

Deliberation 2021-005 of January 19, 2021 Commission Nationale de l'Informatique et des Libertés Nature of the deliberation:

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n° 2021-005 of January 19, 2021 providing an opinion on a draft order relating to the dematerialized declaration on a public website by professionals of recalls of products, foodstuffs or animal feed (request for opinion no. 2220020) The National Commission for Computing and Liberties ,

Seizure by the Minister for Ecological Transition, the Minister for the Economy, Finance and Recovery and the Minister for Agriculture and Food of a request for an opinion on a draft order relating to the dematerialized declaration on a public website by professionals of recalls of products, foodstuffs or animal feed;

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 the Consumer Code, in particular its article L. 423-3;

Having regard to the rural and maritime fishing code, in particular its article L. 205-7-1;

Considering the modified law n° 78-17 of January 6, 1978 relating to data processing, files and freedoms; On the proposal of Mr. Alexandre LINDEN, commissioner, and after having heard the observations of Mr. Benjamin TOUZANNE, commissioner of the Government, Issues the following opinion: The National Commission for Computing and Liberties (hereinafter the Commission) has been seized by the Minister for Ecological Transition, the Minister for the Economy, Finance and Recovery and the Minister of Agriculture and Food of a request for an opinion on the basis of Articles L. 423-3 of the Consumer Code and L. 205-7-1 of the Rural Code and Maritime Fisheries, on a draft decree relating to the dematerialized declaration on a public website by professionals of recalls of products, foodstuffs or animal feed (hereinafter recall declarations).

Article L. 421-3 of the Consumer Code imposes a general safety obligation on professionals for the products and services they market. When a producer or distributor knows that products intended for consumers that he has placed on the market do not meet the requirements set out in this article, he must take the necessary action to prevent risks for consumers and immediately inform the competent administrative authorities.

In addition to this measure, Article L. 423-3 of the Consumer Code and Article L. 205-7-1 of the Rural and Maritime Fisheries Code provide that these reminder declarations are made by the professionals of electronically on a dedicated website, made

available to the public by the administration.

An order of the ministers concerned, taken after consulting the Commission, must determine the conditions of operation, its address, the information to be declared, the nature of that which is made public, as well as the procedures for declaration, publication and updating this information. This is the purpose of the draft order submitted for the Commission's opinion. On the operation of the system

In order for professionals to be able to make this dematerialized declaration, Article 1 of the draft decree provides that the General Directorate for Competition, Consumer Affairs and Fraud Prevention (DGCCRF) creates a data processing system called RappelConso which consists of three distinct modules:- a website intended for professionals, as well as third parties acting on their behalf, required to make the dematerialized reminder declaration;

- a website intended to inform the public about these recalls;

- a module accessible via the internal State network allowing the recipient agents to approve the publication of a reminder created by a professional, to create and publish reminders on their initiative, to publish information intended for the public on reminders and to manage all of the aforementioned interfaces. On the purposes

The purpose of this processing is to allow the implementation of the dematerialized declarations of recall of products, foodstuffs and animal feed, provided for by article L. 423-3 of the consumer code and article L 205-7-1 of the rural and maritime fishing code.

The Commission considers that the purposes pursued are determined, explicit and legitimate in accordance with the provisions of Article 5.1 b of the GDPR. On the data processed

When a professional wishes to make a dematerialized recall declaration, he must join the professional site RappelConso and provide identification information that allows him to create administrator and user accounts.

The ministry indicated that during the creation of a reminder sheet, the identification elements of the professional, filled in during the creation of a member account, were reused during the registration of a reminder declaration.

The appendix to the draft decree lists the personal data collected for the creation of a member account and the creation of reminder sheets. This list mainly contains contact data for the professional and the requesting agent, as well as data relating to the recalled products.

The Commission considers that the data processed are adequate, relevant and limited to what is necessary in relation to the

purposes for which they are processed, in accordance with the provisions of Article 5.1 c of the GDPR. On information and the rights of individuals

Article 9 of the draft decree provides that the provisions relating to the information of the persons concerned are available in the GDPR section of each of the modules of the RappelConso site.

Asked about this point, the ministry indicated that users of the RappelConso site will be informed of the processing operations concerning them:

- when creating a member account by means of a checkbox and a simple reference to a GDPR section of its module;
- when registering a recall declaration, by means of an information notice appearing on all notifications and including a reference to a GDPR section of the corresponding portal. The Commission takes note of the Ministry's commitment that this section will contain all the information required by Article 13 of the GDPR. be carried out at the time of data collection by the data controller in accordance with the procedures defined in Article 12 of the GDPR, and must include all the information provided for in Article 13 of this text.

In this regard, while the Commission shares the position of the G29 presented in the guidelines on transparency within the meaning of the regulation, adopted in their revised version on 11 April 2018 which recognizes, in a digital universe, the possibility of informing through several levels, it recalls that certain essential 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. In this regard, the Commission takes note of the Ministry's commitment that the information notices brought to the attention of the persons concerned will contain these essential elements. On retention periods

Article 7 of the draft decree provides for the following retention periods for information and personal data:

- the personal data relating to a reminder sheet are kept for a maximum period of six years;
- the personal data of a professional's account are deleted six months after the deletion of the same account;
- the information on the natural person, as well as the legal person making the declaration when the latter is a professional, are kept as long as the user has access to the account of the professional for whom he made the declaration;
- information on an agent of an administrative authority processing declarations or information on reminders is kept as long as the agent remains in the same assignment and exercises the same powers;

- the information relating to the connections and access to the various modules mentioned in article 1 are kept for a period which may not exceed six months from the day of their registration. Questioned on this point, the ministry indicated that the histories of the statements recall declaration sheets were kept in an active database for a maximum of six years.

In this regard, the Commission recalls that the personal data collected must be kept on an active basis only for the duration necessary to achieve the objective pursued by the processing (ie the management of reminders). Once this objective has been achieved, personal data that is still of administrative interest to the organization or to meet a legal obligation must be kept in an intermediate database. The Commission therefore recommends keeping the history of the states of the recall declaration sheets in the intermediate database as soon as the objective pursued has been achieved. On safety measures

The Commission notes that physical and logical protection measures will be implemented to preserve the security of the processing and of the information, to prevent any misuse and fraudulent use, in particular by unauthorized third parties, to preserve the integrity of the data processed and to ensure its availability.

The security measures described by the data controller comply with the security requirements provided for by the provisions of Article 32 of the GDPR.

The president,

M. L. Denis