

Deliberation 2020-129 of December 17, 2020 Commission Nationale de l'Informatique et des Libertés Nature of the

deliberation: Opinion Legal status: In force Date of publication on Légifrance: Wednesday March 31, 2021 NOR:

CNIX2106831V Deliberation n° 2020-129 of December 17, 2020 providing an opinion on a draft decree implementing Article 1 of Law No. 2019-486 of May 22, 2019 on the growth and transformation of businesses and adaptation of several regulatory texts including provisions relating to business declarations to the organization unique (request for opinion no. 2219931) The National Commission for Computing and Liberties, Seized by the interministerial mission relating to the simplification and modernization of business formalities of a request for an opinion concerning a draft decree in Council of State relating to the application of Article 1 of Law No. 2019-486 of May 22, 2019 relating to growth and transformation companies and adaptation of several regulatory texts containing provisions relating to declarations by companies to the single body intended to replace the business formalities centres; 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 2006/123/EC of the European Parliament and of the Council of 12 December 2006 relating to services in the internal market; Having regard to the Commercial Code, in particular its articles R. 123-1 et seq.; Considering the law n° 78-17 of January 6, 1978 modified relating to data processing, files and freedoms, in particular its articles 8-I-4°-a) and 30; Having regard to law n° 2019-486 of May 22, 2019 relating to the growth and transformation of companies; Having regard to Decree No. 2019-341 of April 19, 2019 relating to the implementation of processing involving the use of the registration number in the national identification directory of natural persons or requiring consultation of this directory; 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 Decree No. 2020-946 of July 30, 2020 relating to the designation of the National Institute of Industrial Property as a single body mentioned in Article 1 of Law No. 2019-486 of May 22, 2019 relating to the growth and transformation of companies; On the proposal of Mr. Philippe-Pierre CABOURDIN, commissioner, and after having heard the observations of Mr. Benjamin TOUZANNE, government commissioner, Issues the following opinion: The Commission has been seized, on November 5, 2020 on the basis of articles 8-I-4°-a) and 30 of the amended law of January 6, 1978, a request for an opinion relating to a draft decree in Council of State implementing Article 1 of Law No. 2019-486 of May 22, 2019 relating to the growth and

transformation of companies (hereinafter the Pacte Law). Developed with the aim of promoting business growth, the Pacte law includes several provisions aimed in particular at simplifying the entrepreneurial process by modifying in particular many provisions of the Commercial Code. The purpose of Article 1 is thus to replace the various networks of business formalities centers (CFE) with an electronic one-stop shop run by a single operator. This counter will collect all the information and documents necessary for the preparation of a single formalities file. It will also constitute, in the long term, the direct interface between the recipient organizations and the companies, whatever the activity, the place of establishment and the legal form of the latter and will feed the general dematerialized register as provided for by the Article 2 of this same law. As a preliminary point, the Commission notes that the National Institute of Industrial Property (hereinafter INPI) was designated as the operator of the electronic one-stop shop by decree of July 30, 2020 referred to above. In this context, this draft decree aims in particular to define the conditions for filing the file as well as the methods of support and assistance for companies by consular bodies and by the INPI, to specify the methods for verifying the file filed or even to describe the conditions for transmitting the information collected by the INPI to the administrations, persons or organizations mentioned in Article L. 123-32 of the Commercial Code. It also specifies the conditions under which the user creating his business through the INPI may be offered optional tools to inform him about the details and issues of the life of a business. context of the creation of the electronic one-stop shop and its conditions of accessibility all the formalities and procedures necessary for access to and exercise of their activity. They also play a role in centralizing declarations, formally checking the documents presented, transmitting all the documents to the recipient bodies which ensure their regularity and validity as well as, since the transposition of the December 12, 2006 referred to above as services, a role in the context of requests for administrative authorizations necessary for the exercise of regulated activities. of industry, chambers of trades and crafts, registries of commercial courts or judicial courts, chambers of agriculture, tax centers, URSSAF) according to the criterion of material competence specified by article R. 123-3 of the Commercial Code then within each network, according to a geographical criterion. The Commission notes that the one-stop shop as provided for in Article 1 of the Pacte Act aims to replace the various networks of business formalities centers in order to simplify the establishment in France of service providers who wish to offer their goods and services there. As this substitution should take place gradually, the Commission notes that this draft decree includes, in addition to permanent provisions relating to the operation of this one-stop shop (article 8), specific provisions allowing the implementation of a transitional system from 1 January 2021 (article 145) through setting up an electronic counter for business formalities . The

