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n° 2021-149 of December 16, 2021 providing an opinion on three draft decrees implementing automated processing of personal data relating to the traceability of waste, excavated soil and sediment (request for opinion no. 21015227)

The National Commission for Computing and Liberties, Request by the Minister for Ecological Transition of a request for an opinion concerning three draft decrees implementing the processing of personal data relating to the traceability of waste, excavated soil and sediment; 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 or GDPR); Having regard to Law No. 78-17 of January 6, 1978 as amended relating to data processing, files and freedoms, in particular its article 31; Having regard to the Environment Code, in particular its Articles L. 541-7, R. 541-45, R. 541-43 R. 541-43-1 and R. 541-48 of the Environment Code proposal of Mr Alain DRU, commissioner, and after having heard the observations of Mr Benjamin TOUZANNE, Government Commissioner, Issues the following opinion: The National Commission for Data Processing and Liberties was seized, on the basis of Article 31 of the law of January 6, 1978 as amended, by the Minister for the Transition environment, a request for an opinion on three draft decrees: a draft decree implementing the processing of personal data relating to the traceability of hazardous waste and waste contaminated by persistent organic pollutants (POP waste ) referred to as the waste tracking slip management system; a draft decree implementing the processing of personal data relating to the traceability of waste referred to as the national waste register; a draft decree implementing a processing of personal data relating to the traceability of excavated soils and sediments referred to as the national register of excavated soils and sediments. These draft decrees are taken pursuant to article L. 541-7 of the Environment Code and Decree No. 2021-321 of March 25, 2021 relating to the traceability of waste, excavated soil and sediments which provide for the implementation of waste traceability requirements as well as obligations of electronic transmission by certain economic actors of the associated information to three dedicated national databases: the national waste register, the national register of excavated soil and sediments, the system for managing slips and monitoring waste. The three draft decrees provide for the implementation and data processing methods of these three information systems. The Commission notes that the processing implemented by these three information systems is intended the traceability of waste and excavated soil and sediments and are intended to establish criminal offenses relating

to waste management, listed in Articles L. 541-46 and R. 541-78 of the Environment Code, the establishment of statistics for the observation of waste management and the prevention of damage to the environment. The General Directorate for Risk Prevention is responsible for the processing carried out. On storage periods Article 3 of the three draft decrees provides that the storage period for the personal data of the persons concerned is six years and thirty years for information linked to geographical location. With regard to data linked to geographical location kept in the registers, the Commission takes note of the clarifications of the Ministry according to which these are location data purged of any data of a personnel. The Ministry specified that the data relating to the identity of the persons concerned which would be recorded on the slips or the electronic registers would be kept on an active basis for a period of six years at the end of which they will be deleted. The Commission wonders about the need to keep this data in an active database for such a period. In this respect, it invites the Ministry to limit the retention period in the active database to what is strictly necessary with regard to the objective pursued by the processing, and to set a retention period in the intermediate archiving database if necessary. The three draft decrees provide that data relating to the identity of users declaring information and allowing connection to information systems will be kept for a period of six years. In this respect, the Commission specifies that this data may be kept in an active database as long as the person concerned has access to a user account. These data may then be kept in an intermediate archiving database for a period of six years. These retention periods do not call for any particular observation with regard to the justifications provided. However, the Commission invites the Ministry to modify the draft decrees in order to integrate the retention periods actually retained. On the information and rights of the persons concerned The Ministry specified that the persons concerned will be informed on the Trackdéchets website and on the one devoted to the national register and that this information will contain all the information required by Article 13 of the GDPR. Article 6 of the three draft decrees provides that the persons concerned have the rights of access and rectification of their personal data. The Ministry has clarified that the right to restriction of processing applies to the processing carried out. In this respect, the Commission invites the Ministry to make this clarification in the draft decrees. The Commission notes that the right of opposition and the . the conditions of Articles 12, 13 and 14 of the GDPR. In particular, they must be informed of the relationships and retention periods retained. On the recipients and the relationships with information systems relating to the traceability of waste and excavated soil and sediments Article 4 of the three draft decrees provide that agents within the statistical studies department of the ministry responsible for the environment can access all or part of the data. If this access seems legitimate, the Commission invites the Ministry to mention the existence of a purpose relating to the

performance of statistical operations in the three draft decrees. Other processing is planned, and more specifically: it is planned that the waste tracking slip management system will automatically and in real time feed the national waste register and the national register of excavated soil and sediments when the data to be transmitted are integrated into the slips; it is also planned that the three processing operations can be fed directly with data by computerized data exchange from the companies' internal computer software. times , the Commission notes that feeding the GISTRID application relating to cross-border transfers of waste using information from the Trackdéchets application and the national register could also be put in place, so as to facilitate the completion by companies of their transfer requests. On the security and confidentiality of data The file provided to the Commission does not does not contain sufficiently precise elements to assess the conformity of the security and confidentiality measures envisaged. of December 8, 2005 relating to electronic exchanges between users and administrative authorities and between administrative authorities, it must comply with the general security reference system (RGS) provided for by decree no. 2010-112 of February 2, 2010 taken for the application of Articles 9, 10 and 12 of the aforementioned ordinance. The Commission recalls that it is up to the data controller to formally certify its security through RGS approval and to publish the certificate on the Trackdéchets teleservice website. In order to ensure the security of the teleservice, the Commission invites the Ministry to carry out an impact analysis relating to data protection in order to limit the risks weighing on the persons concerned, as well as to apply the technical recommendations relating to the security of websites published by the National Agency for the security of information systems in its technical note recommendations for securing websites. President Marie-Laure DENIS