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2018-351 of 27 November 2018 providing an opinion on a draft decree amending Articles R. 221-11 and R. 221-12 of the Social Action and Family Code relating to the assessment of persons declaring themselves to be minors and temporarily or permanently deprived of the protection of their family and authorizing the creation of a processing of personal data relating to these persons (request for opinion no. 18021240) The National Commission for Computing and Liberties,  
Seizure by the Minister of the Interior of a request for an opinion concerning a draft decree amending Articles R. 221-11 and R. 221-12 of the Social Action and Family Code relating to the assessment of persons declaring themselves to be minors and temporarily or permanently deprived of the protection of their family and authorizing the creation of a processing of personal data relating to these persons;

Having regard to Convention No. 108 of the Council of Europe for the protection of individuals with regard to automatic processing of personal data;

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;

Having regard to Directive 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 the prevention and detection of criminal offences, investigation and prosecution in this area 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 Civil Code, in particular its articles 375, 375-5 and 388;

Having regard to the Social Action and Family Code, in particular Articles R. 221-11 and R. 221-12;

Having regard to the code for the entry and stay of foreigners and the right to asylum;

Considering the law n° 78-17 of January 6, 1978 modified relating to data processing, files and freedoms, in particular its article 27;

Having regard to law n° 2018-778 of September 10, 2018 for controlled immigration, an effective right of asylum and successful integration, in particular its article 51;

Considering the decree n° 2005-1309 of October 20, 2005 modified taken for the application of the law n° 78-17 of January 6, 1978 relating to data processing, files and freedoms;

Having regard to deliberation no. 2018-048 of February 8, 2018 providing an opinion on a bill for controlled immigration and an effective right of asylum;

Having heard Mr. Jean-François CARREZ, commissioner, in his report, and Mrs. Nacima BELKACEM, government commissioner, in her observations, Issues the following opinion:

The committee received a request for an opinion from the Minister of the Interior on a draft decree amending Articles R. 221-11 and R. 221-12 of the Social Action and Family Code ( CASF) relating to the assessment of persons declaring themselves to be minors and temporarily or permanently deprived of the protection of their family and authorizing the creation of a processing of personal data relating to these persons. is transmitted aims to respond to certain difficulties encountered by the departmental councils in the assessment of unaccompanied minors (UMs), the number of which has increased very sharply in the recent period.

In this respect, it notes first of all that this draft decree modifies the procedure for assessing persons declaring themselves to be minors and temporarily or permanently deprived of the protection of their family as provided for by Articles R. 221-11 and R. 221-12 of the CASF in order to provide State assistance in identifying minors. Article 51 of Law No. 2018-778 of September 10, 2018 referred to above, which provides that in order to better guarantee the protection of children and to fight against the illegal entry and stay of foreigners in France, fingerprints as well as a photograph of foreign nationals declaring themselves to be minors temporarily or permanently deprived of the protection of their family may be recorded, stored and subject to automated processing under the conditions set by law n° 78-17 of January 6, 1978 relating to data processing, files and freedoms (...) . In this regard, the committee recalls that although it was seized of the bill for controlled immigration and an effective right to asylum, it did not include the said article introduced after its opinion dated 8 February 2018, by way of amendment.

In this context, is created an automated processing of personal data called support for the evaluation of the minority (AEM), the purpose of which is to identify, from their fingerprints, persons declaring themselves minors and temporarily deprived or definitively of the protection of their family, to speed up and make more reliable the assessment of these people and to prevent the abuse of the child protection system by adults or people who present themselves successively in different departments.

The committee considers that AEM processing, the purpose of which is to protect children, by allowing the identification of persons declaring themselves to be minors and the fight against the illegal entry and residence of foreigners in France, falls within the scope of the regulation ( EU) 2016/679 of April 27, 2016 referred to above (hereinafter GDPR). The processing of personal data, which must be regarded, taking into account the general scheme of the system described below, as implemented on behalf of the State acting in the exercise of its prerogatives of public power, relates to biometric data necessary for the identification of persons. It must therefore be the subject of a decree in Council of State, taken after reasoned opinion and published by the commission in accordance with the provisions of article 27 of the law of January 6, 1978 as amended. The commission also notes that the draft decree submitted to it aims to modify the provisions of the CESEDA relating to processing concerning the application for managing the files of foreign nationals in France ( AGDREF 2 ) and VISABIO on which it has already ruled. It observes that this modification must allow, on the one hand, the questioning of these processing operations within the framework of the assessment of the situation of the person presenting himself as a minor and, on the other hand, to make recipients the agents responsible for the protection of children in the departmental councils of the data resulting from the interrogation of these treatments. On the purposes of the AEM treatment and the modifications made to AGDREF 2 and VISABIO:

