

Deliberation 2023-001 of January 5, 2023 National Commission for Computing and Liberties Nature of the deliberation:

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authorizing the processing of personal data relating to the management of products, equipment, materials and waste resulting from the demolition or significant renovation of categories of buildings called "PEMD platform" (request for opinion no.

22016807) Date of the opinion: January 5, 2023 No. of the deliberation: no. 2023-001 No. of request for an opinion: 22016807

Text concerned: draft decree authorizing the processing of personal data relating to the management of products, equipment, materials and waste resulting from the demolition or significant renovation of categories of buildings called the PEMD

platformThemes: scientific and technical building center, fight against waste, circular economy, recovery of elements resulting from works referral: article 31.I.2 of law n° 78-17 of January 6, 1978 as amended relating to data processing, files and

freedoms diagnoses on the management of products, equipment, materials and waste (PEMD) which must be carried out before any demolition or significant renovation work on certain categories of buildings. The CNIL confirms the applicability of

the GDPR to this processing and requests guarantees on information and exclusion of the right of objection. The National Commission for Computing and 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 on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation or GDPR);

Considering the modified law n° 78-17 of January 6, 1978 relating to data processing, files and freedoms (hereinafter data processing law and freedoms), in particular its article 31; On the proposal of Mr. Alain DRU, commissioner, and after having heard the observations of Mr. Benjamin TOUZANNE, Government Commissioner, Adopts the following deliberation:I. -

ReferralA. - The context Article 51 of the law of February 10, 2020 relating to the fight against waste and the circular economy (1) (known as the Agec law) modifies the diagnosis prior to deconstruction work, imposed since 2011 (2).

Renamed diagnosis of products, equipment, materials and waste (PEMD) before demolition or significant renovation, its purpose is to determine the nature, quantity and location of materials and construction products that will give rise to waste to be evacuated and possibly recycled or to reuse. Failure to comply with the obligation to carry out the diagnosis is penalized (3).

Clients must therefore forward to the scientific and technical building center (CSTB) (4): before the works, the PEMD diagnosis containing recommendations in particular on recycling channels, traceability procedures and, where applicable, elimination of

waste; at the end of the works, an inventory form on the nature and quantity of PEMDs actually generated as well as their mode of elimination.

B. - The subject of the referralThe CNIL was referred for opinion on October 26, 2022 by the Ministry of Ecological Transition and Territorial Cohesion of a draft decree authorizing the processing of personal data relating to the management of products, equipment, materials and waste resulting from the demolition or significant renovation of categories of buildings called the PEMD platform.

The PEMD platform aims to allow project owners or diagnosticians to enter the two forms (diagnosis and verification), as well as the expression of interest from the construction reuse and recycling sectors for registered deposits. The CSTB is responsible for this processing, which it implements on the basis of the performance of a mission in the public interest.

The purpose of the PEMD platform is to: collect information making it possible to identify PEMD generated during works and potentially reusable or recoverable (reusable, recyclable, energy recoverable); allow the expression of interest from any actor with the management of structure holding the SLDBs, with a view to their reuse and/or recovery; collecting information to identify SLDBs that have been reused, recovered or eliminated; and carrying out statistics.

II. - The opinion of the CNILA. - On the applicable legal regimeThe CNIL was seized on the basis of Article 31.I.2 of the Data Protection Act, which requires its opinion on any draft order relating to the processing of personal data implemented on behalf of the State and [...] which have as their object the prevention, investigation, observation or prosecution of criminal offenses or the execution of criminal convictions or security measures.

Since the processing is likely to reveal or rule out the existence of a possible criminal offense in the context of non-compliance with the obligation to carry out a diagnosis relating to the management of SLDBs, the Ministry considers that it meets under the conditions of this article. The CNIL takes note of the arguments of the Ministry on the basis of the referral. The main purpose pursued by the processing being to allow compliance with the obligation to carry out and transmit the PEMD diagnosis, and not the prevention and the detection of criminal offences, the CNIL considers that the processing falls under the regime provided for by the GDPR.

B. - On the data collectedArticle 2 of the decree provides that the personal data collected in the processing are in particular: For registration to the digital service: surname, first name and e-mail address; and the personal data defined by articles 3 and 4 of the decree relating to the diagnosis relating to the management of products, equipment, materials and waste resulting from the demolition or the significant renovation of categories of buildings and repealing the decree of December 19, 2011 relating to the diagnosis relating to the management of waste resulting from the demolition of categories of

buildings. The CNIL notes that the data cited in 1 concern the project owners subject to the provisions of Articles L. L. 126-35 of the CCH, the diagnosticians, the sectors of reuse and recycling of the BTP and the public authorities who will register for the digital service.

The Commission notes that the data referred to in 2 correspond to the elements of the diagnosis and verification forms. It also notes that the decree cited will be published at the same time as the decree examined in this case.

C. - On the information of the people

The contracting authority receives a notification which informs it when interested actors position themselves on one or more batches of PEMD of a deconstruction operation. Their email is then made available to the client for further negotiations. The CNIL reminds that the persons concerned must be informed of the possible transmission of their email. It recommends providing this information when registering for the service and when expressing interest.

D. - On the right to object

The Ministry clarified that the right to object is excluded for this processing, on the basis of Article 23.1.e of the GDPR in order to guarantee important objectives of general public interest of the Union or of a Member State, in particular the protection of the environment. The CNIL draws the attention of the Ministry to the necessary compliance with the provisions of Article 23.2 of the GDPR which requires the provision of certain additional guarantees in the act as soon as the paragraph 23.1 is mobilized, in particular the right of the persons concerned to be informed of the limitation. The other provisions of the draft decree do not call for comments from the CNIL. The President,

M.-L. Denis⁽¹⁾ Law no. 2020-105 of February 10, 2020 relating to the fight against waste and the circular economy.

(2) Decree no. 2011-610 of May 31, 2011 relating to the diagnosis relating to the management of waste resulting from the demolition of categories of buildings.

(3) Article L. 183-4 of the construction and housing code (CCH).

(4) Article R. 126-14-1 of the CCH.