

Deliberation 2019-131 of November 7, 2019 National Commission for Computing and Liberties Nature of the deliberation:

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November 7, 2019 providing an opinion on a draft decree relating to the procedure for communicating connection data to the agents mentioned in article

L. 450-1 of the Commercial Code (request for opinion no. 19018629)

The National Commission for Computing and Liberties, Seizure by the Minister for the Economy and Finance of a request for an opinion concerning a draft decree relating to the procedure for communicating connection data to the agents mentioned in Article L. 450-1 of the Commercial Code; 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 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; Having regard to Directive 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 the competent authorities for the purposes of prevention and detection of criminal offenses, investigations and prosecution 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 the Commercial Code, in particular its Article L. 450- 3-3; Having regard to the postal and electronic communications code, in particular its articles

L. 34-1 and R. 10-13; Considering the modified law n° 78-17 of January 6, 1978 relating to data processing, files and freedoms, in particular its article 8-1-4°-a); Having regard to Law No. 2004-525 of June 21, 2004 amended for confidence in the digital economy; Having regard to Law No. 2019-486 of May 22, 2019 relating to the growth and transformation of companies; Having regard to Decree No. 2011 -219 of February 25, 2011 relating to the storage and communication of data allowing the identification of any person who has contributed to the creation of content posted online; application of law n° 78-17 of January 6, 1978 relating to data processing, files and freedoms, in particular its article 9; On the proposal of Mr. François PELLEGRINI, commissioner, and after having heard the observations of Mrs. Nacima BELKACEM, Government Commissioner, Issues the following opinion: 1. Article L. 450-3-3 of the Commercial Code provides that agents of the investigation services of the Competition Authority (AdIC) and officials authorized by the Minister for the Economy to carry out investigations may, for the purposes of research and observation of anti-competitive practices, access connection data stored

and processed by telecommunications operators, under the conditions and limits provided for in Article L. 34-1 of the Post and Communications Code and by the service providers mentioned in 1 and 2 of I of Article 6 of Law No. 2004-575 of June 21, 2004 on confidence in the digital economy, namely Internet access providers and hosts . A magistrate from the Council of State or the Court of Cassation exercising the functions of controller of connection data requests is responsible for authorizing in advance access requests from the general rapporteur of the AdIC or the administrative authority in charge of competition and consumption.² The purpose of the draft decree urgently referred to the Commission is to specify, on the one hand, the elements that must appear in the request for authorization sent to the connection data request controller and, on the other hand, the procedure for destroying the data thus collected.³ The Commission recalls that the conditions of access to connection data must fall within the framework, on the one hand, of the decision of 8 April 2014 of the Court of Justice of the European Union (CJEU) and, on the other hand, of the decision n° 2015-715 DC of August 5, 2015 of the Constitutional Council which recalled the need to match such access by the agents of the AdIC with guarantees specific to ensuring a balanced reconciliation between, on the one hand on the one hand, the right to respect for private life and, on the other hand, the prevention of breaches of public order and the search for perpetrators .⁴ Insofar as the data held by the operators which may be requested are increasingly numerous and accessible to an increasingly large number of organisations, upon judicial or administrative requisitions or in execution of a right of communication, and for very different purposes, the Commission intends to pay particular attention to the conditions under which certain authorities may have access to connection data held by the telecommunications operators, Internet service providers and hosting providers mentioned above.⁵ . Consequently, without prejudging the compatibility of the system with the conventional framework, the Commission considers that most of the safeguards in terms of the protection of personal data being set by the legislator, the draft decree does not call for any particular observation. on his part.⁶ However, it recalls that the data processed as part of a request for communication of connection data must be strictly limited to the persons directly or indirectly designated in the authorization request and necessary for the purposes of the investigation carried out.⁷ In any case, the Commission considers that, depending on their characteristics, it will have to be contacted for an opinion on the processing of personal data that would be implemented from the data transmitted in accordance with Article L. 450 -3-3 of the commercial code. In particular, it recalls that if this processing is likely to create a high risk for the rights and freedoms of natural persons, an analysis relating to the protection of personal data (DPIA) must be carried out before its implementation. For the President, The Deputy Vice-PresidentS. LAMBREMON