Commission thus notes that the electronic counter for business formalities and the CFEs will carry out their respective missions in parallel during the transitional period until 31 December 2022. It therefore notes that a declarant will benefit, during this period, of several choices to carry out its formalities (physical filing of the file, transmission by post or referral by electronic means). From 1 January 2023, the single window will replace the transitional system (the electronic window for business formalities) as well as the activity of the CFEs. The Commission notes in this respect that it is planned that access to the one-stop shop is carried out from a dedicated web portal offering a duly authenticated user to act as a declarant for a company or via computer APIs allowing the transfer from the system of a company or of a duly identified data flow containing all the information related to the completion of a formality. Given the terms of access to the service offered, it recalls from the outset the importance of ensuring that particularly robust security measures, such as to ensure the integrity and confidentiality of the data transmitted, are implemented. It notes that it follows from the changes envisaged that from 1 January 2023, the formalities for the creation, modification of the situation and cessation of activity of companies will be carried out, from this date, exclusively by electronic means. In this respect, the Commission notes that, to overcome the difficulties that some companies may face in the context of the dematerialization of declarations at a one-stop shop, an assistance system for carrying out formalities is provided for (new Article R 123-14 of the Commercial Code). These elements recalled and without prejudice to the conditions for the effective implementation of the processing implemented by the INPI which must, in any event, comply with the applicable data protection regulations by ensuring in particular the effectiveness of the exercise of the rights of individuals, the draft decree calls for the following observations. On the operating conditions of the planned system and its conditions of implementation As a preliminary point, the Commission notes that the permanent system as presented in Article 8 of the draft of decree and the transitional mechanism as described in article 145 have identical functionalities described respectively in future articles R. 123-6 and R. 123-7 of the commercial code for the single body and in future articles R. 123-30-17 and R. 123-30-18 of the same code. It notes that between 1 January 2021 and 2023, only the scope of formalities handled will be different depending on the companies concerned. The Commission notes first of all that in its permanent phase, the scope of formalities handled by the INPI is identical to that of the current CFE, namely the formalities and procedures necessary for the creation, the modifications of the situation and the cessation of activity of a company, as well as access to a regulated service activity and its exercise (requests for authorization for activities within the scope of the Services Directive). In this context, article 8 of the draft decree also lists the elements contained in the file which will be transmitted to

the INPI in accordance with the provisions of the new article L. 123-33 of the commercial code as resulting from the Pacte law.

. The Commission notes that personal data is likely to appear within these elements without, at this stage, being listed exhaustively in the draft decree, as illustrated by the proposed wording of Article R. 123-4 of the Commercial Code (Among these are, without prejudice to the specific provisions [...]). While the Commission takes note of the clarifications provided, namely that the list in this article constitutes a minimum base of data collected by the counter and that it is important to take into account the legal situation of each company and the corresponding requirements specific to each recipient body, it notes that a more precise list was sent as part of the investigation of this referral. Under these conditions, it considers that the new Article R. 123-4 of the Commercial Code could be supplemented on this point, including by explicitly mentioning the specific provisions referred to. In any event, it recalls that only the data strictly necessary completion of the completed formalities must be collected and transmitted to the recipient organizations and competent authorities, both in the context of the transitional phase of the system and in its permanent phase. It also notes that the electronic one-stop shop, as is the case of the current CFEs, is not intended to replace the bodies to which the formalities are addressed as well as the competent authorities which are currently listed in appendix 1-1 to the regulatory part of the commercial code (such as the tax department , the general social security funds or the chambers of trades and crafts) and the exhaustive list of which will henceforth be established by decree. The Commission recalls that these organizations and authorities remain solely competent to assess the regularity of the files received, the creation of an electronic one-stop shop having the main purpose of simplifying the completion of administrative formalities presented as particularly complex by creating a single interface between declarants and the recipient bodies. The Commission notes that, both in the transitional and permanent phase, it is provided that the chambers of commerce and industry will have access to information collected only from companies having a commercial activity (Articles 75 and 159 of the draft decree). It notes that this access aims to draw the conclusions from the gradual disappearance of their role as CFE and will be strictly limited in its scope to commercial activity, which therefore does not call for any particular observation. The Commission finally notes that the information collected by the INPI within the framework of the one-stop shop cannot be kept beyond the time necessary for transmission to the recipient organizations and this, without prejudice to the elements which must be kept for registration purposes on a register of legal publicity. It observes that the durations thus defined, which will also apply during the transitional phase, repeat those set by Article R. 123-19 of the Commercial Code currently in force. The Commission notes, however, that it has been specified that in practice, the deletion of data will only take

