

Deliberation 2020-039 of April 2, 2020 National Commission for Computing and Liberties Nature of the deliberation: Opinion

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providing an opinion on a draft decree relating to the processing of requests for partial reimbursement of the contribution to the public electricity service (CSPE) for the years 2009 to 2015

(request for opinion no. 20002624)

The National Commission for Computing and Liberties, Seizure by the Minister for Ecological and Solidarity Transition of a request for an opinion concerning a draft decree relating to the processing of requests for partial reimbursement of the contribution to the public service of Electricity (CSPE) for the years 2009 to 2015; 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 to the free movement of such data, and repealing Directive 95/46/EC; Having regard to law n° 78-17 of January 6, 1978 as amended relating to data processing, files and freedoms, in particular its article 8.I 4° a); Having regard to law n° 2019-1147 of November 8, 2019 relating to energy and the climate, in particular its article 57; Having regard to ordinance n° 2020-161 of February 26, 2020 relating to the transactional settlement by the president from the Energy Regulation Commission for reimbursement of the a contribution to the public electricity service; Having regard to decree no. 2018-687 of August 1, 2018 taken for the application of law no. 78-17 of January 6, 1978 relating to data processing, files and freedoms , amended by Law No. 2018-493 of June 20, 2018 on the protection of personal data; On the proposal of Mr. Eric PERES, Commissioner, and after hearing the observations of Mrs. Nacima BELKACEM, Government Commissioner, Issues the following opinion: The Commission was asked for an opinion, on the basis of Article 8.I 4° a) of Law No. 78-17 of January 6, 1978 as amended (hereinafter the Data Protection Act), d a draft decree relating to the processing of requests for partial reimbursement of the contribution to the public electricity service (CSPE) for the years 2009 to 2015. Established by article 37 of law n ° 2003-8 of January 3 2003 relating to the gas and electricity markets and the public energy service, the CSPE was initially acqu itted by electricity consumers in proportion to their consumption. The compatibility of the CSPE with Directive 2003/96/EC on the taxation of electricity was the subject of a preliminary question from the Council of State and a judgment from the Court of Justice of the European Union (CJEU) dated July 25, 2018 (judgment C-103/17). The Council of State, following the judgment of the CJEU, confirmed in a decision of December 3, 2018 that the CSPE could be partially reimbursed in proportion of the part devoted to purposes other than its environmental purpose. The decision clarified that between January

1, 2009 and January 1, 2016, the date on which the CSPE was reformed, taxpayers could claim a partial refund of the CSPE.

In 2015, the Energy Regulatory Commission (CRE) has been designated by the Council of State as the competent authority to hear complaints relating to the CSPE. Faced with the influx of complaints and requests about the CSPE, the energy and climate law of 8 November 2019 entrusted CRE with the task of implementing an alternative method of settling administrative disputes. Article 57 of the law thus empowers the Government to legislate by ordinance to allow the CRE to resort to the transaction to put an end to the disputes related to the payment of the CSPE and to initiate the payment of the corresponding sums. This draft decree defines the conditions of admissibility of requests for partial reimbursement of CSPE, the procedures for filing reimbursement requests electronically, the procedures for calculating the amount of the transaction and the procedures for examining the transaction. This draft text calls for the following observations from the Commission. On the data collected and processed Article 1 of the draft decree establishes the list of documents to be transmitted by the applicant and conditioning the admissibility of its request for partial reimbursement of CSPE. The Commission notes that the draft decree does not specify the nature of the documents or proof of identity considered acceptable by the Ministry. In this respect, it takes note of the clarifications provided by the Ministry according to which these documents consist, on the one hand, for natural persons, of a copy of their identity document (CNI or passport) or a connection via France Connect and, on the other hand, for legal persons, of a copy of the mandates of the legal representatives and/or authorized persons authorizing the applicant to access the platform (hereinafter the CSPE portal) as well as their identity document. In addition, the ministry indicates that the electronic address of the applicants will be collected during enrollment on the CSPE portal for electronic notification. The Commission considers that these categories of data are adequate, relevant and limited to what is necessary with regard to the purposes for which they are processed, in accordance with the provisions of Article 5-1-c of the GDPR. On the information and rights of the persons concerned The draft decree does not mention the procedures for informing the persons concerned. The ministry indicates that information notices will be inserted in the general conditions of use (CGU) of the CSPE portal. The Commission recommends in this regard that, in addition to the T&Cs, the information notices and, in particular, the information relating to the retention periods of the data, be centralized within a space dedicated to the protection of personal data available on the CSPE portal so that the persons concerned can read it in an understandable and easily accessible form throughout the examination of their request. In addition, the Commission specifies that persons filing such a request by post must be provided with information adapted to this channel. some people. In this regard, user assistance integrated into the CSPE portal will allow

