Deliberation 2018-349 of November 15, 2018 National Commission for Computing and Liberties Nature of the deliberation: OpinionLegal status: In force Date of publication on Légifrance: Thursday January 03, 2019Deliberation n° 2018-349 of November 15, 2018 providing an opinion on a draft ordinance taken pursuant to 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, to files and freedoms and various provisions concerning the protection of personal data (request no. AV 18022142) The National Commission for Information Technology and Freedoms, Seized by the Keeper of the Seals, Minister of Justice, of a request opinion on a draft ordinance issued on the basis of Article 32 of Law No. 2018-493 of June 20, 2018 on the protection of personal data and amending Law No. 78-17 of June 6 January 1978 relating to data processing, files and freedoms and various provisions concerning the protection of personal data; Having regard to Convention No. 108 of the Council of Europe for the protection of individuals with regard to automatic processing of personal data of a personal nature; Having regard to Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector; 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, and repealing Directive 95/46/EC; Having regard to Directive (EU) 2016/680 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 by the competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offenses or the execution of criminal penalties, and on the free movement of such data, and repealing Framework Decision 2008/977/JHA of the Council; Having regard to Law No. 78-17 of January 6, 1978 as amended relating to data processing, files and freedoms; Having regard to Law No. 2018-493 of June 20, 2018 relating to the protection of personal data and amending of law n° 78-17 of January 6, 1978 relating to data processing, files and freedoms and various provisions concerning the protection of personal data, in particular its article 32; Having regard to decree n° 2005-1309 of 20 October 2005 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 n ° 2017-299 of November 30, 2017 providing an opinion on a draft law adapting to European Union law law n° 78-17 of January 1978; After having heard Mrs Isabelle FALQUE-PIERROTIN, Commissioner, in her report, and Mrs Nacima BELKACEM, Government Commissioner, in her observations, Issues the following opinion: The Commission was asked for an opinion, on October 31, 2018, d a draft ordinance taken on the basis of the authorization

provided for in 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 6 January 1978 relating to data processing, files and freedoms and various provisions concerning the protection of personal data. The purpose of this draft ordinance is to complete, at the legislative level, the bringing into conformity of national law with the aforementioned Regulation (EU) 2016/679 (hereinafter the Regulation) and the aforementioned Directive (EU) 2016/680 (hereinafter the Directive). The adaptation of French law to the new European framework was mainly achieved through the adoption of the aforementioned law of June 20, 2018, on which the Commission ruled in its opinion dated November 30, 2017, which substantially amended the law of January 6, 1978 and in particular made use of some of the leeway given to Member States by the Regulation. related texts and related to the protection of personal data, without calling into question the choices made by the legislator in June 2018. More specifically, article 32 of the law of June 20, 2018 sets three categories of objectives for this ordinance, namely: make the formal corrections and adaptations necessary for simplification and consistency as well as the simplicity of the implementation of the provisions adapting national law to law. it of the Union; align with these changes all the legislation applicable to the protection of personal data; and adapt, extend or make applicable to overseas countries and territories the new provisions of the Data Protection Act. General observationsAs a preliminary point, the Commission considers that, taken as a whole, the draft ordinance fulfills the objectives assigned to it by the law of June 20, 2018, subject to the observations made in this opinion.In particular, this project will allow the application of uniform rules on the metropolitan territory and in all the overseas communities in terms of the protection of personal data. It also provides for numerous amendments to provisions outside the law of January 6, 1978, which appear likely to improve the overall structure of the applicable data protection legislation. the law of January 6, 1978 tends to substantially improve the clarity of the different applicable regimes depending on the nature of the processing concerned: provisions common to all processing (title I), requirements specific to the scope of the Regulation (title II) and to that of the Directive (Title V), rules specific to the scope of Directive 2002/58/EC of 12 July 2002 referred to above (Title III) and rules relating to processing not falling within the scope of Union law (Title IV relating to the data of deceased persons and Title VI relating to processing involving State security and defence). In addition, the draft ordinance makes the appropriate choice not to duplicate the provisions of the Regulation, which are directly applicable, while including as necessary references to the relevant articles of the Regulation. This improvement in the readability of the law Computing and Liberties and, more generally, the new state of the law resulting from the entry into force of the new European texts constitutes a major step forward. The Commission

