Deliberation 2019-029 of March 14, 2019Commission Nationale de l'Informatique et des LibertésNature of the deliberation: OpinionLegal status: In force Date of publication on Légifrance: Thursday April 25, 2019NOR: CNIX1911931XDeliberation n° 2019-029 of March 14, 2019 providing an opinion on a draft decree issued for the application of article 22 of law n° 78-17 of January 6, 1978 relating to data processing, files and freedoms (request for opinion no. 19000282) The National Commission for Data Processing and freedoms, Seizure by the Keeper of the Seals, Minister of Justice, of a request for an opinion concerning a draft decree issued for the application of Article 22 of Law No. 78-17 of January 6, 1978 relating to information technology, files and freedoms; 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 European Parliament and of the Council of 27 April 2016 relating 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); Having regard to Directive (EU ) 2016/680 of 27 April 2016 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by competent authorities for the prevention and detection of criminal offenses, investigations and prosecutions in this area or the execution of criminal penalties, and the free movement of such data, and repealing Council Framework Decision 2008/977/JHA; Having regard to Law No. 51-711 of June 7, 1951 as amended on the obligation, coordination and secrecy in the field of statistics; Having regard to law n° 78-17 of January 6, 1978 as amended relating to data processing, files and freedoms, in particular its article 22; Having regard to decree n° 2005-1309 of October 20, 2005 amended taken for ap plication of Law No. 78-17 of January 6, 1978 relating to data processing, files and freedoms; Having regard to deliberation No. 2018-349 of November 15, 2018 providing an opinion on a draft ordinance taken pursuant to the Article 32 of Law No. 2018-493 of June 20, 2018 relating to the protection of personal data and amending Law No. 78-17 of January 6, 1978 relating to data processing, files and freedoms and miscellaneous provisions concerning the protection of personal data; Having heard Mrs Marie-Laure DENIS, President, in her report, and Mrs Nacima BELKACEM, Government Commissioner, in her observations, Issues the following opinion: The Commission has been seized by the Minister of Justice of a request for an opinion concerning a draft decree issued for the application of Article 22 of Law No. 78-17 of January 6, 1978 relating to data processing, files and freedoms. the purpose of the draft decree is to specify the specific conditions for u processing of the registration number of persons in the national identification register of natural persons (hereinafter NIR) by determining the categories of data controllers and the purposes of this processing in view of which the latter can be

implemented. In accordance with the terms of article 22 of the amended law of January 6, 1978, the implementation of processing operations including the NIR takes place without prejudice to the obligations incumbent on data controllers or their subcontractors pursuant to section 3 of the Chapter IV of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 mentioned above (Data protection impact assessment and prior consultation). Pursuant to the provisions of this same article, this framework decree must be issued following a reasoned and published opinion from the Commission. implements the processing of personal data based on the collection of the NIR, considering that the specificities of the NIR, and in particular its significant nature, justify that the use of this identifier remains strictly regulated by the law of January 6, 1978 as amended and limited to the purposes for which its use is permitted. In this respect, the Commission has always considered that the use of the NIR as an identifier of persons in the files should be neither systematic nor generalised. It thus ensured that the draft texts authorizing the processing of the NIR were confined to the medico-social sphere and only exceptionally accepted that the NIR be used in other sectors, and for reasons of characterized public interest. In this context, it considers that particular attention should be paid to the provisions of this draft decree, which are intended to set a general framework for the processing of the NIR which may lead to an extension of the list of processing and organizations hitherto authorized to process such data. In this respect, the Commission specifies that it intends to pay particular attention to ensuring that this draft framework decree has neither the purpose nor the effect of maintaining or creating cases of use of the NIR which would be contrary the principles of purpose and relevance of the data processed or facilitating the interconnection of files between different sectors. These elements recalled, the draft decree calls for the following observations. On the scope and general economy of the draft decree With regard to the perimeter of the processing of personal data covered, the draft decree calls for the following observations. of processing and the purposes of this processing in view of which the latter may be implemented when they relate to data comprising the registration number of persons in the directory national identification system for natural persons. Article 1 of the draft decree, which is limited to repeating the terms of the aforementioned article, does not specify whether the processing operations which require consultation of the national directory for the identification of natural persons (RNIPP) without including the registration number to this directory fall within the scope of the draft decree. Questioned on this point, the Ministry specified that the draft decree is intended to govern both the processing that uses the NIR and those that require a simple consultation of the RNIPP. If the Commission takes note of this, it considers that such a clarification could usefully be included in the regulatory act in order to remove any ambiguity as to its effective scope. The

