

Deliberation DR-2021-030 of March 18, 2021 Commission Nationale de l'Informatique et des Libertés Nature of the deliberation:

Opinion Legal status: In force Date of publication on Légifrance: Friday March 25, 2022 Deliberation n° 2021-030 of March 18, 2021 providing an opinion on a draft decree on statutory provisions relating to the territorial public service with a view to limiting the registration of a candidate for a competition allowing access to a job of the same grade organized simultaneously by several management centers (request for opinion no. 21002697)

The National Commission for Computing and Liberties, Request by the Minister for Territorial Cohesion and Relations with Local Authorities of a request for an opinion on a draft decree laying down statutory provisions relating to the territorial public service with a view to to limit the registration of a candidate for a competition allowing access to a job of the same grade organized simultaneously by several management centers; Having regard to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 relating to 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 (General Data Protection Regulation or GDPR); Having regard to the law No. 78-17 of January 6, 1978 as amended relating to data processing, files and freedoms; Having regard to Law No. 84-53 of January 26, 1984 laying down statutory provisions relating to the territorial public service, in particular t its article 36; Having regard to decree no. 2013-593 of July 5, 2013 relating to the general conditions of recruitment and advancement in grade and laying down various statutory provisions applicable to civil servants in the local public service, in particular articles 5 and following; On the proposal of Mr. Alexandre LINDEN, commissioner, and after having heard the observations of Mr. Benjamin TOUZANNE, government commissioner, Issues the following opinion: The National Commission for Computing and Freedoms (hereinafter the "Commission ") was seized by the Minister for Territorial Cohesion and Relations with Local Authorities, on the basis of Article 8-1-4°-a) of Law No. 78-17 of January 6, 1978 as amended , a request for an opinion on a draft decree laying down statutory provisions relating to the territorial public service with a view to limiting the registration of a candidate for a competition allowing access to a job at the same grade organized simultaneously by several their management centres. Article 36 of Law No. 84-53 of January 26, 1984 on statutory provisions relating to the territorial public service provides that when several management centers organize a competition allowing access to employment for a same grade whose tests take place simultaneously, the candidates cannot appear on several lists of those admitted to participate, the methods of application of this article being referred to a decree. This is the purpose of the draft decree submitted to the opinion of the Commission which provides for the creation and operating procedures of a single national

application called "Concours-Territorial" and a database called "Concours-FPT", intended to limit multiple registrations for competitions organized simultaneously by several management centers. On the operation of the system The system, managed and implemented by the computer public interest grouping of the management centers, comprises two phases. The first corresponds to the collection of data from candidates via the "Concours-Territorial" site and the second corresponds to the processing of this data within the "Concours-FPT" database. Asked about the methods of collection data, the ministry indicated that it could be through two distinct channels: the candidate for a competition fills in his information himself when creating a user account on the "Concours-Territorial" site; when the candidate for a competition registers in writing, the data is entered in the "Concours-FPT" database by the management center organizing the competition no later than eight days after the closing date for registrations. In this respect, the Commission invites the Ministry to specify that the "Concours-territorial.fr" site constitutes an entry point for dematerialized registrations for competitions and that candidates have the possibility of creating an account there user. The Commission takes note that the processing implemented is intended to identify candidates registered for several competitions allowing access to the same grade of one of the employment frameworks of the territorial public service, organized simultaneously by several management centers. Thus, when the "Concours-FPT" database identifies a candidate already registered for another competition for access to the same grade of one of the employment executives of the territorial public service and whose tests take place simultaneously, the previous registration is automatically deleted. The candidate and the management center concerned then receive notification of the deletion of previous registrations in favor of the last registration, which is the only one taken into account in the database. of data. On the data processed Article 2 of the draft decree lists the data collected and processed by the IT public interest grouping of management centers in the s the "Concours -FPT" database. This list essentially contains data relating to the candidate's identity and administrative data which do not call for any particular observations on the part of the Commission. The Commission notes however that, although it is not intended to include the "Concours-FPT" database, the "Concours Territorial" website provides for the collection of the candidate's e-mail address when creating a user account. The Commission therefore invites the Ministry to specify in Article 2 of the draft decree that the candidate's electronic address is collected by the "Concours Territorial" site. On the information of the persons concerned When questioned on this point, the Ministry specified that the mentions relating to the information of the candidates will be indicated on the page of creation of the user accounts as well as on the page relating to the protection of personal data, accessible by a link systematically present on all the pages of the site. The Commission recalls that the

information of the persons concerned must be carried out at the time of the collection of the data by the data controller according to the procedures defined in Article 12 of the GDPR, and must include all the information provided for in Article 13 of this text. It therefore invites the Ministry to ensure that this information is provided regardless of the channel used by candidates to register for competitions. In this respect, if the Commission shares the position of the G29 (which has become the European Committee for data) presented in the guidelines on transparency within the meaning of the GDPR, adopted in their revised version on April 11, 2018, which recognizes, in a digital universe, the possibility of informing across several levels, it recalls that certain elements (such as the identity of the data controller, the purposes of the processing and the procedures for exercising the rights of individuals) must immediately be brought to the attention of the persons concerned. An information notice containing these essential elements must therefore be brought directly to the attention of the candidates when they register. On the exercise of the rights of the persons concerned Article 6 of the draft decree provides that the candidates concerned have a right access, rectification and erasure of their personal data. With regard to the right to erasure, article 6 of the draft decree specifies that "candidates may request that their personal data be erased when their processing is unlawful". In this respect, the Commission recalls that if Article 17 of the GDPR specifies that data subjects have the right to obtain from the data controller the erasure of their data when they have been the subject of unlawful processing, the persons concerned may also request it in other circumstances and in particular "when the data are no longer necessary in relation to the purposes for which they were collected or otherwise processed" and "when the personal data must be erased to comply with a legal obligation which is provided for by Union law or by the law of the Member State to which the controller is subject". The Commission notes that the Ministry undertakes to modify the draft decree accordingly. In addition, the Commission recalls that the information notices must specify the procedures for exercising these rights provided for in Articles 15 to 18 of the GDPR and indicate with whom they may be exercised. application of article 23 of the GDPR, more particularly in a budgetary interest. On the recipients Article 4 of the draft decree provides that only persons individually designated by the IT public interest grouping of the management centers will have access, rightly of their attributions and within the limits of the need to know, to the personal data recorded in the "Concours – FPT" database. Questioned on this point, the ministry specified that only the competition managers of the organizing centers responsible for verifying the eligibility of candidates to compete will have access to this data. The Commission considers that these details could usefully be included in the draft decree. The Commission considers that these recipients have a legitimate interest in knowing this data. On the performance of an impact

analysis Insofar as the processing carried out is carried out on a large scale and is likely to lead to automatic decision-making having the effect of canceling the registration of a candidate for a civil service competition, the Commission points out that an impact analysis will have to be carried out implemented. This must be communicated to the Commission pursuant to Article 36 of the GDPR, in the event that a high residual risk for people is identified at the end of the impact analysis. President Marie-Laure DENIS