

Deliberation 2020-041 of March 12, 2020 National Commission for Computing and Liberties Nature of the deliberation: Opinion

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providing an opinion on a draft Order establishing the list of data made available to natural gas suppliers who request it by suppliers offering contracts at regulated natural gas sales prices

(request for opinion no. 20001004)

The National Commission for Computing and Liberties, Seizure by the Minister for Ecological and Solidarity Transition of a request for an opinion concerning a draft decree setting the list of data made available to natural gas suppliers who use it demand by suppliers offering contracts at regulated natural gas sale prices; 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 the free movement of such data, and repealing Directive 95/46/EC; Having regard to law no. 78-17 of 6 January 1978 as amended relating to data processing, files and freedoms; Law No. 2019-1147 of November 8, 2019 relating to energy and climate, in particular its Article 63; Having regard to Decree No. 2018-687 of August 1, 2018 adopted for the application of Law No. 78-17 of January 6, 1978 relating to data processing, files and freedoms, modified by Law No. 2018-493 of June 20, 2018 relating to the protection of personal data; After having heard Mr. Eric PERES, Commissioner, in his report, and Mrs. Nacima BELKACEM, Government Commissioner, in her observations. following opinion: The draft text before the Commission is taken pursuant to IX of Article 63 of Law No. 2019-1147 of November 8, 2019 relating to energy and the climate, which provides in particular that suppliers offering contracts at regulated gas sales tariffs (TRV) are required to grant any company having a natural gas supply authorization that so requests, access to the contact and consumption data they have concerning their customers who benefit from said regulated tariffs. by joint order of the ministers responsible for energy and consumption on a proposal from the Energy Regulatory Commission (CRE) and after consulting the National Commission for Computing and Liberties. Such a system contributes to the gradual changeover gas TRVs to the market supply as introduced by article 63 of the aforementioned law. Indeed, the Council of State ruled on July 19, 2017, after referring a preliminary question to the Court of Justice of the European Union (CJEU), that price regulation in the case of gas does not pursue any objective of general economic interest. As a result, gas TRV contracts are gradually being phased out. The list of data made available by suppliers supplying natural gas at regulated tariffs calls for the following observations from the Commission. On the purposes The Commission observes, as a preliminary point , that neither Law No. 2019-1147 of

November 8, 2019 relating to energy and climate, nor the draft decree submitted for opinion specify the exact purposes of access to customer contact and consumption data who benefit from a contract at regulated tariffs. It notes that the draft decree was the subject of CRE deliberation No. 2019-255 on 21 November 2019. On this occasion, CRE specifies that the scope of the list of data is consistent with the decision-making practice of the Competition Authority, which in its decision no. 14-MC-02 of September 9, 2014, ordered GDF Suez (now ENGIE) to make available to alternative suppliers its data, subject to the absence of opposition from the consumers concerned, certain data from its file of residential and professional customers to the TRVs that it used to propose market offers. Consequently, the scope of the list of data proposed by CRE is restricted to those necessary for commercial prospecting and the construction of supply offers adapted to the profile of the consumer. It emerges from this deliberation that the provision of the purpose of this data is to allow the recipient companies, on the one hand, to establish market offers adapted to customers who benefit from a gas TRV contract with incumbent suppliers (non-domestic consumers, domestic consumers, sole proprietors of a building with main residential use and syndicates of co-owners of such a building) and, on the other hand, to be able to canvass these customers commercially. In order to regulate the reuse of data by the recipient companies and thus ensure compliance with the principle of purpose limitation set out in Article 5(1)(b) of the General Data Protection Regulation (GDPR), the Commission invites the Ministry to specify these purposes in the draft text submitted for opinion. On the nature of the data made available to alternative suppliers and their qualification under the amended law of 6 January 1978 The Commission recalls that in application of the Article 4 of the GDPR, data relating to identified or identifiable natural persons, whether individuals or professionals, constitute personal data, the processing of which is subject to the provisions of the Regulation. A natural person can be identified directly (for example, by a surname and first name) or indirectly (for example, by a telephone number, postal or email address). On the other hand, the processing of data relating to legal persons, when these are not attached to a natural person, do not fall within the scope of the GDPR. Firstly, the Commission notes that the draft decree setting the list of data submitted to it for opinion, concerns both natural and legal persons. In this respect, it observes that within the category of sole owners of a building with main residential use, it is not excluded to be able to identify and that this category is therefore likely to contain personal data (in particular contact data and billing or consumption address). The Commission also notes that within the category of customers its final non-domestic, it is not excluded to be able to identify natural persons practicing in a liberal capacity (lawyers, doctors, etc.) from their domicile, under a corporate name made up of their surname, and that in Consequently, this category is likely to contain personal data (in

particular contact data and billing or consumption address). Secondly, the Commission observes that all the data listed in the draft decree, in particular at articles 3 and 4 concerning end customers belonging to the category of sole owners of a building for main residential use and domestic end customers, are personal data when they relate to a natural person. Indeed, if some of these technical data (such as the subscribed tariff, the tariff zone, the type of gas usage, the type of meter, the transmission distribution interface point, the annual reference consumption, etc.) , taken in isolation, do not make it possible to identify an end customer, a natural person, their association could make it possible to individualize the latter, in such a way that they cannot be considered as anonymous. In addition, the personal nature of these data is highlighted by the very purpose of their processing, as defined by the CRE, namely the construction of supply offers adapted to the profile of the consumer, with a view to targeted commercial prospecting. .Therefore, in order to clarify the nature of this information, the Commission notes that it would be useful to recall in the draft decree that the data made accessible are of a personal nature when they relate to an identifiable natural person. directly or indirectly and that they must therefore be processed in compliance with the conditions laid down by the GDPR, in particular in terms of prior information to the persons concerned. On the relevance of the data with regard to the purposes pursued by the processingThe Commission notes that the data listed in articles 1 to 4 of the draft decree such as the landline telephone number of the holder of the gas contract, the de facto address uration of the end customer, the annual reference consumption or the tariff zone, are mainly contact data and consumption and tariff data. In accordance with the provisions of Article 5(1) (c) of the GDPR, the Commission considers that the list of data communicated appears adequate, relevant and limited to what is necessary with regard to the purposes of commercial prospecting and construction of supply offers adapted to the profile of the consumer mentioned by CRE in its aforementioned draft deliberation.

The President Marie-Laure DENIS