

Deliberation 2021-008 of January 14, 2021 Commission Nationale de l'Informatique et des Libertés Nature of the deliberation: Opinion Legal status: In force Date of publication on Légifrance: Thursday April 15, 2021 NOR: CNIX2104167X Deliberation n° 2021-008 of January 14, 2021 providing an opinion on a draft decree amending decree no. 2018-343 of 9 May 2018 creating the automated processing of personal data allowing the management of the single electoral register taken pursuant to the provisions of I of article 2 and article 7 of the law n° 2016-1048 of August 1, 2016 renewing the procedures for registration on the electoral lists (request for opinion n° 2219367) The National Commission for Computing and Liberties, Seizure by the National Institute of Statistics and Economic Studies (INSEE) of a request for an opinion concerning a draft decree amending decree no. 2018-343 of May 9, 2018 establishing the automated processing of personal data allowing the management of the single electoral register taken pursuant to the provisions of I of Article 2 and Article 7 of Law No. 2016-1048 of 1 August 2016 renovating the procedures for registration on the electoral rolls 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 April 27, 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data; Having regard to Organic Law No. 2016-1046 of August 1, 2016 renovating the procedures for registration on the electoral lists of nationals of a Member State of the European Union other than France for municipal elections; Having regard to Organic Law No. 2016-1047 of August 1, 2016 renovating the procedures for registration on the electoral lists of French people established outside France; Considering the electoral code, in particular its articles L. 11, L. 16, L. 38 and L. 72; Considering the law n° 78-17 of January 6, 1978 modified relating to data processing, files and freedoms; Having regard to law n° 2016-1048 of August 1, 2016 renovating the procedures for registration on the electoral lists, in particular its articles 2 and 7; Having regard to Law No. 2019-1461 of December 27, 2019 relating to involvement in local life and proximity to public action, in particular its article 112; Considering the decree n° 82-103 of January 22, 1982 modified relating to the national directory of identification of the natural persons;

Having regard to decree n° 2018-343 of 9 May 2018 establishing the automated processing of personal data allowing the management of the single electoral register taken pursuant to the provisions of I of article 2 and article 7 of the law no. 2016-1048 of August 1, 2016 renovating the procedures for registration on the electoral lists;

Having regard to decree n° 2019-536 of May 29, 2019 as amended, taken for the application of law n° 78-17 of January 6, 1978 relating to data processing, files and freedoms;

Having regard to deliberation no. 2017-012 of January 19, 2017 adopting a recommendation relating to passwords;

After having heard Mrs. Sophie LAMBREMON, commissioner in her report, and Mr. Benjamin TOUZANNE, government commissioner, in her observations, Issues the following opinion: The draft decree, submitted for opinion to the Commission, is intended to modify the decree n° 2018-343 of May 9, 2018 which created the processing allowing the management of the single electoral register (REU). Pursuant to Article L. 16 of the Electoral Code, the conditions for implementing the processing must be defined by a Conseil d'Etat decree, taken after a reasoned and published opinion from the Commission. The draft decree aims to take into account the changes introduced by the aforementioned law of 27 December 2019 with regard to powers of attorney, to integrate new uses of the REU into the general framework of the management of electoral processes (access to the REU for agents of the Ministry of the Interior in charge of elections) and to use the REU to check the legitimacy of support for a European citizens' initiative. resulting from Law No. 2016-1048 and two organic laws adopted on August 1, 2016. The purpose of this reform was to allow the management of the REU by centralizing all the information necessary for the maintenance and updating of the electoral rolls. Indeed, the REU management system now makes it possible to record applications for registration processed by municipalities and consulates, whether this application was made at a counter or submitted online via the teleservice offered on the service-public.fr site, and then carries out automatic checks to ensure that the elector whose registration is requested is neither dead nor incapacitated. These verifications are carried out in particular by comparing the data communicated in the context of the application for registration with those available to INSEE pursuant to Article 5 of the decree of 22 January 1982 referred to above relating to the national directory for the identification of natural persons (RNIPP). The system also makes it possible to carry out automatic registrations, for persons reaching the age of 18 and those acquiring French nationality, on the basis of information transmitted to INSEE by the national service directorate of the Ministry of defence, by the Ministry of Justice and by the Ministry of the Interior. In addition, the system integrates the information transmitted by the other Member States of the European Union (EU), before each European election, concerning

voters of French nationality registered for this election on their national lists, in order in particular to avoid the possibility double voting. Finally, the implementation of the REU facilitates the verifications to be carried out by the control commission provided for in article L. 19 of the electoral code, resulting from law n ° 2016-1048, and allows the implementation of a teleservice offering voters the possibility of accessing recorded data and information concerning them. the processing of personal data making it possible to manage the REU and having as its purpose the establishment, control and management of electoral lists, under the conditions provided for by the provisions of Chapter II of Title I of Book I of the Electoral Code. Commission also recalls that it must be kept informed, under the conditions provided for in Article 33-II of the law of 6 January 1978 as amended, of any substantial modification affecting the characteristics of the processing.