data subjects to exercise their rights directly with it. In addition, the services and payment agency (ASP) is responsible for responding, in the name and on behalf of CRE, to any request for the exercise of rights made by the persons concerned within the time limits provided for in article 12 of the GDPR. On the retention period of data The draft decree does not mention the retention period of the information processed in the context of reimbursement requests. The ministry indicates that throughout the duration of the reimbursement procedure (from the filing from the request to the issuance of the transaction proposal), all documents and data relating to the applicant will be kept by the ASP. In this respect, the retention period will correspond to that necessary for the purposes of litigation and will be defined shortly by the Ministry. is formulated), the data will be kept in an electronic archiving system with probative value for the time necessary for the purposes of litigation. This duration will be defined shortly by the Ministry and must be communicated to the persons concerned in accordance with Article 13 of the GDPR. In addition, for any file submitted on the CSPE portal, not validated and inactive for a period of six months, subject to confirmation by the ministry, the data will be deleted. Finally, an automatic purge mechanism to guarantee compliance with the storage is also provided for. With regard to these elements and subject to the details of the Ministry on the storage period for the purposes of litigation, the Commission considers that the data collected is kept for a period which does not exceed the period necessary given the purposes for which they are collected and processed, in accordance with Article 5-1-e of the GDPR. On security measures Article 2 of the draft decree indicates a general security objective taking into account the identification of parties, the integrity of documents and the security and confidentiality of exchanges. Article 32 of the GDPR requires the security of data throughout its life cycle, this article 2 could be modified in order to integrate the more general obligation concerning the security of data on the platform. The beginning of II of Article 2 should therefore state that the technical characteristics of this platform guarantee the security of the data, in particular [...]. The processing being a teleservice of an administrative authority within the meaning of Ordinance No. 2005-1516 of December 8, 2005, it must comply with the general safety reference system (RGS) provided for by decree no. 201112 of February 2, 2010 referred to above. The Commission points out that it is up to the data controller to formally certify its security through RGS certification and to publish the certificate on the teleservice site. In addition, the Commission points out that platforms, such as any website, must be subject to state-of-the-art measures in order to guarantee their security. As such, it insists on the need to put in place specific measures, such as those recommended by the National Agency for Information Systems Security (ANSSI) in the technical note recommendations for securing websites. exchanges with applicants, the Commission notes that CRE will only send

information by e-mail about the existence of a response that can be consulted on the CSPE portal. This solution makes it possible to notify the user of the progress of his file while guaranteeing, in particular, the confidentiality of the exchanges and the authenticity of the parties by security measures on the CSPE portal such as the implementation of the HTTPS protocol for the access to it and the choice of procedures for authenticating applicants. In addition, the Commission recalls that the same level of protection must be applied to paper-based processes as to digital processes. . It recalls the importance of choosing a solution that ensures a sufficient level of data security, particularly with regard to their confidentiality and integrity as well as the authenticity of the issuer. This implies, in particular, that the data be encrypted or pass through an encrypted tunnel, and that traceability of these exchanges be implemented. As the system provides for the possibility of extracting documents from the platform of the administrative courts, the Commission recalls that this must be carried out under conditions respecting the high level of security requirements based on these platforms. The CSPE portal may have to process documents used in identity fraud, in particular documents or proof of identity, the Commission recalls the importance of ensuring the confidentiality of these documents. adopting a recommendation relating to passwords, to which the data controller may usefully refer. Subject to the preceding observations, the security measures described by the e data controller seem to comply with the security requirement provided for in Articles 5-1-f and 32 of the GDPR. (AIPD) and its security measures with regard to the regular reassessment of risks. President Marie-Laure DENIS