Commission also notes that some of the provisions of the draft decree relate to processing that was the subject of formalities, before May 25, 2018, on the basis of Article 26 of the law of January 6, 1978 as amended and which are now likely to fall within the scope of Directive (EU) 2016 /680 of April 27, 2016 known as Police Justice. Asked about the scope of processing actually covered, the Ministry specified that the categories of data controllers and the purposes of those who, covered by the directive, require the processing of the NIR are included in the scope of this draft decree. If the Commission takes note of these clarifications, it follows that the processing which would fall under the aforementioned directive and which would be based on the collection of the NIR or on the consultation of the RNIPP must be implemented under the conditions provided for in Article 22 of the law. of January 6, 1978 as amended and necessarily appear in this draft decree. It observes that in this case, the software intended to facilitate the use and reconciliation of information on the operating methods gathered during the procedures referred to in Articles 74 and 74-1 of the Code of Criminal Procedure (draft d article 1-70°) for which the Commission acknowledges that the NIR can be used in the context of requisitions for the purposes of identifying deceased persons as well as the processing implemented in the context of monitoring convictions persons under the age of twenty-one entrusted by the judicial authority (draft article 1-71°). With regard to the general scheme of the list of processing operations in question, the Commission intends to draw the Government's attention to the heterogeneous degree of detail retained for the drafting of the various paragraphs of Article 1. In this respect, it emphasizes that the extremely detailed inventory made by the present draft with regard to certain processing implemented in the field of health (for example the draft articles 1-16° to 1-21°), which is moreover likely to lead to a modification of the regulatory act each time the conditions for implementing the processing concerned change, harms the overall readability of the draft decree insofar as these specific cases are moreover likely to be encompassed in more appearing in other paragraphs. It notes, conversely, that some of the purposes and categories of data controllers mentioned in the draft decree are not sufficiently explicit and should be Firstly, the Commission regrets that the draft decree does not mention the cases in which only consultation of the RNIPP is authorized, without including among the data consulted the NIR. It considers that the draft decree should be clarified on this point. By way of illustration, the Commission considers that the wording of draft articles 1-48° and 49° remains ambiguous insofar as it is not explicit that the NIR cannot be consulted, nor a fortiori kept, within the files referred to in these articles - namely the business banking file (FIBEN), the central file of unpaid checks (FCC) and the national file of incidents of repayment of loans to individuals (FICP) - as well as within the framework the centralization of decisions to withdraw payment cards issued to their customers by credit institutions. The

Commission also considers that the persons authorized to implement processing including the NIR do not always make it possible to precisely determine the categories of persons responsible of processing actually concerned, as evidenced by the wording used in draft articles 1-4° and 1-39° (State administrations and services). With regard to the very purpose of the project submitted to it, it considers that it should be modified in order to remove any ambiguity as to the designation of the data controllers authorized to use the NIR. In any case, the Commission recalls that only persons authorized with regard to the tasks entrusted to them should be able to access and use the data contained in the processing operations implemented (compliance with the principle of the need to know). The Commission therefore calls, more generally, for the wording of the draft decree to be standardized so that the degree of detail is consistent for all the sectors concerned. With regard to Article 2 of the draft decree , the Commission recalls that, in accordance with article 22 of the law of January 6, 1978, the draft decree aims to authorize the processing of the data that is the NIR as such. On the other hand, it does not have the purpose, and