Mainly, the Commission considers that the draft decree calls for comments on the following points:- with regard to the part of the REU processing which falls solely under Title I of the amended law of 6 January 1978, since it relates to activities which do not fall within the scope of EU law, the Commission considers that the legal regime should be aligned with that of the GDPR insofar as the Title I regime is less protective;

- with regard to the aims pursued, the Commission considers that the draft decree should be supplemented in order to explain what the terms of implementation of the methods of democratic expression used cover, in particular if new uses of the REU are envisaged ;

- the Commission considers that the retention period for traces should be six months, not three, and that a proactive mechanism for the automatic control of traces should be put in place. On the applicable legal regime Article 1 of the draft decree specifies that the purposes of the processing are the establishment, control and management of lists of persons for the implementation of democratic expression processes, in particular the establishment, control and management of electoral lists under the conditions provided for by the provisions of Chapter II of Title I of Book I of the Electoral Code. The Commission observes that REU processing relates in part to activities which do not fall within the scope of EU law and for which the GDPR is not applicable, in accordance with its article 2-2.a). It thus considers that REU processing falls under the GDPR for activities falling within the scope of EU law (for example, European elections), and under Title I of the law of 6 January 1978 as amended for activities falling outside the scope of EU law (for example, the organization and holding of elections or consultations under national sovereignty: presidential, legislative, senatorial, referendums). where the legal regime for processing under title I of the law of 6 January 1978 as amended is less protective than that of the GDPR, in particular

because of the absence of rights for the persons concerned, it considers that the draft decree should align the legal regime of this processing on that of the GDPR. The Commission notes that following the exchanges that took place in the context of this referral, the processing as a whole will be placed under the GDPR regime. On the purposes of the processing With regard to the purposes of the processing, the Commission observes that changes of the decree are considered on this point. INSEE specifies that the proposed new wording aims to use the REU in the context of other processing operations which still take place “for the implementation of democratic expression processes”. The Commission takes note of what is to take into account the modernization of electoral proxies (control of the ceiling of proxies, dematerialization of their establishment) or to allow the collection and control of support within the framework of the referendum of shared initiative as well as in that of an initiative European citizen. Without calling into question the legitimacy of the justifications provided by the Ministry and taking into account the above details, the Commission considers that the wording envisaged, which is particularly broad, does not allow a precise understanding of the terms of work of the processes of democratic expression. It considers in particular that, if new uses of the REU are envisaged, this should be expressly indicated in the draft decree. Subject to the foregoing, the Commission considers that the intended purposes are determined, explicit and legitimate in accordance with Article 4-2° of the amended law of January 6, 1978. On the retention period of traces The Commission takes note of the implementation of application and technical logging, the retention period of which is three months. The Commission recalls that the processing of these data has, in principle, the sole purpose of detecting and preventing illegitimate operations on the main data of the processing, that for this purpose, their retention period must be six months and that the implementation of the proactive mechanism for automatic control of traces, necessary for this purpose, greatly contributes to the detection of abnormal behavior by the automatic generation of alerts. It notes that such a retention period for traces will be included in the action plan for the impact analysis relating to data protection (DPIA). The other conditions for implementing the planned processing call for the following observations: On the data collected Article 1 of the draft decree amends Article 2 of the decree which lists the categories of data collected in order, in particular, to add data relating to powers of attorney. In the first place, the Commission notes that the changes envisaged will not allow the collection of sensitive data within the meaning of I of Article 6 of the law of 6 January 1978 as amended. , the REU will not be able to allow the recording of the reasons for the conviction or the loss of nationality. Indeed, only the nature of the incapacity will be recorded (loss of civic rights following a criminal conviction or loss of nationality) and its period of application, without indicating the content of the court decision. Commission observes that the