The committee notes that the proposed treatment, which is part of a more general policy of taking into account the situation of unaccompanied minors, must allow for better efficiency of the child welfare system (ASE) while making it possible to remedy partly to the difficulties encountered by the departments in the care of these minors. As such, it has been informed that this processing will first be implemented within a limited number of pilot sites, prior to its generalization in March 2019.

Article 2 of the draft decree thus provides that the purpose of AEM processing is to better guarantee the protection of children and to fight against the illegal entry and stay of foreigners in France, and, to this end:- 1 ° To identify, from their fingerprints, persons declaring themselves to be minors and temporarily or permanently deprived of the protection of their family and thus to fight against document fraud and identity fraud;

- 2° To allow better coordination of the State services and the competent services in terms of reception and assessment of the situation of the persons mentioned in 1°;
- 3° To speed up this assessment and make it more reliable;
- 4° To prevent misappropriation of the child protection system by adults or persons presenting themselves successively in

several departments. The commission considers that the purposes of the processing are determined, explicit and legitimate, in accordance with the provisions of the article 5-1-c of the GDPR.

The committee also notes that the proposed processing aims to enable the identification of the person presented as a minor. To this end, article 3 of the draft decree modifies the purposes of AGDREF 2 and VISABIO processing in order to add the determination and verification of the identity of a foreigner who declares himself to be a minor and temporarily or permanently deprived of the protection of his family for the purposes currently provided for by the CESEDA and thus allow the query of these two processing operations within the framework of the AEM system. It recalls that the main purpose of the AGDREF 2 processing is to guarantee the right of residence of foreign nationals in regular status and to fight against the illegal entry and stay in France of foreign nationals. This processing thus constitutes the main file for the administrative management of foreigners in France and in particular allows the management, by the prefectures, of the files of foreign nationals, the production of residence permits and the management of removal measures. processing VISABIO is intended in particular to better guarantee the right of residence of people in a regular situation and to fight against the illegal entry and stay of foreigners in France, by preventing document fraud.

It follows in particular from the purposes pursued by these two processing operations that they are likely to create a high risk for the rights and freedoms of natural persons and that they must therefore be the subject of an impact analysis on the protection personal data (DPIA). Processing presenting a high risk having been the subject of a prior formality before May 25, 2018 is not, however, immediately subject to this analysis, unless the conditions for implementing this processing have subsequently made the subject to one or more substantial modifications. The AGDREF 2 and VISABIO processing operations are thus concerned, which are, by their nature, likely to generate high risks for the persons concerned. Although a DPIA has indeed been transmitted to the commission concerning the modification of the provisions relating to AGDREF 2 processing, it considers that the modifications examined in VISABIO processing are substantial and that consequently the changes submitted to it also require the carrying out of a impact analysis. It requests that this AIPD be carried out and be sent to it, if necessary, before the effective implementation of the AEM processing. his family :

As a preliminary point, the committee notes that the president of the county council is not obliged to seek the assistance of the State in carrying out the procedure for assessing the minority. Thus, the minor concerned would not be systematically received by the prefecture for the purpose of verifying his identity under the conditions described below. It also recalls that in the event

that a person presenting himself as a minor refuses to submit to of his fingerprints, the information relating to this refusal will be transmitted by the prefecture to the president of the departmental council. In this respect, the committee emphasizes that such a refusal cannot legally and by itself, without a detailed examination of the situation, have negative consequences for the person concerned.

Firstly, the committee notes that the verification of the identity of the person presenting themselves as minors initially results in the collection of their fingerprints, without these being the subject of a record, for the purpose of querying the AGDREF 2 and VISABIO databases. In the event of a match, i.e. if the person is already known to AGDREF 2 and/or VISABIO, and that If they are registered there as a foreign adult, the prefect informs the departmental council of the registration of the person concerned, as well as the reason for registration, in these processing operations. In this respect, the commission notes that the data thus transmitted by the prefect to the president of the departmental council, resulting from the AGDREF 2 and VISABIO processing, are limited to the civil status of the person (surname, first name, date and place of birth ) and the reason for recording in this (these) processing(s). are recorded there and in particular those of the fingerprints of minors or civil status documents.