cannot legally have the effect of authorizing by itself the implementation of all the processing necessary for the purposes mentioned in Article 1. It thus recalls that the categories data controllers authorized to process the NIR for the purposes mentioned in Article 1 of the draft decree must comply with the principles and obligations resulting from the GDPR. It insists on the fact that each processing implemented must respect these principles and in particular that relating to the minimization of data which must lead to the processing of the NIR only in the event of need justified by the purpose of the processing concerned. In addition, it recalls that data controllers must comply with the obligations prior to the implementation of the processing of personal data. In particular, they must carry out a data protection impact analysis in the cases provided for in Article 35 of the GDPR and, in the high residual risk hypotheses provided for in Article 36 of the same text, consult, where appropriate the supervisory authority. It notes in this respect that Article 2 of the draft decree specifies that the processing must be carried out subject to the appropriate guarantees for the rights and freedoms of the persons concerned, and in compliance with the article 5 of the GDPR. While it is not for the decree to recall the principles set out in the GDPR, the Commission notes that, in the event that such a reference is maintained, reference should also be made to the corresponding provisions taken for the transposition of the directive (EU) 2016/680 referred to above. With regard to the transitional provisions of the draft decree, the Commission wonders about the future of all cases of use of the NIR which were previously authorized by regulatory acts within the framework of a Conseil d'Etat decree taken after consulting the CNIL.While the ministry specified that this framework decree was intended to resume all existing processing using the NIR, it also indicated that processing which would not have

not been taken up do not become illegal by this sole fact and that the processing operations authorized in particular by a single regulatory act are not subject until their modification, and no later than May 25, 2020, to the ob ligation to be mentioned in the framework decree. In general, the Commission therefore recalls the importance of ensuring that beyond the date of 25 May 2020, all processing operations based on the processing of the NIR or the consultation of the RNIPP are actually included within of this decree. In the same way, it wonders what will happen to the provisions relating to the conditions for implementing processing already authorized previously and set out in dedicated regulatory acts. On the categories of data controllers and the purposes of processing relating to the NIR in the field of social protection Article 1-1° of the draft decree provides for authorizing the processing of the NIR for a whole series of organizations in order to allow the accomplishment of their missions in terms of protection social protection, including when the use of the NIR is necessary for carrying out evaluations, studies, statistics and research, or to implement exchanges or processing of interest to several social protection actors. These provisions call for the the only following observations from the Commission. Article 1-1°-c) of the draft decree provides for authorizing the processing of the NIR by groups formed by the organizations ems and administrations or services responsible for managing a social protection scheme between them . In this respect, the Commission notes that the concept of groups covers the Public Interest Group for the Modernization of Social Declarations (GIP-MDS), the Union-Retraite Public Interest Group (GIP-UR), and the Economic Interest (EIG) SESAM-Vitale and that an exhaustive list of these groups or services responsible for the management of a social protection scheme will be published and notified to the Commission. Article 1-1°-j) of the draft decree provides in particular for the use of the NIR by the establishments and social services mentioned in I of article L. 312-1 of the code of social action and families for keeping the user's file relating to its support. The Commission emphasizes that such a wording could be understood as allowing the use of the NIR by social services for the care of a user without there being any exchanges with health professionals. and social security and provident organisations. However, the Commission points out that such use of the NIR, in this context, has never been authorized and that any ambiguity should therefore be removed as to what is covered, in this context, by the notion of supported . It considers it essential that the draft decree be clarified on this point. With regard to Article 1-4° of the draft decree, the Commission emphasizes the fairly broad scope of this provision and wonders about its articulation with the article 1-24° of this draft. In this respect, the ministry specified that it was a question of limiting the use of the NIR to the ministries of defense and justice in accordance, respectively, with the decrees n° 91-549 of June 6, 1991 and n° 86- 835 of July 10, 1986. The Commission therefore considers

