Deliberation 2022-023 of February 17, 2022Commission Nationale de l'Informatique et des LibertésNature of the deliberation: OpinionLegal status: In force Date of publication on Légifrance: Thursday June 16, 2022NOR: CNIX2216411VDeliberation n° 2022-023 of February 17, 2022 providing an opinion on a draft decree implementing Article 4-1 of Ordinance No. 58-1360 of December 29, 1958 on the organic law relating to the Economic, Social and Environmental Council (request for opinion No. 21016019)The National Commission for the 'Informatique et des Libertés, Seizure by the Minister of Justice of a request for an opinion concerning a draft decree implementing Article 4-1 of Ordinance No. 58-1360 of December 29, 1958 establishing organic law relating to the Economic, Social and Environmental Council; 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 (RGPD); Having regard to Organic Law No. 2021-27 of January 15, 2021 relating to the Economic, Social and Environmental Council, in particular its article 3; Having regard to Law No. 78-17 of January 6, 1978 as amended relating to data processing, files and freedoms; After hearing the report of Mrs. Sophie LAMBREMON, Commissioner, and the observations of Mr. Benjamin TOUZANNE, Government Commissioner, Issues the following opinion: The National Commission for Computing and Liberties (hereinafter "the Commission") has been urgently requested by the Ministry of Justice of a draft decree implementing Article 4-1 Ordinance No. 58-1360 of December 29, 1958 on the organic law relating to the Economic, Social and Environmental Council (CESE). A corrective referral was sent to it on December 22, 2021.It is provided for by the Constitution, in its article 69 paragraph 3, that "The Economic, Social and Environmental Council may be seized by way of petition under the conditions set by an organic law After examination of the petition, he informs the Government and Parliament of the follow-up he proposes to give to it". The conditions for implementing the right to petition the EESC are specified by article 4-1 of ordinance no. 58-1360 of 29 December 1958, which initially sets the threshold for the admissibility of petitions at five hundred thousand .Organic law n° 2021-27 of January 15, 2021 relating to the Economic, Social and Environmental Council has in particular lowered the conditions allowing citizens to seize the ESEC by way of petition, on any question of an economic, social and environmental nature. Thus, from now on, Article 4-1 of Ordinance No. 58-1360 mentioned above, in its version resulting from this law, allows the CESE to be seized by way of petition by at least one hundred and fifty thousand people aged sixteen years and over. The draft decree aims to specify the terms and conditions of admissibility of referral to the CESE by way of petition. It defines the information collected from petition signatories and determines the retention period. It also sets the rules relating to access to this

information. Article 3 of the aforementioned Organic Law No. 2021-27 provides that the information collected from the signatories in order to guarantee their identification is specified by decree in Council of State , taken on the advice of the Commission. The Commission stresses that the question of determining the law applicable to the processing of personal data implemented by the EESC in the context of the right of petition is delicate. If certain processing operations implementing French constitutional provisions and not relating to national defense or State security fall solely under Title I of the Data Protection Act (see CNIL, SP, January 14, 2021, Opinion on draft decree, Single Electoral Register, No. 2021-008, published), the Commission agrees with the Government in considering that in this case, the GDPR is applicable. Indeed, the Court of Justice of the European Union considered that the GDPR was applicable to the processing of personal data carried out by the Committee on Petitions of the Parliament of a Federated State of a Member State in the context of its activities. (CJEU, third chamber, July 9, 2020, n° C-272/19, VQ v Land Hessen). On the general conditions for implementing the system Firstly, the Commission invites the Government to clarify the draft decree. This indicates in its article 1 that the petition and the list of signatories, with the appropriate supporting documents, can be sent to the EESC by post, by e-mail or removable storage medium (USB key type) or "by platforms in line ". Article 3 lays down supporting documents which vary according to the mode of transmission to the ESEC chosen by the sole representative of the petitioners. However, it emerges from the exchanges with the ministry and the ESEC that: on the one hand, with regard to the transmission " by the platform", the role of the platform is actually to allow a method of collecting signatures online. The identification data will therefore be collected by the platforms but the transmission to the President of the EESC of these elements will be done by a secure exchange application between the platform and the EESC. The order to carry out this transmission by the approved platform or that of the EESC can only be given by the sole representative; on the other hand, the information collected from the petitioners is determined by the method or methods of signature that can be used. by the petitioners, not by the final mode of transmission. The Commission recommends that the decree clearly indicates that the collection of signatures can be done by handwritten signature, by digital signature, by electronic signature, or by means of an online platform to which the user provides his name and e-mail address. It also seems necessary that the role of the platforms be clarified. Finally, the Commission emphasizes that the choice made for the collection of signatures calls for different security precautions for the processing of personal data. or structures organizing the collection of signatures will be responsible for the processing induced by the collection of signatures and proof of identity. The ministry indicates that once the data has been transmitted to the EESC by this sole representative, the

