

Deliberation 2021-094 of July 22, 2021 Commission Nationale de l'Informatique et des Libertés Nature of the deliberation:

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CNIX2132821V Deliberation n° 2021-094 of July 22, 2021 providing an opinion on a draft decree creating a processing of personal data relating to the transmission of data of persons involved in the sector of private public transport of people called "Data of special public transport of people" (request for opinion no. 21011170) The National Commission for Computing and Liberties,

Seizure by the Minister for Ecological Transition of a request for an opinion concerning a draft order creating a processing of personal data relating to the transmission of data from persons involved in the private public transport sector referred to as Data of the particular public transport of persons;

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 (GDPR);

Having regard to Directive (EU) 2016/680 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 by competent authorities for the purposes of prevention and detection of criminal offences, investigation and prosecution thereof or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA;

Having regard to the transport code;

Considering the modified law n° 78-17 of January 6, 1978 relating to data processing, files and freedoms, in particular its article 31; After having heard the report of Mrs Marie-Laure DENIS, president, and the observations of Mr. Benjamin TOUZANNE, Government Commissioner, Issues the following opinion: The National Commission for Computing and Liberties (hereinafter the Commission) was seized on March 19, 2021 by the Ministry of Ecological Transition, then on June 25, 2021 by amending referral, of a draft decree creating a processing of personal data relating to the transmission of data of persons involved in the sector of the particular public transport of persons called Data of the particular public transport of persons .L Article L. 3120-6 of the Transport Code, introduced by Law No. 2016-1920 of December 29, 2016 relating to the regulation, accountability and simplification in the private passenger public transport sector nnes, provides: on the one hand, the obligation for the reservation centres, mentioned in article L. 3142-1 of the same code, to communicate to the administrative

authority any data useful for monitoring compliance with the legislative provisions and regulations relating to access to the professions of private public transport of persons (T3P), their conditions of exercise and the networking activities mentioned in Title IV (The networking activities) of Book 1 (Road transport of persons) of the transport code. on the other hand, that the administrative authority may require these reservation centers to periodically transmit, for statistical purposes, the data necessary to know the activity of the T3P sector. In its deliberation No. 2019-054 of April 25, 2019, the Commission ruled on a draft decree introducing Articles R. 3120-40 and R. 3120-41 of the Transport Code. It had noted that these provisions are limited to specifying the methods of data transmission and to mention the competent authority for each purpose, and had asked to be seized for an opinion on any draft regulatory act taken pursuant to the decree and the Article L. 3120-6 of the Transport Code with a view to completing the legal framework. persons working in the public transport sector, pursuant to article L. 3120-6 of the transport code. It refers, for the personal data likely to be processed and their retention periods, and in order to improve the readability of the provisions governing each of the purposes concerned, to two orders issued respectively pursuant to Articles R. 3120-40 (for the purpose of control) and R. 3120-41 (for the purpose of statistics) of the Transport Code, on which the Commission was also informed. On the purposes Article 1 of the draft decree specifies that the processing created has for purposes, under the conditions set out in I and II of Article L. 3120-6 of the Transport Code: 1° Monitoring compliance with the legislative and regulatory provisions relating to access to the professions of private public passenger transport , their conditions of exercise and the networking activities mentioned in Article L. 3141-1 of the Transport Code (verification of compliance with the conditions of access and exercise of the profession conditions, research he and finding of criminal offences) and 2° The periodic transmission, for statistical purposes, of the data necessary to know the activity of the sector of the particular public transport of people. With regard to the purpose of control The Commission underlines that the exchanges with the ministry as well as the analysis of reveal that the purpose of control specified in 1° of article 1 of this draft decree refers, in practice, to two separate processing operations. Indeed, although they must both make it possible to ensure compliance with the legislative and regulatory provisions as provided for in 1° of paragraph 1 of Article L. 3120-6 of the Transport Code, these processing operations present certain specificities which influence, in particular, the intensity of their intrusiveness. of data The Commission notes that this data is varied and likely to give a particularly precise view of the activity of the professionals concerned. However, it takes note of the Ministry's clarifications that these data are only intended to be collected by the authorities mentioned above, within the framework of a delimited control action and in order to confirm existing

suspicious with regard to an identified person, whose sources may be various (identification of anomalies in the context of the processing implemented from data collected periodically, complaints from users and players in the sector, etc.). Also, these data will be used to constitute a set of clues within the framework of a specific procedure and will not be collected on a regular basis. Furthermore, in order to ensure the need for such data collection and that it be adapted accordingly, the Commission invites the Ministry to draw up and send it a report on the effectiveness of the system, in particular if regarding the number of shortcomings identified thanks to the data processing put in place. On the other hand, the Commission emphasizes that the data referred to in Appendix II of the draft order issued pursuant to I of Article R. 3120-40 of the Transport Code, which is more limited in scope, is on the other hand collected periodically from reservation centers in order to ensure regular control of access to and exercise of the profession by cross-referencing them with certain files (register of VTC operators, register of drivers, etc.) and lead to the implementation of systematic monitoring of compliance with the rules applicable to these professionals. These checks will therefore have a narrower scope than those for which the data requested may be used from time to time, but will be carried out independently of any suspicion with regard to an identified professional. Firstly, the Commission recalls that the right of communication introduced with regard to data likely to be collected on an ad hoc basis, in the event of suspicion of fraud, must in no case lead to feeding a database intended to detect, upstream, anomalies unrelated to the specific case concerned by control. Secondly, the Commission considers that it would be appropriate for the order creating the processing to distinguish, explicitly, the processing as presented above in order to highlight the two logics. As regards the statistical purpose With regard to the statistical purpose referred to in 2° of the draft decree, the Commission invites the Ministry to modify the wording so that it explicitly recalls that it is prohibited to reuse this data for other purposes, in particular control and sanction of the professionals concerned. obligation for reservation centers to inform, in a visible manner, the professionals whose personal data are processed, of the existence of the data processing carried out for statistical and control purposes. It also takes note of the clarification that information on processing for T3P players will be published on the ministry's website. It recalls that, in accordance with Article 12 of the GDPR, the information must be provided in a concise, transparent, understandable and easily accessible manner, in clear and simple terms. In addition, the Commission takes note of the express exclusion of the right of opposition both with regard to the purpose of control and the purpose of statistics. On the other hand, it recalls that the ministry responsible for transport, or the reservation centers collecting data on T3P professionals, must satisfy other requests for the exercise of rights made by the persons concerned in

accordance with Articles 12 and following of the GDPR and of Title III of the amended Data Protection Act. On securityThe Commission notes the impossibility for the ministry to specify, at this stage, the security measures of the data collection system, the terms of which will be determined later after discussions with the networking platforms. he extent of the data collected and the sensitivity of the processing envisaged, the Commission nevertheless stresses that the security measures which will be put in place by the Ministry, in particular in terms of encryption of flows and backups, authentication, logging and authorization of the agents, must provide satisfactory guarantees as to the authenticity, integrity and confidentiality of the data.

The President Marie-Laure DENIS