that the draft should be amended accordingly. shops and tobacconists. Asked about this article, the Ministry specified that the use of the NIR had two objectives, namely to eliminate the risk of duplicate beneficiaries of the life allowance scheme for tobacconists (RAVGDT) based on a specific code assigned to the tobacconist and generated automatically by the GIMT processing authorized by decree of March 1, 2006 (computerized management of the tobacco monopoly), on the one hand, and to facilitate exchanges between social security organizations on the other hand. Without calling into question the legitimacy of the objectives pursued, the Commission considers that the use of the NIR for the purposes of computerized management of the network of outlets and tobacco outlets by the customs service pursues purposes other than the management of the life allowance. It therefore considers that such authorization from the NIR for the computerized management of the network of outlets and tobacconists should be limited to these two objectives. Article 1-82° of the draft decree provides for the use of the NIR by the administrations and bodies responsible, by legislative or regulatory provisions, for the determination of rights and the payment of allowances and benefits associated with these rights in the context of data exchanges aimed at improving the determination of the beneficiaries and simplifying the procedures administrative procedures for the payment of allowances and benefits associated with these rights. When questioned on this point, the Ministry specified that this provision covers all the rights related to benefits and allowances paid by the departments and bodies responsible for them in order to combat against the non-use of users who meet the conditions of access to these rights. The Commission emphasizes the legitimacy of the purpose of combating non-take-up. However, it considers that, in its current wording, this paragraph does not make it possible to determine either the nature of the allowances and services paid, or the categories of data controllers or even the purposes pursued by the processing that would be targeted. Under these conditions, it questions the legality of this provision appearing within this framework decree, the purpose of which is, pursuant to the provisions of article 22 of the law of January 6, 1978 as amended, to provide clarification on these two points. In any event, the Commission recalls that exchanges for the purpose of combating non-recourse cannot lead to the extension of the use of the NIR by the administrations concerned by these exchanges beyond the uses which are also authorized to them, each insofar as it is concerned, by the other paragraphs of Article 1. On the categories of data controllers and the purposes of processing relating to the NIR in the field of health (draft articles 1-6° to 1-22°) In general, the Commission notes that the draft decree carries out, in the sphere of health, a complete and particularly detailed inventory of all the hypotheses of use of the NIR and determines, for each one of them, the categories of data controllers and the purposes of the processing. It observes that this project takes

up previously existing processing using the NIR as they resulted from the regulatory texts and the deliberations of the Commission (simplified standards in particular). In particular, it observes that, on the one hand, the new purpose of referencing the data provided for by article 1-6° of the draft decree and, on the other hand, that of invoicing and financial support of the expenses set out in article 1-10° of the draft decree, associated with the appropriate processing managers, cover the majority of scenarios for the use of the NIR in the health sector (implementation of organized cancer screening programs, management medical and paramedical practices by members of the medical and paramedical professions, coordinated management of diabetic patients by orthoptists and doctors, etc.). The Commission refers to the observations previously made on these points. Furthermore, the Commission recalls that the carrying out of studies, assessments and research (including those carried out by the Technical Agency for Information on Hospitalization in this concerning the costs of medico-social and social establishments mentioned in draft article 1-9°), covered by the provisions of section 2 of chapter IX of the law, does not fall, by application of the last paragraph of article 22 of the law, within the scope of the draft decree. It therefore requests that the hypotheses for using the NIR for these studies, assessments and research be removed from the project; only the studies for internal use referred to in article 53-2° of the amended law of 6 January 1978 should appear in the draft decree, excluded from chapter IX of the said law. As regards the use of the NIR for the purposes referencing of health data and administrative data (draft article 1-6°), the Commission recalls that, pursuant to article R. 1111-8-3 of the public health code (CSP), the obligation to use the NIR as INS to carry out this referencing concerns exclusively the professionals, establishments, services or organizations mentioned in article L. 1110-4 of the CSP and the professionals constituting a care team, provided that those -they are involved