president of the EESC will be the data controller for the information collected from the signatories of the petitions addressed to him, regardless of his mode of referral. The Commission notes that this clarification has been added to Article 3 of the draft decree. She considers that this provision of the draft decree should be amended to indicate that it is the EESC, and not its president, who will be responsible for processing this information. With regard to checking the identity of the persons concerned, it notes that the sole agent "will carry out a consistency check on the identity of the signatories", while the EESC office will check the veracity of the information collected, and will ensure that the signature does indeed come from a person physical meeting the legal conditions to be a signatory and that the latter has not signed the same petition several times. The Commission regrets that it did not receive more details enabling it to assess how the identity check of signatories will be carried out in practice and invites the Ministry to clarify this point. The Commission notes that the list of signatories will not be published. It also notes that the signatories may contact the ESEC to verify that their signature and the personal data concerning them have been recorded and validated.On the data collectedArticle 3 of the draft decree lists the information that will be collected from the signatories, namely: in all cases: the surname, the usual name, the first names, distinguishing, where applicable, the usual first name, the date of birth, the postal address; data which will vary depending on the method chosen for the collection of signatures, from which will derive the method of transmission of documents to the CESE. First, the ministry maintains that "the deduction of the political opinions, religious or philosophical convictions of the signatories not possible with regard to the primary purpose of the decree, which aims – in application of article 4-1 of the order of December 29, 1958 – solely to allow the identification of the signatories and no "sensitive" data is collected for this purpose". However, the Commission notes that depending on the content of the text of the petition, the information recorded may be of such a nature as to reveal so-called "sensitive" data, within the meaning of Article 6 of the law of January 6, 1978 as amended. Indeed, opinions or convictions, real or supposed, could be deduced from the data collected concerning the signatories, for example data relating to political opinion. It therefore considers that Article 3 of the draft decree will have to be amended in order to expressly mention that "sensitive" data may be processed, if necessary, on the basis of the mission of important public interest under the conditions defined in Article 9-2 of the GDPR.Secondly, Article 1 of the draft decree provides that the sole agent sends the signed petition to the ESEC President according to the procedures indicated and may in particular do so by means of the platforms of online petition approved by the EESC or a platform developed by the EESC. The Commission notes that the draft decree has been supplemented in order to provide that the platforms concerned comply with the technical specifications

and electronic identification procedures corresponding to the level of guarantee so-called "low" provided for in the appendix to Commission Implementing Regulation (EU) 2015/1502 of 8 September 2015 setting the technical specifications and minimum procedures relating to the guarantee levels of the electronic identification means referred to in Article 8(3) of Regulation (EU) No 910/2014 of the European Parliament and of the Council on electronic identification and trust services for electronic transactions within the internal market and have a mechanism protecting them from automated submissions. not to illicit re-use of the data collected, in particular sensitive data. such a system is not necessary in this case. The Commission considers it essential to set up a logging system, making it possible to keep track of s data consultation, creation and modification operations, in accordance with its deliberation no. 2021-122 of October 14, 2021 adopting a recommendation relating to logging. In particular, a retention period for the logs of six to twelve months is recommended, and these logs must be subject to regular automatic control, in order to detect abnormal behavior and generate alerts if necessary. The proactive processing of these logs is all the more relevant since the data relating to a petition is intended to be processed quickly and can lead to significant decision-making for the institution and society. While no provision of the GDPR effectively requires a logging system to be provided for in the regulatory act creating the processing, the Commission recalls that providing for it in the decree obliges the administration to put it in place and constitutes an important guarantee. . It also notes that many decrees and orders regulating the processing of personal data provide for this. The Commission therefore considers that the draft decree should be supplemented in order to provide for such a logging system.On accessors and recipientsArticle 6 of the draft decree indicates that "have access to all personal data and information mentioned in article 4, by reason of their attributions and within the limits of the need to know, the members of the bureau of the Economic, Social and Environmental Council responsible for examining the admissibility of the petition as well as the agents and service providers specially accredited by the Council". The Commission takes note of the clarifications provided by the Ministry according to which the General Secretary of the EESC will be authorized mainly in respect of first-time buyers, in order to check the accuracy of the information relating to the identity of the signatories prior to the examination of the admissibility of the petitions. It also notes that the other authorized agents and service providers were not yet fully defined at this stage. On retention periods Article 4 of the draft decree specifies the retention period for personal information and data recorded, the data being destroyed: without delay after publication in the Official Journal of the EESC's opinion on the petition; where applicable, after a period of two months from the decision of the EESC bureau declaring the petition inadmissible or, in the event of an appeal against this decision, without delay from the