nevertheless draws the Government's attention to the imperative need, in several respects, to this approach, with regard to a text relating to the protection of the fundamental rights of citizens and imposing obligations on very diverse operators, and in particular on small and medium-sized enterprises or public bodies of modest size. Title I devoted to common provisions should be supplemented to bring together other cross-cutting rules of particular importance, without prejudice to exceptions or modulations of these rules to be included in the specific provisions of Titles II to VI of the amended law. This is the case, in particular, with the principle of prohibiting fully automated decisions, the common base of the offense data regime, as provided for in the draft ordinance concerning sensitive data, or even the security obligation imposed on any data controller. Similarly, this law should enable data subjects and bodies involved in the implementation of data processing to know all the powers of the Commission, which are not limited to what is provided for in its draft Article 8. It considers that such additions or clarifications, in accordance with the general approach adopted by the draft, are necessary in order to give full meaning to the principle of enhanced accountability of the actors, which constitutes one of the main contributions of the Regulation. within the new title II of the law of January 6, 1978, relating to the processing operations falling within the scope of the Regulation, the process of referring to the provisions of the Regulation must imperatively be continued concerning certain essential provisions of the latter, in order to make it possible to have, even by reference, of an exhaustive and complete view of the applicable legal framework. In this respect, if the rights of individuals are all mentioned in the law in its draft wording, the Commission considers it necessary that certain essential obligations of operators, in particular the appointment of a data protection officer, the specific obligations in terms of processing security, data protection from the design stage and by default, or compliance with the rules on data transfers to third countries, are also mentioned in the provisions of the Data Protection Act. Finally, more specifically, the Commission points out that certain provisions of great importance are, from a formal point of view, very difficult to read, because of the practice of referring, sometimes in sequence, to provisions themselves referring same to other provisions, for some external to the law of January 6, 1978 (for example, the drafts of article 65 relating to the system specific to health data and article 93 concerning processing for archival purposes in the public interest), or different levels of exceptions that are excessively embedded in each other (such as the draft article 30 of the law, relating to the framework for the registration number of persons in the national directory of identification of natural persons, known as NIR). Finally, the Commission wonders about the good legibility of the articulation between the provisions relating to the territorial scope of the law of January 6, 1978, appearing in draft article 3, and the provisions of the European texts themselves – Regulations in particular –

governing their own scope. The drafting of these provisions must therefore imperatively be improved. Beyond these general issues of legibility of the law, the draft ordinance calls for the following observations on the part of the Commission .On Title I (common provisions) of the law of January 6, 1978 Draft article 8 of the law, which lists the missions of the Commission as amended by law no. 2018-493 of June 20, 2018, without prejudice of the other missions provided for in Article 57 of the Regulation which could usefully be recalled, could be updated at the margin by repealing obsolete missions, in order to avoid any confusion with other new missions of similar subject but is subject to specific procedural and substantive rules. Thus, the provisions of a) and b) of 3° of draft Article 8, relating to the intervention of the Commission on professional rules, could be deleted, taking into account its new prerogatives in terms of approving codes of conduct and certification. On the other hand, the Commission notes with satisfaction the precision according to which it can receive, not only complaints within the meaning of article 77 of the Rules, but also any petition or complaint (draft article 8- I-2°-d of the law) emanating in particular from a grouping, which makes it possible to better understand the diversity of referrals it receives. provisions of the current article 11-4°-a) of the law requiring the prior consultation of the CNIL on any draft law or decree relating to the protection of personal data or the processing of such data. As the Council of State ruled in a decision of June 20, 2018, this concept refers to any draft provisions, either relating to the general framework for the protection of the rights and freedoms of individuals with regard to their data. personal data or the processing of such data, or which determine, in some of their essential characteristics, the conditions for creating or implementing a processing operation or a category of processing of personal data. could usefully recall that this case of compulsory consultation of the Commission, which corresponds to the leeway mentioned in c) of 1 of Article 57 of the Regulation, applies without prejudice to the case of consultation, distinct, resulting directly from the Article 36.4 of the same Regulations. This last provision provides, in the particular cases where the impact analysis reveals