If the person is not known to AGDREF 2 as a person who has declared themselves to be a minor but who has already been assessed as an adult, the prefectural agent collects the person's civil status data, enrolls them biometrics (collection of their fingerprints) and the registration of the digitized image of their face, for the purpose of creating an AEM procedure. At the end of the collection of this data, the AEM processing makes it possible to verify that the person is not already registered in the database, by means of the data previously collected. If the system detects an identity that seems to correspond to this data, the data relating to it are displayed to the prefectural agent, who must then determine whether the person actually corresponds to the identity known to AEM. It is possible at this stage that an assessment is already in progress in another department, or that the person has already been declared a minor. In these two cases, the information is transmitted by the prefecture to the president of the departmental council to whom he will return to take the ties of the president of the departmental council in charge of the initial evaluation. If the person has been assessed as an adult, this information may be taken into account by the president of the county council to decide to interrupt the assessment if necessary. If the agent considers that the person does not correspond to this identity, the registration procedure continues normally and the prefecture agent continues the creation of the AEM procedure. The data thus collected, with the exception of the digitized image of the fingerprints, are published in PDF format and transmitted by dematerialized and encrypted means to the departmental council concerned, to allow the realization

of the procedure of evaluation of the minority, such than provided for by articles R. 221-11 and R. 221-12 of the CASF. The commission recalls that, in accordance with the provisions of article 51 of the aforementioned law no. face cannot be implemented from the photograph collected. It notes that the draft decree explicitly provides that AEM processing does not include any search device allowing identification from the digitized image of the face. In this respect, the ministry specified that the identification of the person concerned for the purposes in particular of comparison with the aforementioned bases will be exclusively subordinated to a human intervention of the agent of the prefecture or the departmental council responsible for ensuring the correspondence between the digitized image of the face and the image of the person present. It also notes that the digitized images of the faces will not be used for biometric comparisons, the only verifications carried out from these images being visual verifications carried out by the agents. On the data collected: On the data recorded in the MEA processing Article 2 of the draft decree provides, on the one hand, that may be subject to recording in the planned processing: the digitized images of the face and the fingerprints of two fingers of persons who declare themselves to be minors and deprived of temporarily or permanently for the protection of their family. This article provides, on the other hand, that data and information relating to persons who declare themselves to be minors may also be recorded in the processing, insofar as such data are available.

These are data relating to civil status, nationality, municipality of attachment, telephone and electronic contact details, languages spoken, data relating to filiation, references of identity and travel documents held and of the entry visa issued, on the date and conditions of entry into France as well as to the departmental council in charge of the assessment. At the end of the evaluation of the minority of the person concerned, data can be transmitted by the departmental council to the prefecture. They relate only to the procedure number of the child welfare service, the date on which the assessment of the person's situation ended and, where applicable, the date of the assistance measure. educational decision taken by the children's judge. The commission notes that information on the results of the assessment with regard to the minority and the isolation of the person concerned can also be transmitted in return by the departmental council to the prefectures, to the outcome of the assessment. In this respect, it takes note that these data relate solely to the fact that the person is of legal age or minor, and isolated or not, if they have been recognized as a minor, on French territory. These data are also saved in the processing in the form of values to be selected from a list of closed type. Under these conditions, the recording of data relating to the result of the assessment of the minority of the person concerned does not call for observation on the part of the commission. Finally,

data may be recorded by the prefecture agent controller, in particular: the procedure number assigned by AEM, as well as the date of notification to the prefect of the department and, in Paris, to the prefect of police of the date on which the assessment of the person ended. This last category of data does not call for any observations on the part of the committee.

The commission considers that the categories of data thus collected in the AEM processing are adequate, relevant and limited to what is necessary with regard to the purposes for which they are processed, in accordance with Article 5-1-c of the GDPR.

data recorded in AGDREF 2

The committee recalls that under the last paragraph of Article R. 221-11 of the CASF as amended by the draft decree, the chairman of the departmental council notifies, in principle at the end of the assessment, the date and the meaning of it.

