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2021-021 of February 11, 2021 providing an opinion on a draft decree relating to the video control of waste unloading in non-hazardous waste storage and incineration facilities (request for opinion no. 20019046) The National Commission for Computing and Liberties,

Seizure by the Ministry of Ecological Transition of a request for an opinion concerning a draft decree relating to video control of waste unloading in non-hazardous waste storage and incineration facilities;

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 (GDPR);

Having regard to the Environment Code, in particular its article L. 541-30-3;

Considering the modified law n° 78-17 of January 6, 1978 relating to data processing, files and freedoms, in particular its article 31-I; On the proposal of Mr. Alain DRU, commissioner, and after having heard the observations of Mr Benjamin TOUZANNE, Government Commissioner, Issues the following opinion: The Commission has been asked for an opinion by the Minister for Ecological Transition on a draft decree issued pursuant to Article L. 541-30-3 of the environmental code created by article 116 of law n° 2020-105 of February 10, 2020 relating to the fight against waste and the circular economy.

This new article provides that the unloading of non-hazardous non-inert waste in storage or incineration facilities (such as sorting refusals from sorting centers for waste from economic activities, skips coming from waste collection centres, bulky , residual household waste) must be subject to a video control device. to ensure compliance with the rules of good waste management, which prioritize the sorting and recycling of waste over their disposal. It notes that Article L. 541-30-3 of the Environment Code specifies that the methods of application of the video control system, with regard in particular to the procedures for implementing video control, its terms of maintenance and use as well as rules for the collection, archiving and provision of data collected for control purposes are set by decree, which must be submitted to it for its opinion. With regard to environmental requirements, the Commission observes that the legislator intended to implement this mechanism in a permanent and immediate manner without first resorting to experimentation. Although the Commission takes note of this choice, it nevertheless recalls that special guarantees are to be implemented with regard to the risks inherent in the use of this type of device. The Commission takes note of the details provided by the Ministry according to which the The primary objective

of the control thus carried out is to enable waste management to be optimized and to prevent damage to the environment even though, on a secondary basis, it may make it possible to observe any offending behavior. While it also notes that each operator of a waste storage or incineration facility will be responsible for processing within the meaning of Article 4 of the GDPR, the Commission considers that the planned processing will also be implemented on behalf of the State within the meaning of article 31 of law n° 78-17 of January 6, 1978 as amended. Under these conditions, it considers that the processing carried out within the framework of Article L. 541-30-3 of the Environment Code falls under the GDPR and that the provisions of 2 ° of I of article 31 of the law of January 6, 1978 modified. These elements recalled, the Commission invites the ministry to draw up and distribute a doctrine of use of the cameras intended for the operators of the installations concerned, which will have by elsewhere determine whether the processing implemented requires the performance of a data protection impact assessment (DPIA) and its transmission to the Commission under the conditions provided for in Articles 35 and 36 of the GDPR. implementation of the planned deviceIn the first place, with regard to the methods of implementation and the methods of use of the video control device as well as the rules for collecting the data collected, the draft article D. 541-48-6 environmental code provided it that the video control device records: the images of the unloading operations so as to be able to identify the content which is unloaded; the license plate of each vehicle received at the installation for this purpose. The Commission takes note of this that the cameras will not film either the public road or the spaces open to the public. In this regard, the Ministry indicated that waste treatment facilities are spaces not open to the public which are fenced with controlled and restricted access to site personnel and waste haulers. It also notes that with regard to the areas where these devices will have to be installed (areas dedicated to the unloading of waste, in a landfill or an incinerator), the presence of employees remains occasional. The Commission also recalls that, in application of the principle of data minimization, it will be up to each operator to ensure that only relevant data is collected, in particular by ensuring that the cameras are oriented so as to film only what is strictly necessary with regard to the objective pursued . In this respect, it notes that the draft decree provides that the system can only record waste unloading operations so as to be able to identify the content that is unloaded and the license plate of each vehicle received at the facility. On this point, the Commission takes note of the clarifications provided by the Ministry according to which the registration of the license plate is necessary to enable a direct link to be established between the observed infringement and the producer or holder of the waste, responsible for their good management. Indeed, in the event of an infringement noted by the inspector during the control of the video recordings, the registration number of the