decision of the Council of State confirming the inadmissibility of the petition. The Commission notes that in the event of a decision of inadmissibility, the conservation of signatures is necessary in the event of a contentious appeal, for the durations provided for by the draft decree, in order to guarantee that the appeal can usefully be examined. With regard to the case where the petition is admissible, it notes that there is no provision for the early deletion of the data, in particular in order to allow the ESEC office to have all the supporting documents during the investigation. of the petition.On the rights of the persons concernedFirstly, with regard to the information of the persons concerned, the Commission considers that the wording of Article 6 of the draft decree relating to the right to information is ambiguous and should be specified insofar as, in accordance with Articles 12 et seq. of the GDPR, it is the responsibility of the data controller to provide the data subject with the information listed and not for the person to request communication of this information. information of the persons concerned by the persons who will collect the signatures, the Commission notes that this will be ensured under the conditions provided for in Article 13 of Regulation (EU) 2016/679 of 27 April 2016 by a mention on the medium used to collect support for the petition (paper, dematerialized medium or on the ESEC website or partner platforms). The Commission recalls that the EESC should also provide information on the processing operations for which it will be responsible, after transmission of the signatures. It considers, with regard to the elements transmitted, that the collection of data by the EESC will be indirect insofar as it is not the latter who will be responsible for processing when the signatures and proof of identity of the persons concerned are collected. , including when its platform will be used. It notes that the Ministry intends to clarify the draft decree and apply the exception provided for in Article 14-5-b) of the GDPR. The Commission considers that the information notices could usefully be supplemented in order to detail the procedures to be followed by the persons concerned to verify that their signature and their personal data concerning them have been recorded and validated.Secondly, article 6 of the draft decree provides that the rights of access and rectification are work with the President of the EESC under the conditions provided for in Articles 13, 15 and 16 of the GDPR. This provision also indicates that, pursuant to point (h) of paragraph 1 of Article 23 of the GDPR, the rights of limitation and opposition provided for in Articles 18 and 21 of this Regulation do not apply to this processing. The Commission wonders about the very existence of the right of opposition since the processing of signatures by the ESEC seems to result from a legal obligation, within the meaning of Article 6 of the GDPR, in which case this does not provide no right of objection. In any event, it approves of the fact that the decree specifies that the right of opposition cannot be exercised. exclude the right to restriction, in particular if the data subject disputes the accuracy of certain data. It notes that the Ministry

considers that Article 23-1-h) of the GDPR justifies the exclusion of the right to limitation, insofar as the CESE exercises a mission of control and regulation (the identification of petitioners and examination of the admissibility of petitions). Finally, the Commission wonders about the procedures for exercising the right to erasure and regrets not having had more details on this subject. She wonders about the possibility for a person to withdraw their support for the petition and believes that the draft decree should clarify this point. In the event that a person were to withdraw their support for the petition, their data would no longer appear necessary with regard to the purposes for which they are processed and should then be deleted. It takes note of the clarifications provided by the Ministry that the processing will be based on a legal obligation, and that the right to erasure does not apply in accordance with Article 17-3-b) of the GDPR. Firstly, the Commission notes that the file transmitted does not contain a data protection impact assessment (DPIA) because the ministry considers that the criteria requiring the completion of a DPIA are not met. However, the Commission considers that the processing may present a high risk for the persons concerned insofar as it is likely to reveal so-called "sensitive" data within the meaning of article 6 of the law of January 6, 1978 as amended, involve processing at large scale of such data given the number of potential signatories of the petitions, is likely to concern vulnerable people and may concern minors, insofar as the signatories must be sixteen years of age or older. In view of these elements, it considers that the processing could meet at least two criteria requiring the performance of a DPIA and recommends, in any event, that the ESEC perform a DPIA. This observation also applies to the platforms for collecting signatures that the EESC will develop or approve. Secondly, the Commission regrets that it has not received any information relating to the architecture or security of the system and therefore cannot rule on the compliance of the device with the security requirement provided for in articles 5-1-f) and 32 of the GDPR. However, it draws the Ministry's attention to the following points. The Commission stresses that any platform used to collect signatures must, as a teleservice allowing an exchange between administration and users, comply with the general security reference system (RGS) provided by decree no. 2010-112 of February 2, 2010. As such, it must be subject to a risk analysis including the risks weighing on the persons concerned. The Commission also recalls that it is up to the data controller to formally certify acceptance of the security level of the teleservice through RGS certification. In particular, the Commission considers that the measures recommended by the National Agency for the security of information systems in the documents entitled "Recommendations for the implementation of a website" and "Recommendations for the implementation of a website: mastering security standards on the browser side" should be implemented work.Finally, the Commission recalls that the processing of photocopies of identity documents must be carried

out with the utmost rigor in terms of security. In particular, it recommends to the data controller that the digitized documents be subject to encryption measures in accordance with appendix B1 of the RGS both in terms of databases and backups. Equivalent measures must be taken for the conservation of copies of identity documents in paper form, which must be carried out in a secure piece of furniture. The deletion of these documents must be carried out in compliance with the state of the art in terms of secure deletion, whether for digital or paper versions. The President Marie-Laure DENIS