that a planned processing presents high residual risks and where, as a result, the data controller must in any case consult the supervisory authority , in accordance with 1 to 3 of the same Article 36), that it must also be consulted by the public authorities before the adoption of any legislative or regulatory measure relating to such processing, in order to guarantee the effectiveness of the consultation of the supervisory authority in any case. Finally, it would appear useful to provide that, like the opinions on bills of law or on draft decrees issued pursuant to a legislative provision expressly providing for an opinion of the CNIL, the other opinions issued by the Commission under Article 8-4°-a) of the law (on any draft decree relating to the protection of personal data or the processing of such data) provided that the aforementioned opinions of Article 36.4 of the Regulation (on any

proposed legislative or regulatory measure relating to a given processing operation presenting a high risk) are also published. Article 29 of the law of January 6, 1978 as resulting from the draft ordinance, relating to the procedures for cooperation between the Commission and the counterpart authorities of non-member States of the European Union, constitutes the resumption, in identical terms, of the provisions in force of article 49-5 of the same law. The Commission notes, however, that this article does not accurately reflect the conditions under which the CNIL may henceforth cooperate with these authorities, whether within the scope of the Regulation or outside it. of the Rules, draft Article 29 risks being problematic in that: it only provides for assistance given by the Commission at the request of another authority, without mentioning the reciprocal; it makes this cooperation subject to the condition, absent from Article 50.b) of the Regulation, of an adequate level of data protection in the other State; it requires the conclusion of an agreement between the CNIL and the foreign authority, whereas the Regulation does not prescribe any particular formalization of this cooperation. Although Article 50.b) will, in any case, apply directly in French law, the Commission considers it highly desirable, for the sake of legal clarity, that draft Article 29 of the law be amended to specify this articulation. Within the scope of the Directive, and moreover more broadly outside the scope of the Regulation, this draft article should at least be modified to underline the symmetrical nature of the cooperation and refer, rather than to the criterion of adequacy, with the requirement laid down, both by the Directive and by the Regulation, of appropriate safeguards for the protection of personal data and for other fundamental rights and freedoms. Beyond the inter-authority cooperation, organized by the draft article 29 of the law, the Commission underlines the interest that would be presented by the explanation in the national law of the nature of the other appropriate measures that the State must be able to take for the complete transposition of article 40 of the Directive. the aforementioned law of 20 June 2018, which places the official statistical service in a less favorable situation than the other data controllers implemented for scientific or historical research purposes, even though these provisions initially pursued the opposite objective. It would therefore seem appropriate and in accordance with the Regulation to allow, in strict compliance with the conditions and guarantees provided for by these provisions, the official statistical service to use the non-significant statistical code in the context of processing involving sensitive data. In the chapter devoted to prior formalities, draft article 33 of the law, devoted to the information to be communicated to the Commission in support of authorization and opinion applications, should be supplemented to take into account the new obligations provided for by the Regulation and the Directive and to facilitate the exercise of the rights of individuals. Thus, requests addressed to the Commission should include the identity of the joint controllers and the respective

responsibilities of the controller, the joint controllers and the processors involved in the processing. They should also include the function of the person or the service with which the right of access is exercised, not only, but all the rights open to the persons concerned. The same additions should also be provided for in draft articles 35 (concerning acts authorizing processing) and 36 (list of processing having been the subject of a formality with the Commission) of the law. Finally, this Draft Article 33 does not include an obligation for data controllers to inform the Commission without delay of changes made to processing when the latter is still subject to prior formalities, in particular of any change in the parameters of the processing mentioned in I and any cancellation of processing. However, this information appears to be essential to enable the Commission to keep the list of processing operations provided for in draft Article 36 of the law up to date. A provision to this effect must therefore be introduced, in order to allow the Commission to carry out its general missions of information. Articles 31 and 32 resulting from the draft ordinance, raises difficulties of articulation between national law and European texts. This article modifies the deadline for the examination of requests for opinions received by the Commission, which must decide within eight weeks of the request, extendable by six weeks, against a deadline of two months renewable once in the current state of the law. The Commission