

Deliberation 2022-105 of October 20, 2022 Commission Nationale de l'Informatique et des Libertés Nature of the deliberation: Opinion Legal status: In force Date of publication on Légifrance: Friday April 28, 2023 NOR: CNIX2310511V Deliberation No. 2022-105 of October 20, 2022 providing an opinion on a draft decree creating an automated processing of personal data called the "Computerized System for Cross-checking, Guidance and Coordination of Organized Crime Procedures" (SIROCCO) (request for opinion no. 22013497) The National Commission for information technology and freedoms, Request for an opinion by the Minister of Justice concerning a draft decree creating an automated processing of personal data called "Computerized System for Cross-checking, Orientation and Coordination of Organized Crime Procedures" (SIROCCO); Having regard to Law No. 78-17 of January 6, 1978 as amended relating to data processing, files and freedoms, in particular its Articles 31-II and 89-II; After having heard the report by Mrs. Christine MAUGÜÉ, commissioner, and the observations of Mr. Benjamin TOUZANNE, government commissioner, CONSIDERING THE FOLLOWING CONTEXT The National Commission for Computing and Liberties (hereinafter "the Commission") was seized by the Ministry of Justice of a draft decree creating an automated processing of personal data called "Computerized System for Cross-checking, Orientation and Coordination of Organized Crime Procedures" (SIROCCO). The draft decree should enable the specialized inter-regional jurisdictions (JIRS) and the national jurisdiction responsible for combating organized crime (JUNALCO) to combat more effectively the highly complex criminal phenomena for which they are responsible, by allowing them to coordinate their actions. It thus aims to provide them with an exhaustive database relating to the investigations and investigations that they carry out, to facilitate the monitoring of procedures relating to organized crime by the JIRS and their general prosecutors' offices and to ensure the cross-checking of information necessary for the management of investigations between these jurisdictions and JUNALCO. . JUNALCO, created by Law No. 2019-222 of March 23, 2019 on programming and reform for justice, has concurrent national jurisdiction to deal with very complex cases of organized crime, in particular those extending beyond beyond the jurisdiction of a single JIRS. Such a project is thus justified, on the one hand, by the concurrent competence of the JIRS which is exercised over extended territorial jurisdictions and, on the other hand, by the fact that the presence of criminal organizations in the jurisdictions of several of these JIRS or throughout the territory makes necessary a global and coordinated judicial treatment. According to the ministry, the expected benefits tend to allow coordination between the JIRS but also between the JIRS and JUNALCO : by a coherent referral to the various JIRS: the existence of a dedicated tool will make it possible to identify the cases which the JIRS has taken up and to identify criminal tendencies as well as to reassess its position on the cases which

have been referred to it reported (if it finally wishes to take up the case); real coordination between the JIRSs: a common tool could make it possible to generate alerts when individuals targeted by the procedures also appear in those of the other JIRSs; coordination between the JIRS and JUNALCO: the tool will allow JUNALCO in particular to make contact with the JIRS concerned by the same phenomenon and to provide a legal response adapted to global phenomena; highlighting the activity and action of each JIRS, JUNALCO and their whole by the provision of quantified, reliable and exhaustive data, concerning the reported and processed cases. Each JIRS will thus be able to create a new case in SIROCCO when it is notified. The JIRS will be free to determine internally who will carry out this task (clerk, specialized assistants or prosecutors). Then, the files created in SIROCCO will be filled in manually as the procedure evolves by the actors of these jurisdictions. SIROCCO processing will have an "infocentre" module, which will be fed by an automatic flow from the SIROCCO application and will include almost all of the data in a pseudonymized manner. The infocentre module must make it possible to: offer JIRS/JUNALCO users the possibility of carrying out queries on piloting data; carry out, for those responsible for statistical studies, studies on the activity of JIRS evaluation of criminal policy.

ISSUES THE FOLLOWING OPINION ON THE DRAFT DECREE On the applicable legal regime and the purposes of processing Article 1 of the draft decree specifies the purposes assigned to SIROCCO processing: monitoring of procedures relating to organized crime by the JIRS and their general prosecutor's offices; the cross-checking of the information necessary for the direction of the investigations between the said courts and the national court responsible for the fight against organized crime. Firstly, the processing will not make it possible to establish cross-checks on the database of links or behavior within the meaning of serial analysis files as provided for by articles 230-12 to 230-18 of the Code of Criminal Procedure (CPP). Cross-checks will only be possible according to the following methods: a manual search function, which can be carried out on the entire SIROCCO database, except on the identity data entered; an automatic cross-check function, which can only relate to the identity of the defendant. In the event of a positive match, the user will receive an alert in SIROCCO and he will be invited to contact the department at the origin of this match. No other information will be provided for this automatic search, witnesses and victims will be excluded from this modality. Secondly, the processing will make it possible to build consolidated statistics which can be carried out, on the one hand, by each of the JIRS or the General Prosecutor's Office of the JIRS concerned, and on the other hand, by the Directorate of Criminal Affairs and Pardons (DACG) on the basis of pseudonymised data concerning the activity of the eight JIRS and JUNALCO, on the all items contained in SIROCCO excluding free fields. The Ministry did not consider it necessary to mention in the regulatory act the statistical purpose of the

