods of carrying out and the content of the social and financial diagnosis carried out within the framework of a legal procedure in the purposes of termination. This draft decree is issued pursuant to paragraph 2 of article 119 of law n°2018-1021 of November 23, 2018 on the evolution of housing, development and digital Article 24 of Law No. 89-462 of July 6, 1989. This Article 24 provides for a procedure for the automatic termination of the rental contract for

non-payment of rent or charges, or for non-payment of the d guarantee deposit. During this procedure, a social and financial diagnosis must be carried out by a competent body, designated by the departmental action plan for the housing and accommodation of disadvantaged people, then sent to the magistrate in charge of the instruction so that it can examine the tenant's situation. The purpose of this decree is to specify the methods of carrying out and the content of this social and financial diagnosis. On the nature of the data The draft decree lists the information likely to be collected to guide the magistrate's decision, which for the most part do not require any observation by the Commission. Certain headings have nevertheless been the subject of clarifications from the ministry. With regard to information relating to legal and jurisdictional support, the ministry has specified that they give the magistrate indications on the various steps taken by the tenant. , likely to constitute mitigating or aggravating factors. They also help him to assess the assistance provided to the tenant in the constitution of his defense in order to grant him a possible postponement of the hearing. As regards information relating to social support, it was specified that they covered elements such as the social, medical and/or psychiatric situation (for example chronic debilitating illness, severe disability, protection measure of guardianship or curatorship, etc.). If such data is adequate and relevant with regard to the objective pursued, the Commission would like to emphasize the sensitivity of this information and draws the Ministry's attention to the need to implement measures capable of ensuring its security and confidentiality. that the non-excessive nature of the information processed was guaranteed by the ethics of the social worker, the Commission notes that this data may also be collected by legal companions. Also, it wishes to draw the attention of the Ministry to the risk that could be involved in carrying out diagnoses by professionals who are neither trained in social work nor subject to the code of ethics of social workers or to an equivalent. therefore invites the Ministry to ensure that the guarantees surrounding the collection of this information are equivalent regardless of the quality of the speaker. For the President, Deputy Vice-President

Sophie LAMBREMON