place after the issue by the recipient organization of the validation or rejection of the completed formality. While such a procedure does not raise any particular difficulty with regard to the applicable data protection regulations, it observes that the wording of the draft decree on this point does not reflect this possibility. The Commission requests that Article 8 be clarified in this sense. Insofar as the completion of the formalities aims to be entirely dematerialized, the Commission also takes note of the clarifications provided with regard to the retention period of data linked to the creation of the declarant's user account. It notes that it is thus envisaged that this data will be erased after a period of inactivity of three years of the account after intervention of the notifications with the holder of the said account. The Commission notes that this duration was established with regard to the observed average rate of completion of formalities by company directors. provisional data and documents relating to declarations initiated but not finalized, allowing them to subsequently resume the formality initiated (future article R. 123-9 of the Commercial Code). The Commission notes that such a possibility is already provided for, under the same conditions, by Article R. 123-27 of the Commercial Code. It also acknowledges that a declarant may at any time modify or delete the data relating to the formalities initiated but not completed as well as the information relating to his user account and that only the connection data will be kept for a period of three months and for the purpose of dealing with any complaints. On the security measures and the need to carry out an impact analysis relating to data protection Insofar as the planned system will be based in particular on the collection of the registration in the national identification directory of natural persons (NIR) of the declaring natural person or will require consultation of this directory (see below), it will concern a very large number of natural persons. The Commission therefore considers it necessary to carry out a data protection impact assessment. It acknowledges that such an analysis is being carried out by the INPI. More specifically, the Commission recalls that state-of-the-art security measures, such as data encryption, will necessarily have to be implemented. works to ensure the confidentiality of data exchanged on public telecommunications networks. It also recalls that the methods of authentication, both of the persons concerned and of the persons authorized to access the processing, must be sufficiently robust and in accordance with its deliberation n° 2017-012 of January 19, 2017 adopting a recommendation relating to the words Furthermore, the Commission points out that traceability measures must be put in place and concern all the operations carried out, both by the persons concerned and the authorized persons, in order to ensure the security of the processing. The traceability data thus collected should be kept for a period of six months (and not three as currently envisaged), and be subject to automatic analysis measures in order to guarantee the detection of any unauthorized operations. Finally , more generally,

the Commission recalls the need to provide, prior to the implementation of the system, accommodation in conditions that fully comply with the applicable regulations. If transfers of data outside the European Union were envisaged, it recalls that they should be subject to a framework in accordance with the texts and recent case law on the subject. On the modification of Decree No. 2019-341 of April 19, 2019 relating to the implementation of processing involving the use of the registration number in the national identification directory of natural persons or requiring consultation of this directory Article 8 of the draft decree provides that the declarations sent in in the context of a business creation may include the NIR of the declaring natural person (new article R. 123-4 of the commercial code). This same article provides that the single body [the INPI] queries the national directory for the identification of natural persons in order to confirm, for registered natural persons, the identical nature of the elements declared to those appearing in this directory. The Commission notes that such a query will also be possible during the transitional phase of implementation of the system, if the technical conditions allow it (article 145 of the draft decree). The Commission notes that the consultation carried out is intended solely to compare the identity data provided by the declarant (surname, first name, date of birth) with those appearing in the national register for the identification of natural persons (RNIPP). The only information relating to the identical nature or not of the information thus compared will be transmitted to the one-stop shop as well as to the declarant in order to invite him to proceed, if he wishes, to a modification and to the social organizations in order to invite them, in as part of their mission of affiliation to the scheme for self-employed workers, to strengthen their control over the identity provided in the event of a discrepancy. In this context, article 195 of the draft decree aims to modify the decree of April 19, 2019 referred to above in order to allow the use of the NIR or the consultation of the RNIPP 6° For the verification of the identity of the heads of companies, their spouses and all the natural persons composing the management of the company, as well as for the transmission to the social bodies referred to in appendix 1-1 of book I of the commercial code of the declarations provided for in appendix 1-2 of the same code: the IT department mentioned in article R. 123-30-14 of the commercial code. The Commission notes that such a change is intended solely to obtain confirmation of the accuracy of the identity entered in relation to that recorded within the RNIPP in order to improve, upstream, the quality of the data entered and thus avoid cascading corrections when an error is discovered by the recipient bodies of the completed formality. It notes that, consequently, article 132 of the draft decree deletes 8° of E. of article 2 of the decree April 19, 2019 referred to above, relating to the transmission by the clerks of the commercial courts of the NIR, the latter losing on January 1, 2023 their jurisdiction as CFE as well as the possibility of being seized directly of an application

for registration in the commercial register and companies. This article of the draft decree also makes the necessary terminological changes related to the end of implementation of the transitional system, which does not call for any particular observation. The P resident Marie-Laure DENIS