tool, which, in its view, is intrinsic to any processing of personal data. The Commission points out that, although it has already admitted, in certain cases, that statistics may be calculated from data for public processing where the regulatory act governing it does not explicitly provide for this purpose, it recommends that such a purpose be explicitly indicated therein. Statistics are in fact, most often, anonymous data, the use of which is no longer governed by the rules for the protection of personal data and therefore potentially exceeds the initial purposes of the processing. In this case, the SIROCCO processing will contain a dedicated module for the production of statistics which will pursue a specific purpose, to allow the measurement of the efficiency of criminal policies in the area of organized crime and the adaptation of these criminal policies locally, distinct from purposes listed by the regulatory act. The calculations envisaged including in particular the aggregation of information associated with the respondents whose data concerning them can be linked together thanks to their pseudonymous identifier, the data contained for this purpose in the infocentre are personal data. The Commission therefore invites the Ministry to expressly provide for this purpose with regard to Article 4-2° of the law of 6 January 1978 as amended, specifying that it is a purpose tending to the production of statistics, by indicating the anonymous or at least pseudonymous character of each of the data and, if possible, by regulating the use of these statistics. It takes note of the commitment of the ministry to add in the draft decree the purpose relating to the production of statistics. In any event, it invites the Ministry to ensure that the names of the respondents cannot be easily found from the pseudonymous technical identifiers used. Thirdly, the Commission notes that the infocentre module will only purpose the development of statistics in order to provide indicators and dashboards for the management of JIRS activity in particular. If the processing does not give rise to any sending of information with a view to prosecuting offenses or breaches, the infocentre module nevertheless aims exclusively, through these statistics, to make it possible to improve the fight against offenses relating to organized crime. and ensure better repression of criminal offences. The statistical purpose of the tool therefore falls under the regime of Directive (EU) No 2016/680 of 27 April 2016. Subject to the above, the Commission considers that the intended purposes are determined, explicit and legitimate in accordance with article 4-2° of the amended law of January 6, 1978. On the planned linksIt appears from the elements transmitted that SIROCCO may be the subject of two manual links with the "CASSIOPEE" processing (Application Chain Supporting the Information System Orients Criminal Procedure And Children) and the "digital criminal file" (DPN). On the one hand, the Commission notes that, for the "CASSIOPEE" processing, it will only be a question of reporting in SIROCCO the "CASSIOPEE number" of the associated procedure. The Ministry specifies that this common number is used to identify a file throughout the

criminal chain and that it constitutes the only official reference affixed to judicial documents. On the other hand, if the processing offers the possibility of joining procedural documents in order to allow monitoring of the progress of the procedure, it is not envisaged that the entire criminal file from DPN will be attached to the SIROCCO file. In this respect, it is planned to distribute to the courts a doctrine of use relating to attachments. Without calling into question the legitimacy of these links, the Commission recalls that the communication of the elements appearing in the procedures instruction is governed by legal provisions and is only permitted under certain conditions. It also considers that it remains essential that all of the aforementioned processing operations are not duplicated in SIROCCO and that the acts creating CASSIOPEE and DPN must, if necessary, be modified in order to allow links to be made with SIROCCO processing. the data collected