in the health or medico-social care of users. However, it notes that the draft decree opens up the possibility of using the NIR as an INS for the purposes of referencing data to bodies ensuring the exchange of information concerning the guidelines issued by the Commission on the Rights and Autonomy of Persons with Disabilities between departmental centers for people with disabilities and social and medico-social establishments and services. The Commission recalls that exchanges with these organizations must comply with the provisions of Articles R. 1111-8-3 and R. 1111-8-4 of the CSP. Under these conditions, it questions the need to expressly target these organizations in the draft decree insofar as they already fall within the scope of these provisions of the CSP and these provisions are themselves covered by Article 1 -6° of the draft decree. With regard to the use of the NIR for the purposes of invoicing or financial coverage of expenses relating to telemedicine acts (draft article 1-11°), the draft decree aims , as data controllers authorized to use, the NIR: professionals, institutions, structures

or establishments and their groups which provide social security insured persons or their beneficiaries with acts or services fully or partially covered by health insurance, including public accountants attached to these establishments and the professionals referred to in article R. 6316-1 of the CSP (health professionals, including medical professionals). The Commission notes that, in addition to these data controllers, other players involved in the deployment of the telemedicine system need to process the NIR for invoicing or financial support purposes and do not seem to be targeted in the draft decree. This is particularly the case with suppliers of technical solutions, who, in the context of telemedicine experiments for the improvement of health pathways (ETAPES program), distribute the technical solution allowing the patient to be medically monitored remotely and collect the NIR at for billing purposes to health insurance. Under these conditions, the Commission observes that technical solution providers should be added to the categories of data controller referred to in Article 1-10° of the draft decree. As regards the use of the NIR for the purposes implementation of organized cancer screening programs by contracted structures in charge of managing cancer screening, reading centers associated with screening programs, health insurance bodies, specialist doctors who have carried out additional examinations (draft article 1-12°), the Commission observes that the use of the NIR is already covered, as indicated previously, either by the provisions of article 1-6° of the draft decree or by those of the article 1-10°, with the exception of treatments of populations eligible for screening sent for the purpose of invitation by the health insurance funds to the management structures under agreement. Under these conditions, the Commission suggests mentioning, in the draft decree, only the sole exception of treatments transmitted by the health insurance funds and set up for the purpose of inviting the target populations. use of the NIR for the purposes of identifying professionals working in the health system by the public interest group responsible for the development of shared health information systems (ASIP) (draft article 1-13), the Commission recalls that was authorized, by the decree of February 6, 2009 amended by the decree of April 18, 2017, the creation by the Ministry of Social Affairs and Health of a processing of personal data called the Shared Directory of Professionals intervening in the health system (RPPS), the implementation of which has been entrusted to ASIP. It observes that, pursuant to the provisions of Article 3 of the aforementioned decree, ASIP is authorized for the purpose of collecting and recording in the RPPS the identity traits of the healthcare professional (surname, of use, first names, etc.) to consult the national directory for the identification of natural persons (RNIPP). Insofar as the mere consultation of this directory is sufficient to enable ASIP to carry out its missions, the Commission asks that, in the draft decree, only the consultation by ASIP of the RNIPP for the purposes of make RPPS data more reliable. With regard to the use

of the NIR for pharmacy management purposes by pharmacists, for the performance of statistical sales analyzes (draft article 1 - 19°), in the absence sufficient information enabling it to assess to what extent the collection of the NIR would be relevant, the Commission requests the abolition of the collection of the NIR by pharmacists for this purpose. It expresses the same reservation with regard to the use of the NIR by health professionals for the management of suppliers, the traceability of products and stakeholders and the management of prospects (draft article 1-20°). On the categories of data controllers and the purposes of processing relating to the NIR in the field of human resources Article 1-24° of the draft decree provides for the processing of the NIR for the administrative, financial and operational management of the human resources of administration. It therefore considers it necessary to specify the scope of the processing covered by this