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2022-101 of October 6, 2022 providing an opinion on a draft decree on the exchange of information and data between administrations

(request for opinion no. 22013347)

The National Commission for Computing and Liberties, Seizure by the interministerial digital directorate (DINUM) of a draft decree in the Council of State relating to the exchange of information and data between administrations taken pursuant to Article 162 of Law No. 2022-217 of February 21, 2022 relating to differentiation, decentralization, deconcentration and various measures to simplify local public action; 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 (General Data Protection Regulation or GDPR); Having regard to article L. 114-8 of the code of relations between the public and the administration (CRPA), in particular the third paragraph of II. ; After hearing the report of Mr. Claude CASTELLUCCIA, Commissioner, and the observations of Mr. Benjamin TOUZANNE, Government Commissioner, Issues the following opinion: This draft decree concerns the organization of exchanges of information between administrations necessary to inform people of their right to any benefit or benefit provided for by legislative provisions or regulatory acts, and to possibly grant them said benefits or benefits. This project is taken in application of article 162 of the law relating to the differentiation, decentralization, deconcentration and concerning various measures for the simplification of local public action, on which the Commission had ruled (deliberation n ° 2021 -035 of March 25, 2021), codified in II of article L. 114-8 of the CRPA. According to the DINUM, this system aims to generalize the proactive approach of administrations in order to fight against the non-use of law the services and advantages to which users could claim. The Commission has been following for a long time, and with particular attention, the evolution of the dematerialization of part of the exchanges of data between administrations, which constitute the processing of personal data. These exchanges contribute to the simplification of administrative formalities for users when their purpose is to exempt users, natural or legal persons, from providing the same supporting documents several times. The fight against non-use must not conflict with the right to the user to renounce the services and advantages for which he is eligible. If the simplification of administrative procedures and the improvement of relations between the public and the administrations constitute legitimate objectives, these exchanges must be

limited to strictly necessary data and guarantee the respect for the rights of individuals, as well as the security and confidentiality of data. The Commission considers that a distinction must be made, on the one hand, between the exchanges of data carried out for the purpose of responding to user requests, which do not pose any difficulty in principle when the invasion of privacy appears slight , and, on the other hand, those carried out for administrative police, surveillance or fraud detection purposes, for which particular vigilance is required. In this respect, the Commission very much welcomes the addition of the mentions indicating that the data collected will not be used or reused for the purposes of "detection or for the sanction of fraud" in article L. 114-8 of the CRPA, as it had deemed necessary in its deliberation No. 2021-035 of March 25, 2021 cited above. On the responsibility for processing The draft decree leaves administrations significant leeway as to the choice to implement processing for the purpose of proactive information as well as, where applicable, their terms. Therefore, the administrations concerned must be considered as data controllers within the meaning of the regulations on the protection of personal data. As such, they are subject to the provisions of the GDPR and Law No. 78-17 of 6 January 1978 amended relating to data processing, files and freedoms. The Commission takes note that it is not planned that the administrations will subsequently call on it for an opinion, when they put in place the processing operations relating to the proactive approach. As part of the proactive approach, the principles of minimization and proportionality of data imply that the collection of these by the administrations must be limited to what is necessary. On the information of the people The information of the users must comply to the requirements set by the GDPR and adapted to the target audience. Firstly, paragraph 2 of point II. of article L. 114-8 of the CRPA provides that the user is informed of his rights of access and rectification as well as, where applicable, of his right to oppose the continuation of data processing, " at the latest at the time of the first individual communication" made by the administration. The Commission recommends that the administrations inform users in advance of any contact made with regard to the mention "at the latest at the time of the first individual communication" aforementioned. This prior information could be delivered, in particular, via the website of the administration concerned. Individual information could also be delivered through the various portals offered to users such as "mesdroitssociaux.gouv.fr" or "impots.gouv.fr "In any event, an alternative for people who use digital services little or not at all, as well as for those who do not have access to them, should always be provided. Secondly, the Commission recalls the provisions of the last paragraph of article L. 114-8 of the CRPA which provides for online information of users on the list of administrations as well as the advantages or services which are, or will be, concerned by the transmissions of data. On the exercise of rights of persons The DINUM plans to let the administrations

determine the procedures for exercising the rights of the persons concerned, and in particular the rights of access, rectification and opposition. In order to guarantee an optimal user experience, the Commission recommends that the administrations put in place similar procedures so that all users can easily exercise their rights. easily and directly exercise their rights with all the administrations concerned. However, the establishment of such a system should not lead to the creation of a single national file listing all the information relating to the users contacted, which would be accessible to all the administrations concerned.

Firstly, the rights of users, in in particular the right of access and the right of rectification, should be able to be exercised with all the administrations concerned, whether it is the one having collected the user's data or those carrying out the proactive information. In this respect , Article 19 of the GDPR provides that "the controller shall notify each recipient to whom the personal data have been communicated of any rectification or erasure of personal data or any limitation of the processing carried out". As data controllers, the administrations concerned implementing processing for proactive information purposes should comply with this notification obligation and allow uniform updating of user data. Secondly, the Government has indicated to the Commission that it wanted to expressly exclude, in the decree, the possibility for a person to object to their data being transmitted to one or more administrations for the purposes of a proactive approach. Consequently, the exercise of the right of opposition prior to a first request by the administration will not be possible. The exclusion of this right of opposition can be considered as falling within the logic of the fight against the non - use of services. However, it must meet the conditions set out in Article 23 of the GDPR. question. He must always be able to benefit from it by means other than that of the proactive approach initiated by the administrations. the data of the data subject within the processing concerned. that the information relating to the request and the exercise of this right will be retained. The Commission recommends that access to information concerning persons who have refused further processing be restricted and strictly supervised. This information should be kept in the form of a cryptographic fingerprint, for example via a hashing operation. Finally, the Commission draws the attention of DINUM and the administrations concerned to the need for people to be able to easily exercise their rights according to procedures taking into account in particular the difficulties of access, or even the absence of access, to digital technology for part of the population. On the duration of data retention Article 2 of the draft decree specifies that the duration retention of data is correlated to the specific purpose of each of the procedures concerned by the proactive approach, and that it is assessed on a case-by-case basis, in particular according to the administrative usefulness of the data. Paragraph 3 of point II. of article L.114-8 of the CRPA provides that the decree referred to the Commission "determines (...) the duration and the methods of

conservation of the information and data collected on this occasion". However, the draft decree does not specify the retention periods that must be put in place, contrary to the provisions of the aforementioned Article L. 114-8. The Commission notes that the Government undertakes to supplement the draft text to fulfill this legislative requirement. The Commission will be particularly vigilant in respecting the principle of limiting the period of storage of personal data. In this respect, as had been recommended by the Commission in terms of commercial prospecting, the retention period for information relating to the exercise of the right of opposition by a user should be three years. In addition, the retention period for user data who have not exercised their right of opposition could be determined with regard to the duration of the proactive information campaign carried out by the administration at the origin of the proactive approach, or on the usefulness of the data with regard to the processing in question. In addition, certain information held by the authorities becomes obsolete after a certain period, such as the reference tax income or the age of the user. This temporality could also be used in the determination of retention periods. users eligible for certain advantages or services. The other provisions of the draft decree do not call for any comments from the Commission. President Marie-Laure DENIS