Article 2 of the draft decree lists the persons concerned by the processing: the persons implicated, indicted, placed under the status of assisted witness and prosecuted, whether they are subsequently the subject of a dismissal of a dismissal decision or that these persons are subsequently sentenced, released or acquitted; the victims; the witnesses; the personnel of the Ministry of Justice in function in the JIRS or the JUNALCO, or members of the investigation services in charge of the file; any person who may appear in the pleadings and other documents included in the processing. As the first category of persons concerned by the processing, insofar as the persons prosecuted cannot be the subject of a classification without further action. Firstly, the ministry specifies that SIROCCO will have a module of infocentre, which will be fed daily by an automatic feed from the SIROCCO application and will include almost all the data in a pseudonymized manner. It is also stated that the infocentre does not contain any identity data and that the data "will be completely anonymized". The Commission takes note that any data contained in the free field areas of the SIROCCO processing will not be transmitted to the infocentre. At the end of the retention period provided for the data contained in SIROCCO, the correspondence between the data from the infocentre and those processed in SIROCCO can no longer be carried out insofar as the corresponding record of the person in SIROCCO has been deleted. The Commission notes that, in view of the categories of data concerned (offence, start date and end of the facts, etc.) which will be transmitted to the infocentre, and the existence of a technical identifier making it possible to link together the cases concerning the same respondent, real anonymization seems difficult to achieve. However, in order to protect the persons concerned, the precision of certain information could be reduced by means of statistical aggregation techniques or by reducing the granularity of the data. The Commission takes note of the government's commitment to keep only the year in the dates of the events described in the data of the infocentre after the expiry of the retention period of the data in SIROCCO.

Although it considers that this measure makes it possible to reduce the risks of re-identification based on data from the infocentre, it invites the Government to carry out an analysis of the risks of re-identification according to Opinion No. 05/2014 on the techniques of anonymization adopted by the Article 29 group (G29) on April 10, 2014. Secondly, the processing may record so-called "sensitive" data within the meaning of I of article 6 of the law of January 6, 1978 amended in strictly to the extent that this recording is necessary for the purpose assigned to it. In the event that such data could be entered in the free field areas, and in accordance with article 88 of the law of January 6, 1978 as amended, the processing of such data is only possible in case of "absolute necessity, subject to appropriate safeguards for the rights and freedoms of the data subject". These free fields should be pre-populated with information on how to fill them in. Although the Ministry has undertaken to implement a user alert mechanism by means of a message on first connection recalling the exclusion in principle of sensitive data in free fields, unless absolutely necessary, the Commission recalls that strict control must be ensured. In this respect, the ministry indicates that a random control of the processing will be carried out by the "Computing and Freedoms" referent of the DACG during the initial period of commissioning of the application. However, the Ministry would like these controls to be subsequently carried out by the heads of jurisdiction and not by a member of the DACG with the dual objective of accountability and efficiency. The implementation of this control constitutes a guarantee contributing to the implementation in compliance of the processing "SIROCCO" with the requirements for the protection of personal data. The Commission notes that these checks will be instituted by the employment doctrine and that they will have to be carried out by the heads of jurisdiction or their representatives twice a year. Thirdly, the draft decree provides for the collection of data identification of victims and witnesses, which will be entered manually in SIROCCO by the users of the processing. According to the Ministry, if the processing is not intended to systematically process data relating to these people, this data may appear in the notes monitoring the procedure and, in the case of victims, they may possibly appear in the free fields. If they are involved in another procedure registered in SIROCCO or in the name of the case, to identify the procedure. The Commission draws the attention of the Ministry to the fact that, as far as possible, the data of civil status relating to victims should not be used for the naming of cases, given the risk of confusion that this would cause. It recommends that this be indicated in the employment doctrine which will be distributed to the courts and takes note of the ministry's commitment on this point. The other categories of personal data collected do not call for comments on the part of the Commission. Subject to the foregoing, the data processed are adequate, relevant and not excessive in relation to the purposes pursued. On the retention period of data Article 4 of the draft

decree provides for the retention periods for information and personal data recorded in the processing: ten years from the last update of the state of the legal proceedings; this period is extended to ten years after a final conviction in criminal matters and to fifteen years after a final conviction in criminal matters. criminal or, if this duration is later, ten years after the effective date of the end of the sentence. (investigation, investigation, hearing, judgment, appeal) and a reconciliation between two cases is not likely to cause a new data retention period to run. Secondly, these retention periods are justified by the Ministry by the desire to retain a retention period identical to that retained in the context of the "Census of terrorist cases" (RECAT) application. The Ministry indicates that, by these retention periods, it intended to operate an arbitration between the necessarily significant retention period in order to allow adaptation to the specificity of the treatment of organized crime, requested by the professionals in court, and the Imperative to limit the processing of personal data. In addition, the draft decree provides that, in the event of a decision of release or acquittal that has become final, the data is erased. In addition, there is a function for the automatic deletion of data from the case or file, respecting criteria and a defined deadline. The Commission considers that, overall, these data retention periods are appropriate but recommends that the Ministry supplement its project by guarantees for minors, as it had underlined in its deliberation n° 2020-101 of October 1, 2020 providing an opinion on a draft decree creating a processing of personal data called RECAT. Thirdly, since the data from the infocentre cannot be considered a priori as anonymous, the Commission points out that the amended law of 6 January 1978 imposes that a limited retention period be applied to them. Beyond the agreed period, the data could be deleted or anonymized by a process in accordance with the G29 opinion on anonymization techniques. It takes note of the ministry's commitment to include in the draft decree a retention period for infocentre data. part of the processing and information recorded in the processing, by reason of their attributions and within the limits of the need to know. As a preliminary point, the Commission understands from the draft decree that the persons mentioned as "accessors" will not only be responsible for to access the data but will be able to save data in the processing. The Commission therefore invites the Ministry, to avoid any ambiguity, to indicate in the draft decree that these "accessors" will be able to have access to the data and will also be authorized to save certain data in the processing. In the first place, the accessors to the processing SIROCCO and the users of the infocentre module are identical. The extent of their rights will vary according to the empowerment matrix defined. Secondly, the Commission wonders about the reasons which led the ministry to recognize access to treatment to the "president of a judicial tribunal - in this respect , she also wonders about the relevance of this expression and wonders whether this designates the president of the judicial court - whose jurisdiction is