draft decree amends the aforementioned Decree No. 2018-343 in order to add data relating to powers of attorney. It notes that this amendment aims to draw the consequences of the changes introduced by Law No 2019-1461 of 27 December 2019 referred to above. Thirdly, the Commission observes that the REU management system provides a set of functions on the basis of dematerialized and automated exchanges between INSEE, responsible for this management system, municipalities and other administrations. Exchanges are also possible with the administrations of other EU Member States. On the one hand, the Commission notes that exchanges between the REU information system managed by INSEE and the various players in the system may take place, in particular by file exchanges. It acknowledges that the administrations holding information implying electoral incapacity, deregistration or automatic registration as defined by law (Ministry of Justice, Ministry of the Interior, Ministry of Defence), will provide INSEE this information via files in XML format. Without calling into question the legitimacy of these connections, the Commission points out that the processing concerned, including in particular the criminal record, will have to be modified, if necessary, in order to expressly provide for this connection. On the other hand, it notes that, for the application of Article 12 of Regulation (EU) 2019/788 of the European Parliament and of the Council of 17 April 2019 on the European citizens' initiative, the draft decree amends Article 7 of Decree No ° 2018-343 in order to provide that: - the Ministry of the Interior sends INSEE a sample of the declarations of support signed by French nationals in order to verify their registration in the REU. This list includes the following information: full first names, family names, date of birth; - within one month, INSEE sends the Ministry of the Interior the number of supporters actually registered in the REU. The data and information contained in the list transmitted by the Ministry of the Interior are destroyed no later than one month later. In view of these details, these modifications appear to the Commission to be justified. on the part of the Commission. On the retention periods for data As a preliminary point, the Commission recalls that, given the extent of the processing, it had deemed it necessary that the retention periods defined by the draft decree be strictly limited to the durations justified by the purposes of the processing. In this respect, it notes that INSEE specifies that the data relating to a voter registered on an electoral list are kept as long as their situation has not changed. The Commission further notes that if the voter changes commune and registers in this new commune, only the latter situation is retained. The Commission also notes that the draft decree amends Article 3 of Decree No. 2018-343 mentioned above in order to indicate that the data relating to the powers of attorney mentioned in 6° of article 2 are kept until December 31 of the year following the end of validity of the power of attorney, which does not call for observation on its part. On accessors and recipients The draft decree amends Article 4 of the

aforementioned Decree No. 2018-343 in order in particular:- to provide that persons who already have access to data relating to powers of attorney, in order to take into account the changes made by the aforementioned law no. 2019-1461;

- to add the officials in charge of the elections of the Ministry of the Interior individually designated and authorized by the Secretary General, for the purpose of consulting the electoral lists to the list of users accessing the processing. The Commission notes that it is expected that the agents in charge of the elections of the Ministry of the Interior will not however have access to the data provided for in e of 3° (e-mail address, telephone number) and in 4° (data prior to processing) of Article 2 of Decree No. 2018-343 as amended. Under these conditions, the planned amendments appear to the Commission to be justified.

On the rights of the persons concerned

Firstly, with regard to the right to information of the persons concerned, the Commission notes that general information will be provided by the publication of regulatory texts (including the decree, the subject of this consultation) and the information available on the sites of INSEE and the Ministry of Interior La Réunion. The Commission notes that it is not intended that INSEE inform the voter of his support in the REU under a civil status different from that which he would have indicated in his application for registration. The return to the voter concerning the result of his application for registration with the REU falls within the competence of the municipalities.

Secondly, the draft amending decree provides that, in accordance with the provisions of Articles 49 and 50 of the law of January 6, 1978 amended, the rights of access and rectification for the data mentioned in article 2 are exercised with INSEE, or with the Institute of Statistics of French Polynesia for the electoral lists of the French Polynesia and with the senior administrator of the Wallis and Futuna Islands for the electoral lists of the Wallis and Futuna Islands, which does not call for observation. The rights of erasure, limitation, portability and opposition provided for respectively by articles 51, 53, 55 and 56 of the amended law of 6 January 1978 do not apply to this processing, which does not call for comment.

On security measures

Firstly, the Commission notes that exchanges between the REU information system managed by INSEE and the various actors of the system can be done according to three possibilities:- file exchanges: this possibility is used by the administrations providing information on the electoral situation (justice, defense, interior) and by the Legislative and Administrative Information Department (DILA) in charge of the online registration request teleservice;

- an API (application programming interface) allowing third-party software to communicate with the SI-REU;
- a web portal dedicated to municipalities, in particular those which do not have municipal management software (Elire portal made available and managed by INSEE). through encrypted channels, all on the interdepartmental network of the State (RIE).

The Commission notes that access to the portal and the API is secured by the SSL protocol, subject to the general security reference (RGS) and that INSEE authorizes TLS connections using versions 1.1 to 1.2. The Commission recommends, on this point, to use, as far as possible, the most up-to-date version of TLS and notes that will be included in the AIPD's action plan. Secondly, the Commission observes that access, for internal users at INSEE, is carried out by means of a single authentication, called SSO, and that the passwords used must be composed of twelve characters of three types out of four (upper case es, lower case letters, numbers and special characters) with a validity of 90 days. The Commission recommends, in order to comply with the criteria defined in its aforementioned deliberation No. would not be applied, the passwords are made up of four types of characters (upper case, lower case, numbers and special characters). identifier and password pair and that the latter must be composed of eight characters of three types out of four. The Commission recommends, once again in order to comply with its aforementioned deliberation no. additional measures, such as a temporary blocking or an account lockout after a defined number of failed attempts, a captcha, etc. It acknowledges that the recommendations made relating to the structuring of passwords will be included in the AIPD's action plan. The Commission notes that external access through third-party software using the API requires, in addition to the user authenticates using its identifier and password pair, that the application is approved by the use of an application code, making it possible to ensure that the latter is authorized to connect through the aforementioned API. The President,

M. L. Denis