questions the need for such a modification, which incorporates, within the framework of common provisions, the time limit provided for in Article 36.2 of the Regulation and considers it necessary to bring the all of the deadlines for examining requests for opinions. Indeed, within the scope of the Regulation, the requests for opinions referred to in draft articles 31 and 32 of the law do not have the same purpose as consultation on a impact analysis, in the event of a high residual risk, required by section 36.2 of the Regulation. Within the scope of the Directive, the draft ordinance does not specify the relationship with the specific deadline (six weeks, extendable by one month) provided for in the event of consultation of the national supervisory authority by the provisions of article 28.5 of the Directive, moreover not transposed in the current draft, except to consider that the longer period currently provided for constitutes as such an additional guarantee for the protection of the rights and freedoms of individuals within the meaning of the Article 1 of the Directive. In both cases, the Commission recalls that the scenarios in which it may be consulted on an impact assessment may be distinct from those in which a request for an opinion may be submitted to it: it could for example be required to examine a request for an opinion which would not be accompanied by any impact analysis, since the planned processing would not be likely to create a high risk for the persons concerned, while n benefiting from a shorter period of time than that granted to it under the former regulations. Finally, outside the scope of EU law, there is no constraint to maintaining the deadlines in force today. Under these conditions, the

Commission considers that the deadline currently provided for by the law of 6 January 1978 should be maintained by default among the common provisions and that only the specific provisions appearing in Titles II, V and VI of the same law should be, where necessary, modified to take into account the specific rules provided for by European texts.As regards the project of article 38 of the law of January 6, 1978, the Commission wonders about the compatibility with the Regulation of the conditions fixed by these provisions, which subordinate the possibility, for the persons concerned wishing to exercise their rights, to appoint a person morality for the purpose of lodging a complaint on their behalf before the CNIL or an action before the courts. This article, which is the resumption of the current article 43 quater from the law June 2018, only allows a mandate to be given to the associations and organizations mentioned in IV of draft article 37, i.e. to groups eligible to exercise a class action, independently of any mandate previously entrusted by a person concerned. However, among these conditions appear in particular, for associations whose statutory object is the protection of privacy and the protection of personal data, the requirement, not devoid of scope, that the grouping be regularly declared for five year . If the introduction into national law of the class action without a mandate constitutes, under the terms of Article 80.2 of the Regulation, a margin of maneuver for the Member States, likely to justify a tightening of the conditions of admissibility, the Commission wonders , with regard to the action with mandate, on the legality of this condition of anteriority. Article 80.1 of the Regulation in fact authorizes representation provided that the body is validly constituted in accordance with the law of the Member State, this reference therefore relating exclusively to the conditions of constitution of the legal person itself, and not to his capacity to act in this context or on the conditions of admissibility of his action. The only condition, set directly by the Regulation, is that the grouping has statutory objectives of public interest and is active in the field of the protection of personal data. National law therefore appears more restrictive than the provisions of the Regulation . As a result, the Commission considers it necessary to amend draft Article 38 of the law in order to give full scope to the mechanism for representing individuals for the purposes of protecting their rights provided for by the Regulation. Finally, in Chapter V (remedies), draft article 39 repeats the provisions of the current article 43 quinquies of the law of January 6, 1978, resulting from law no. 2018-493 of June 20, 2018, in order to allow the CNIL to seize the Council of State with a view to the possible referral of a preliminary question to the Court of Justice of the European Union (CJEU) relating to the validity of an instrument adopted by the European Commission and founding data transfers. The Commission considers that the draft ordinance must be supplemented to specify the relationship between the powers of suspension conferred on the Council of State and the specific powers of the CNIL, which can itself order the