paragraph and recalls, in particular, that the use of the NIR should be limited to exchanges with social security bodies. If it does indeed appear legitimate to use the NIR in payroll operations and for social declarations, this number cannot become a unique registration number to identify employees in all the human resources management files of a company or an administration. In this respect, the Commission emphasizes that this provision must neither have the purpose nor the effect of extending the processing of the NIR to all personnel management operations but must only cover operations for which its treatment is necessary. On this point, it recalls that certain previous decrees were intended to expressly limit the use of the NIR to specific operations relating to personnel management, such as payment of payroll. This restriction was, for example, imposed by Decree No. 2013-450 of May 31, 2013 authorizing automated processing of personal data called ReHuCIT-GP relating to the management of human resources of the Ministry of Equality of Territories and Housing and the Ministry of Ecology, Sustainable Development and Energy. To the clarifications that were requested, it was answered that this provision was necessary in the context of payroll management, particularly for the resynchronization of payroll files with the financial files of agents in the human resources information systems of the ministries. . However, the Commission observes that such use seems already covered by Article 1-23°. Under these conditions, it requests that the relationship between these provisions be clarified or, failing that, that this provision be withdrawn. Article 1-25° of the draft decree provides for the use of the NIR, by public employers, their mandated third parties as well as private employers, in the context of people's access to administrative restaurants. It follows from the clarifications provided that such use, presented as having a practical interest for all public and private employers, does not appear to be necessary or proportionate. The Commission therefore considers that there is no need to use the NIR for such a purpose and requests that the draft decree be amended accordingly. Article 1-26° of the draft decree allows the processing of NIR for the

piloting and management of social action concerning the central and decentralized services of the State administrations. The Commission notes that this concerns the extension, to all ministries, of the processing known as SAXO, which only the Ministry of National Education was authorized to implement by order of 26 September 2011. Beyond of the significant extension of the players authorized to process the NIR, the Commission notes that the decree of 26 September 2011 only allows the use of a truncated NIR that does not have the same characteristics as the NIR. It considers, in view of these elements, that Article 1-26° should be deleted. With regard to Article 1-31° of the draft decree, the Commission notes that it provides in particular that the General Directorate of Social Cohesion (DGCS) uses the NIR for the payment, control and management of employment assistance schemes. The Commission notes that the draft decree will be modified in order to remove the reference to the services of the DGCS insofar as only the Service and Payment Agency is responsible for the processing referred to and therefore justifies the need to process the NIR at these purposes. With regard to the declarations of employers for the purpose of supplying the personal training account (CPF) mentioned in Article 1-35° of the draft decree, the Commission wonders whether they are contained within the scope of article 1-23° relating to social declarations made by employers. In any event, it wonders about the absence of the professional prevention account (C2P) in the draft decree, particularly with regard to the other bodies involved. With regard to the draft article 1-39°, the Commission notes that it authorizes the processing of the NIR for the carrying out of studies and socio-professional surveys in the field of employment, by the administrations and services of the State. Although the Commission does not question the benefit of having the NIR for certain studies such as that on mortality by socio-professional category carried out by INSEE, it considers that the imprecise wording of this provision gives it too broad a scope. Furthermore, the Commission considers that the relationship between the purposes provided for in the draft articles 1-33° 1-39° of the draft decree should be clarified. On the categories of data controllers and the purposes of the processing relating to the NIR in the field of housing The draft article 1-81° resumes the purposes provided for by decree n ° 2017-917 of May 9, 2017 relating to applications for social rental housing and authorizing the processing of personal data called Single number, with certain additions, however. The Commission notes in this respect that if this article authorizes the agents of the persons and services listed in Article R. residence to process the NIR, it is however clearly specified in the decree of May 9, 2017, that these same agents are recipients of the data listed in the text with the exception of the registration number in the national directory of identification of natural persons s. Under these conditions, it has reservations about such an extension likely to affect a large number of people and considers that this provision cannot be