vehicle noted in the video recording may be the subject of a reconciliation, by a single visual comparison, with data from the register of waste entering the installation, which contains the registration numbers of all vehicles unloading waste at the installation, in order to identify the origin of the waste and prosecute those responsible. The Commission notes that the waste register is, to date, kept by each operator and that it is planned, in the long term and for non-hazardous waste storage and incineration facilities, that the data it contains be transmitted electronically to the national waste register pursuant to Article L. 541-7 of the Environment Code. The Commission also notes that draft Article D. 541-48-10 of the Environmental Code environment imposes, if people have been filmed, that their image be anonymized by any means likely to prevent their identification . In this respect, it takes note that the cameras will be oriented in such a way as to avoid filming, as much as possible, the employees, whether they are the personnel of the installation or the drivers. It recalls that it will be up to each data controller to be particularly vigilant about the orientation of these devices, which must be subject to regular checks and that the implementation of an anonymization process, within the meaning of GDPR, implies the implementation of particularly strict technical conditions. Finally, the Commission notes that the draft article D. 541-48-10 of the Environment Code excludes the recording of sound data, which it takes note of in as guarantees provided within the framework of the implementation of the planned devices. Secondly, with regard to the procedures for maintaining the video control device, the Commission notes that these are detailed in the draft article 541-48-9 of the Environment Code and do not call for any particular comments. On the rules for archiving data collected The Commission notes that draft Article D. 541-48-10 of the Environment Code environment provides that the data are kept for one year. At the end of this period, the data is automatically deleted. Draft article D. 541-48-11 of the environmental code further specifies that when the data has, within one year, been extracted and transmitted to the State agents mentioned in article L. 541-44 of the same code for the purposes of legal or administrative proceedings, they are kept according to the rules specific to each of these proceedings. account of the annual frequency of checks carried out by the inspection of installations classified for the protection of the environment, provided that the images of the people who would have been filmed are subject to anonymization within the meaning of the GDPR, as provided for draft article D. 541-48-10 of the environment code. On the rules for making data collected available Draft article D. 541-48-11 of the environment code provides that only access to the data contained in the processing ent, if necessary in real time, the personnel of the installation authorized for this purpose by the operator. This article also provides that the data, if necessary in real time, can be consulted by: State agents mentioned in Article L. 541-44 of the Environment Code; persons intervening, at

the request of the operator or the aforementioned State agents, on behalf of audit or advisory bodies. This access is subject to the operator's authorization and the presence, at the time of viewing, of a person from the installation authorized by the operator. The draft article D. 541-48-11 of the environment code also provides that the data are accessible on site and that they are transmitted in a usable form at the request of the aforementioned State agents. The Commission recalls that in any case, access to the data of the planned processing as well as their consultation must be carried out within the limits of the respective attributions of the aforementioned agents and their need to know in the context of their missions. In this respect, it recommends that these details appear expressly in draft Article D. 541-48-11 of the Environment Code. operator to access the data must be particularly trained and made aware of the rules for implementing a video surveillance system. Under these conditions, the Commission considers that these users and recipients have a legitimate interest in knowing the data contained in the processing. information and the rights of the persons concerned

Firstly, with regard to the information of the persons concerned, the Commission notes that the draft article D. 541-48-8 of the environment code provides that the presence of an unloading video control device is signaled at the entrance to the installation as well as in the filmed premises, by means of panels, in sufficient number, permanently displayed, legible and comprehensible, in the places concerned, which include at least: the pictogram of a camera indicating that the place is placed under video surveillance; the purpose of the installed processing; the retention period of the images; the name or quality and number telephone number of the operations manager; the right to lodge a complaint with the CNIL; the procedure to follow to request access to the visual recordings concerning them. The draft article D. 541-48-8 of the code of the environment also provides that the operator individually informs the employees of the operation of the presence and location of the video control device for the unloading of waste. In addition, this article provides that the licensee ensures that the producers, holders and carriers of the waste received in the installation individually inform their employees likely to be filmed in the installation's video control zone. In this respect, the Commission recalls that employees must be informed individually of all the information notices provided for in Article 13 of the GDPR and that, in any event, the employee representative institutions must be consulted before the installation of the control system (draft article D. 541-48-7 of the environmental code). Secondly, and insofar as the processing is carried out on behalf of the State, the Commission that the draft decree should mention, with regard to the rights of the persons concerned and with regard to the provisions of article 35 of the law of January 6, 1978 as amended, the generic information corresponding to the exercise of these rights ts, without prejudice to each operator's responsibility for compliance with the regulations applicable to the

protection of personal data. On security measures In general, the Commission recalls that, in accordance with Article 32 of the GDPR, the operators must implement technical and organizational measures to guarantee a level of security adapted to the risks and that the security measures must be updated with regard to the regular reassessment of the risks. Specifically concerning the anonymization of the images of the people who would have been filmed, the Commission notes that technical solutions will be made available to data controllers enabling them to implement real-time blurring solutions

The President,  
M.-L. Denis