extended to the jurisdiction of one or more courts of appeal pursuant to article 706-75 of the CPC". It does not see the circumstances in which this president would need to know the elements of the investigation or investigation procedure. Thirdly, the Commission notes that the draft decree will be supplemented in order to add the persons in charge of statistical studies of the sub-directorate of statistics and studies (SDSE), ministerial statistics service of the Ministry of Justice, in order to allow their authorization by the Secretary General of the Ministry of Justice, within the limit of the need for It notes that those in charge of statistical studies of the criminal policy evaluation unit of the DACG are also intended to access the data recorded in the processing as officials and agents individually designated and duly authorized by the Director of criminal cases and pardons. Thirdly, the Commission takes note of the fact that, if the data resulting from the application could possibly be used by the heads of jurisdiction and heads of court in the context of management dialogues with the management of the judicial services, the latter will not be provided with the raw data resulting from the processing but will only be informed during these exchanges of anonymized statistical data. On the rights of the persons concerned Firstly, with regard to the information of the persons concerned, the Article 6 of the draft decree provides that, in accordance with the provisions of Article 107-II-1° of the law of January 6, 1978 as amended, the right to information is limited to the information provided for by I of Article 104 of the said law. The Commission wondered about the reasons which led the Ministry to derogate from the right to information of the persons concerned insofar as general information on a website is envisaged and that the decree establishing the processing will be published. It notes that the Ministry waives the right to avail itself of this derogation and that the draft decree will be amended accordingly. Secondly, with regard to other rights, it is provided that "in accordance with the provisions of Article 111 Law No. 78-17 of 6 January 1978 as amended relating to data processing, files and freedoms, access to the data referred to in Article 2 and to those appearing in the documents mentioned in 1° and 2° of Article 2, and the conditions for their rectification or erasure are governed by the provisions of the Code of Criminal Procedure". The Commission takes note that a formal correction will be made to this provision insofar as it is in fact the documents mentioned in 1° and 2° of Article 3 (providing for the documents, deeds and documents registered in processing) and not of article 2 (providing for the data collected according to the categories of persons concerned) of the draft decree. It also notes that it has been decided to apply article 111 of the law of January 6, 1978 modified in order to protect the secrecy of investigations and instructions, the data recorded in SIROCCO being taken from the files of legal proceedings. However, this will be a limited application of this article 111. hand, with regard to data relating to useful and relevant documents in connection with a procedure recorded in the processing (the 3° of article

3), the rights of access, rectification, erasure and limitation are work directly with the DACG. They may be subject to restrictions, pursuant to 2° and 3° of II and III of article 107 of the law of 6 January 1978 as amended in order to avoid interfering with investigations, research and legal proceedings. and to interfere with the detection, investigation and prosecution of criminal offenses or the execution of criminal penalties. The person concerned by these restrictions must then exercise their rights with the Commission under the conditions provided for in Article 108 of the said law. On the other hand, it is provided by the draft decree that the rights of access, rectification , erasure and limitation relating to the data concerning the personnel of the Ministry of Justice in function in the JIRS or the JUNALCO are exercised directly with the hierarchical authority having issued them the security clearance. Thirdly, the draft decree provides that the right of opposition does not apply to this processing, which does not call for comments. On security measures With regard to encryption, the Commission notes that an encryption is provided during the communication of the data as well as during their replication. However, given the nature of the data concerned, the Commission recommends that all backups of the SIROCCO database be encrypted at rest. SIROCCO database are well encrypted at rest. The Commission recommends that the identity of the respondents cannot be easily traced from the pseudonymous technical identifiers used in the infocentre module. The other security measures do not call for any specific comments. The President Marie-Laure DENIS