temporary or definitive suspension of transfers on the basis of Articles 58.2.f) and j) of the Regulation, which are applied by the current Articles 45-III-5° and 46-I-2° of the law of January 6, 1978. In the cases covered by the draft article 39 of the law, the Commission will ask the Council of State, not for the suspension of such a transfer, but for the extension, until the decision of the CJEU, of the temporary suspension which it will have previously pronounced. Title II (provisions applicable to processing covered by the Regulation) of the law of January 6, 1978 Draft article 44 of the law of January 6, 1978 relating to exceptions to the prohibition on the processing of sensitive data within the scope of the Regulation, must be modified. These exceptions result either directly from Article 9.2 of the Regulation (for example, when the person has given their consent or when the processing is necessary for their vital interests) or from room for maneuver taken on the basis of the law of a Member State, some of which are mentioned in 1° to 6° of draft article 44 of the law, without prejudice to other specific legislative provisions providing for other exceptions. The wording of the first paragraph of this article should be clarified since it suggests that the conditions set by the Regulation are cumulative with those provided for in 1° to 6°. In addition, the exception mentioned in 1° of Article 44 does not take up the letter of the provisions of 9.2.-h) of the Regulation, which is broader, and must be supplemented in order to allow in particular the processing of this data in within the framework of occupational medicine or health and social care. This processing should also benefit from the same derogation, in terms of prior formalities to be completed with the Commission, as those currently mentioned in 1° of said draft Article 44 of the law and therefore be mentioned in Article 65 of the same law. Draft article 48 of the law, relating to the right to information, includes a second paragraph according to which When personal data is collected from a minor under fifteen years of age, the person responsible for processing transmits to the minor the information mentioned in article 13 of the aforementioned Regulation in a clear and easily accessible language. This provision should be repealed since, on the one hand, its objective is already satisfied by taking into account the specific case of children in Article 12 of the Regulation, which does not provide for the intervention of national law, and, on the other hand, that the threshold of fifteen years does not appear in the Regulation and is therefore likely to create confusion. With regard to minors, the Commission also wonders about the compatibility of the provisions laid down in II of draft article 51 of the law with those of article 17 of the Regulation, which already provide for the erasure of data relating to minors collected in the context of the offer of information society services , under conditions different from those provided for in the draft order. It notes, however, that the second paragraph of the aforementioned provisions, relating to the procedural aspects of the Commission's actions in this area, can be maintained as it stands. Draft Article 52 of the law relates to

processing for which, for derogation, the right of access is exercised indirectly, through the intermediary of the Commission. This is particularly the case, under the terms of the first paragraph of this article, of the processing implemented by public administrations and private persons entrusted with a public service mission whose mission is to control or collect taxes, subject to that the regulatory act creating this processing expressly provides for it. erasure, it only expressly provides for the indirect exercise, through the CNIL, of the right of access, contrary to what is provided for both processing falling within the scope of the Directive (Article 108) and processing involving the State security and defense (Article 119). It therefore considers that these provisions should be supplemented. In the same perspective, in the event of derogation from the right to information with regard to the same processing operations and the other processing operations mentioned in the third paragraph of draft article 48 of the law, the Commission should be able to be approached by data subjects for the purpose of exercising this right on their behalf, similar to what is provided for for processing operations covered by the Directive. The Commission also points out that draft Article 52 of the law, by providing for the indirect exercise of rights for all the information contained in the processing, does not seem to meet the proportionality requirement set by Article 23 of the Regulation because it seems to exclude, in any case, the ability for rights to be exercised directly for certain categories of processing data, as is currently the case for the tax administration's FICOBA file, concerned by this provision ion. It considers that this possibility of a mixed regime in terms of access, rectification and erasure, which is moreover provided for by Article 119 for processing involving State security and defence, should be provided for. Finally, the Commission wonders, with regard to the limitation to the right of access permitted by the third paragraph of the same draft Article 52 for the processing carried out by the financial courts in the context of their non-judicial missions, on the meaning and scope of the reference to the conditions provided for in paragraphs e and h of Article 23 of the Regulation. The specific provisions applicable to data processing in the field of health are grouped together in section 3 of a chapter dedicated to obligations incumbent on the controller and the processor, even though these provisions do not concern only such obligations. This is the case, for example, of draft article 69 of the law of January 6, 1978, which states that any person may object to the personal data concerning him being subject to the lifting of professional secrecy. made necessary by the processing of health data, whether for research in the field of health or processing justified by the public interest. However, this article repeats the provisions of article 56 of the law of January 6, 1978, in its version prior to its amendment in June 2018, which for its part only concerned the processing of health data constituted within the framework of the research (right to object to the use or reuse of their data in the context of research). The extension of this right of