maintained in the draft decree. The Commission also notes that the aforementioned decree of 9 May 2017 expressly indicates that the non-nominative data are transmitted exclusively for purposes of statistical exploitation and studies to the persons and services whose missions and attributions justify it. Also, the Commission is wondering about the advisability of henceforth authorizing the agents of the persons and services listed in Article R. 441-2-6 of the Construction and Housing Code to carry out statistics based on nominative information and in particular the NIR. Under these conditions, the Commission calls for the draft decree to be amended so as to include the conditions laid down by the decree of 9 May 2017. On the categories of data controllers and the purposes of processing relating to the NIR in the financial field and tax Firstly, the Commission notes that, for the purpose of researching deceased holders of accounts or safes mentioned in draft article 1-50°, only the consultation of the data appearing in the RNIPP without any other use of the NIR is authorized by institutions in the banking and financial sector subject to the obligations relating to inactive accounts provided for in section 4 of chapter II of title I of book III of the monetary and financial code, or by the person authorized for this purpose who has signed a license use with the National Institute of Statistics and Economic Studies. It recalls that the NIR cannot under any circumstances be used to serve as a consultation key for the RNIPP and considers that the draft decree should therefore be specified in this sense. The Commission notes that, for the purpose of finding the beneficiaries of the contracts in escheat mentioned in draft article 1-51°, the draft decree extends the scope of contracts to bonds or capitalization contracts concerning deceased persons. In addition, the draft decree extends the list of organizations authorized to access RNIPP data for the exclusive purpose of researching beneficiaries of escheated contracts, to supplementary occupational pension organizations. Finally, it takes note of the possibility for insurance organizations to collect the NIR of insured persons, beneficiaries or members for the purpose of comparison with the file of deceased persons transmitted by INSEE to improve their operational management and make the fight against dormant contracts. These provisions do not call for any particular comments. With regard to draft Article 1-59°, the Commission takes note of the widening of the scope of organizations authorized to use the NIR in the context of the fight against fraud, on the one hand, to the Compulsory Damage Insurance Guarantee Fund (FGAO) and, on the other hand, to the Guarantee Fund for victims of acts of terrorism and other offenses (FGTI); this expansion does not call for any specific comments with regard to the clarifications provided relating to the desire to give these two entities the same prerogatives in terms of the fight against fraud as insurance organizations when they fulfill same nature. Furthermore, the Commission points out that the NIR can be collected and processed by insurance organizations in relation to healthcare professionals

(establishments and institutions) as part of their obligations relating to social declarations and for compensation accidents; it can also be processed for the management of annuities or for operating loss and loss of employment guarantees. Insurance organizations can process this number for their fraud prevention processing only in the cases referred to above. Draft article 1-59° should be clarified to limit the cases of collection and processing of the NIR to these activities alone.Secondly, the Commission notes that the draft article 1-44° provides for the use of the NIR in order to verify the reliability of the identification elements of the persons appearing in the processing of data relating to the base , the control and collection of all taxes, duties, levies and royalties or fines and for the exercise of the right of communication with the persons listed in article R. 81-A of the book of tax procedures. It notes that such use, which does not call for any particular observation with regard to the legal framework currently in force, will be subject to the collection of the NIR under the conditions strictly listed in Article R. 287-1-II of the book of tax procedures. Moreover, without calling into question the legitimacy of the processing of personal data which would have the purpose of combating fraud (draft article 1-57°), the Commission considers that the only reference to this notion within the present draft decree does not make it possible to explain the processing referred to. The Ministry having been questioned on this point, it takes note of the clarifications made according to which it is a question of combating social and tax fraud by allowing access to the common directory of social protection (RNCPS) provided for in Article L 114-12-1 of the social security code. In view of these details, the Commission requests that the draft decree be amended accordingly. On the other provisions of the draft decree The Commission recalls that Article 22 of the law of 6 January 1978 contains in particular provisions relating to exclusively for official statistical purposes and which are implemented by the official statistical service and do not include any of the data mentioned in I of Article 8 or in Article 9, which are therefore not intended to be included in the within this draft decree. It recalls in this respect that the aforementioned Article 22 in its wording prior to the amendments made by Law No. 2018-493 of June 20, 2018 on the protection of personal data already contained provisions aimed at lighten, under certain conditions, the formality regime applicable to certain processing operations relating to personal data, including the registration number of the persons in the national identification directory of natural persons or who require consultation of this directory. In particular, the Commission stresses that this simplification of formalities was subject to the NIR having previously been the subject of a cryptographic operation replacing it with a non-significant statistical code. In general, it recalls that the Commission has always favored the facilitation of research work, provided that appropriate safeguards are provided when the NIR is processed. As part of its opinion on the draft law for a Digital Republic of 19 January 2015, it thus recalled that any

relaxation of the prior formalities in force concerning the processing of the NIR for research purposes had to meet two imperative conditions, namely : be accompanied by strong guarantees ensuring the protection of the data of the persons concerned and appropriate to the processing in question ; not have the effect of undermining the restriction of the use of the NIR as an identifier for the medico-social sphere only. In the present case, it observes that the draft article 1-65° targets in particular the processing implemented by the official statistical service which has the purposes of official statistics, studies, research or evaluation, carried out in compliance with the law of June 7, 1951 referred to above and which are not the subject of a cryptographic operation replacing the NIR with a non-significant statistical code without it being possible to determine precisely the way in which this provision is articulated specific with that of Article 22 of the Law of 6 January 1978. In particular, the Commission notes that this provision can be read as allowing the use of the NIR in the absence of any cryptographic process for processing that would be carried out works for the purposes of public statistics by the official statistical service and which would be based, for example, on the collection of data mentioned in I of Article 8 or in Article 9 of this same law, while being exempt from the guarantee e relating to the implementation of a cryptographic process. In the event that such a reading is retained, it considers that maintaining the reference, in this paragraph 65°, to the processing implemented by the official statistical service for statistical purposes, should be re-examined to avoid any contradiction with the letter of Article 22 or, in any case, with the purpose of minimizing the data processed which underlies the requirement of recourse to a cryptographic process provided for by law for processing for exclusively statistical purposes. the amended law of 6 January 1978. The Commission also notes that draft article 1-76° provides in particular that the National Institute of Statistics may implement processing which relates to data including the NIR for the purposes of the population census. As a preliminary point, it underlines that from the beginning of the 1980s, the CNIL highlighted the singularity of the files implemented within the framework of the census population, emphasizing their general scope and the extensive information they make it possible to collect both on the dwellings concerned and on their occupants. The Commission notes that, pursuant to article 156 of law no. February 27, 2002 relating to local democracy, the general population census has three purposes, namely the counting of the population of France, the description of the demographic and social characteristics of the population as well as the counting and description of the characteristics of accommodations. It observes that the processing implemented for this purpose is based on the collection of data to illustrate the main characteristics of the individuals questioned (gender, age, activity, occupations, household characteristics, size and type of accommodation, means of transport, travel daily newspapers) in order

to adapt, where appropriate, the policies implemented at national and local level. In view of the purposes pursued by the processing implemented in order to carry out the census of the population, the Commission considers that the collection of the NIR for this purpose does not appear to be necessary or proportionate. In any event, it has reservations about the possibility of providing for such use of the NIR by regulatory means. Finally, for the sake of clarity, the Commission considers that TRACFIN should be expressly referred to in article 1-58° of the draft decree. President Marie-Laure DENIS