opposition to any processing of health data is likely to raise difficulties for processing resulting from a legal obligation (such as, for example, in terms of health vigilance, pharmacovigilance, materiovigilance, etc. .). This hypothesis should therefore be reserved.Finally, the Commission points out that the draft article 80 of the law of January 6, 1978, relating to the specific rules applicable to processing for the purposes of journalism and literary and artistic expression, is likely to raise several questions. On the one hand, the draft ordinance, in the continuity of the current article 67, does not retain exactly the same name for these treatments as article 82 of the Regulation, the scope of which is also broader . On the other hand, the Commission notes that the draft ordinance provides that a certain number of provisions (duration of storage, prohibition to process sensitive and infringement data, rights to information, access and rectification , etc.) do not apply to this processing when it is necessary to reconcile the right to the protection of personal data and the freedom of expression and information. This wording should be adapted to clarify that the notion of necessity applies to exceptions, and not to the processing operations themselves. Above all, the Commission wonders about the casuistical approach adopted by the draft ordinance, which refers the assessment of the need on a case-by-case basis to the data controller, under the control of the CNIL and the judge. This approach contrasts with the objective approach of the law in force, which generally excludes the application of certain provisions. In any case, it does not appear to be necessarily implied by the wording of the leeway appearing in Article 82 of the Regulation, which seems to defer the assessment of the need for any derogations to the national legislator.On Title III (processing in the electronic communications sector) of the law of January 6, 1978 These provisions do not call for any comment by the Commission, other than a statement, pending adoption and entry into force of the future regulation to replace the aforementioned Directive 2002/58/EC, of the coexistence of the data breach notification regimes charged to operators under these sectoral provisions and those, transversal, of the Regulation. On Title IV (processing of data of deceased persons) of the law of January 6, 1978 The draft article 84 of the law provides that the rights and obligations provided for the processing covered by the Regulation are applicable to Data processing of deceased persons, subject to the specific provisions of this title. However, the Commission stresses that, in its version in force, the Data Protection Act does not apply to deceased persons but only concerns the protection of natural persons with regard to the processing of data, to which it may nevertheless be extended breached through data relating to deceased persons when their disclosure has consequences for the privacy of their heirs. As an extension of this state of the law, recital (27) of the Regulation indicates that the latter does not apply to the personal data of deceased persons, while allowing Member States to lay down rules in this area. The Commission therefore wonders about the

exact wording and scope of the provisions provided for in draft Article 84 of the law, which seems to substantially modify the state of the law from this point of view. The same is not true of the draft articles 85 and 86 of the same law, which take up provisions currently in force and are in no way incompatible with the aforementioned approach. Nevertheless, the Commission once again regrets that the implementing decree provided for by law no. 2016-1321 of 7 October 2016 for a digital Republic has not been adopted to date, even though these provisions were introduced is more than two years old and that article 40-1 of the law of January 6, 1978 (draft article 85 of the same law) is difficult to apply in the absence of this decree. On title V (provisions applicable to processing covered by the Directive) of the law of January 6, 1978 These provisions repeat those of law no. 2018-493 of June 20, 2018 and therefore call for few comments. the meaning of its observations issued in its opinion of November 30, 2017 and in accordance with the state of the law resulting from the law of June 20, 2018, the draft order maintains the possibility, for the persons concerned, to avail themselves in certain cases of a right of opposition with regard to the drafts the Directive. The Commission intends above all to return to the major issue represented by the definition of the procedures for exercising – direct or indirect – the rights of individuals. For processing operations falling within the scope of the Directive, the principle is now that the direct exercise of rights, which constitutes, as the Commission has already underlined in its aforementioned opinion of 30 November 2017, a major step forward in terms of strengthening the rights of individuals. The restrictions on the direct exercise of rights, which in any case open up the option for the person to exercise all of their rights through the intermediary of the Commission, must be defined by the regulatory act instituting the processing (draft of article 107 of the law). The Commission nevertheless considers that the ordinance should specify, in order to make the state of the law clear and to secure the regulatory acts to be taken, that the regulatory power can now provide for three different mechanisms in this area: either the exercise direct rights by persons without possible restriction; either the direct exercise of rights with, in the event of a restriction imposed on an applicant by the controller, the possibility of seizing the Commission; or, under these restrictions, the indirect exercise of these rights from the outset when the nature of the processing and of all or part of the data it contains justifies it. Maintaining this third possibility may indeed, in certain cases figure, actually prove to be more protective than the second option. Indeed, it is necessary to avoid that the formal commitment of a prior approach with the data controller who will oppose - sometimes tacitly after two months - a restriction in a quasi-systematic manner, for reasons relating to the object of certain processing operations and the nature of certain data, has the sole effect of unnecessarily lengthening the processing times for the data subject's request. The Commission also notes that, within the

scope of the Regulations, such an option is expressly provided for (draft article 52 of the law, mentioned above). Finally, the Commission reiterates its observations made with regard to the provisions provided for in draft articles 48 and 52 of the law, with regard to the need, on the one hand, to supplement the provisions relating to the methods of intervention of the CNIL in the event of restriction (draft article 108 of the law) in order to take into account all the rights concerned, and not only the rights of access and rectification, and, on the other hand, to expressly provide the possibility of a mixed regime in terms of the rights of individuals for the same processing, in respect of which restrictions could only apply to certain categories of data only.On other provisions concerning data protection legislation of a personal natureGenerally, the Commission notes that the amendments provided for by the draft ordinance of sectoral legislation relating to the protection of personal data are essentially legislative in nature. EU and are mainly intended to modify the references to the law of January 6, 1978 that these laws contain. If they also contain some material errors, concerning for example the modification of the public health code (X and XIII of article 21 of the draft ordinance) or of the internal security code (IV of article 22 of the same draft), the Commission recalls that the entry into force of the European texts makes necessary a more general revision of some of these sectoral legislations. , indeed seem imperative to ensure the necessary legal certainty for the persons and organizations concerned by these laws and to allow the proper application of the right to the protection of personal data. This is the case, for example, with regard to video protection for which the Commission considers that it is highly desirable for the legislator to carry out a review of the applicable provisions, in particular in order to ensure the proper articulation of the provisions positions of the internal security code with the Regulation and the Directive. Similarly, if the Commission takes note of the modifications provided for by article 10 of the draft ordinance concerning the provisions of the criminal code relating to violations of the rights of the person resulting files or computer processing, it nevertheless regrets that no criminal offense is provided for with regard to the new rights of persons and obligations of data controllers and subcontractors provided for by the Regulation or the Directive, with the exception of the ignorance of the new obligations provided for in terms of notification of data breaches. Other sectoral legislation also requires far-reaching amendments, which the Commission considers necessary to proceed as soon as possible. Beyond these general considerations, the Commission notes that article 9 of the draft ordinance aims to modify article L. 581-9 of the environmental code relating advertising devices comprising an automatic audience measurement system or analysis of the typology or behavior of people passing nearby. These devices are currently subject to a dual authorization regime, from the mayor as regards street furniture, on the one hand, and from the CNIL as regards the processing of personal

data, on the other hand. The draft order abolishes the prior authorization of the CNIL, which cannot be effectively maintained in the absence of leeway provided for by the Regulation on this point, and replaces it with an opinion from the CNIL prior to the decision to authorization of the advertising device by the competent authorities. The Commission considers that it would be highly preferable, for the purposes of simplification and to preserve the scope of the principle of accountability resulting from the Regulation, not to create an ad hoc notice system and refer to the common law of the Regulations. In this respect, it specifies that such processing must in principle be the subject of an impact analysis under the conditions provided for in Articles 35 and 36 of the Regulation. Finally, Article 16 of the draft ordinance aims to modify provisions of the Code of Criminal Procedure (CPP), in particular those of article 230-22 which concern judicial reconciliation software. It is thus planned that the maximum retention period for data will be increased from three to six years. The Commission recalls that it will in any case be up to it to assess, for the processing operations covered by Article 230-20 of the CPP actually implemented, the proportionality of the retention periods adopted.President I.FALQUE-PIERROTIN