Article R. 221-15-5 of the CESEDA resulting from article 2 of the draft decree then provides that when a person declaring themselves to be a minor of foreign nationality is assessed as an adult, the AEM processing system systematically transmits the data collected to the AGDREF processing 2 . Consequently, article 4 of the draft decree amends section 1 of appendix 6-4 of the CESEDA in order to provide that data relating to foreign nationals declaring themselves to be minors and temporarily or permanently deprived of the protection of their family , and assessed as adults by the president of the departmental council, may be recorded in the AGDREF 2 processing. In this respect, data relating to the municipality to which the person concerned is attached, the departmental council responsible for the assessment, the date and conditions of entry into France, the procedure number assigned by the AEM treatment and the procedure number of the child welfare department, the end date of the assessment by the president of the departmental council, the result of this decision, the date of the educational assistance measure as well as the date of the notification to the prefect of the department and, in Paris, to the prefect of police of the end of the evaluation by the president of the departmental council or of the referral by the president of the judicial authority. of the person. With regard to these details, and taking into account the purpose of combating the illegal entry and stay of foreigners in France expressly assigned by law to AEM processing, the commission considers that the data recorded in the AGDREF processing 2 may be considered adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed, in accordance with Article 5-1-c of the GDPR.

Finally, the commission notes that no data relating to the person concerned is recorded in the VISABIO processing. On the recipients:

Firstly, the draft decree provides that access, by reason of their powers and within the limits of the need to know, to all or part

of the personal data and information mentioned in Article R. 221-15 -2 the agents of the prefectures and sub-prefectures responsible for implementing the regulations concerning foreign nationals, individually designated and specially authorized by the prefect and, in Paris, by the prefect of police, which does not call for special observation.

Provision is also made for access, under the same conditions, to all or part of the personal data and information referred to in Article R. 221-15-2, by agents belonging to the central services of the Ministry of the Interior responsible for immigration and residence, information systems for foreigners in France and the administration of treatment, individually designated and specially authorized by the Minister of the Interior. The committee takes note of the details provided by the ministry according to which , on the one hand, the agents thus referred to are those of the General Directorate for Foreigners in France (DGEF) and the Information and Communication Systems Department (DSIC) and that, on the other hand, these agents have only access to the data recorded for the purpose of administering the treatment. If the access of these persons to the processing data, for the sole purpose mentioned above, does not call for any particular observation by the commission, it takes note of the commitment of the ministry to modify the draft decree to specify the attributions of the agents concerned, namely that they are in charge of the administration of the processing, of the applications relating to foreigners in France and of the information systems. Under these conditions, the commission considers that access to the data of the processing of the persons concerned by the draft decree is legitimate.

Secondly, the draft decree provides that for the exclusive purposes of compiling statistics, the agents in charge of statistical studies assigned to the Directorate General for Foreigners in France can access anonymized information obtained from AEM processing. Insofar as the ministry implements sufficient measures to guarantee the anonymization of the data recorded in the processing for purely statistical purposes, the commission considers that access, under these conditions, by these persons to the data of the planned treatment does not call for any particular observation. Thirdly, the draft decree provides that the public prosecutor, the persons individually designated and specially authorized by him, as well as the agents in charge of child protection of the competent departmental council, may be recipients of the data recorded in the processing, with the exception of the digitized image of the fingerprints. in the processing is intended in particular to allow the transmission of this data in the event that it is illicit additional information in the context of his referral, in accordance with the provisions of the Civil Code and the CASF, without the digitized image of the fingerprints being able to be transmitted to him. Fourthly, article 3 of the draft decree provides that may be recipients of the data recorded in the AGDREF 2 and VISABIO processing, for the exclusive



purposes of assessing the minority of the person presenting themselves as an unaccompanied minor, the agents responsible for implementing child protection individually designated and specially authorized by the president of the departmental council. The commission notes that this provision is intended solely to allow the agents thus referred to have knowledge of the information communicated by the prefecture in the event of a match between the fingerprints of the person and those recorded in the AGDREF 2 and VISABIO processing operations, i.e. civil status data (name, p surname, date and place of birth) as well as the reason for registration. In view of these details, it considers that the transmission of data resulting from this processing to the agents responsible for implementing child protection for needs of the assessment of the minority is legitimate taking into account the purposes pursued by the planned processing. the regulation of foreigners, as well as that relating to access to French nationality, in the prefectures and sub-prefectures, individually designated and specially authorized by the prefect and, in Paris, by the prefect of police. These same agents may also be recipients of VISABIO processing data, for the application of the regulations relating to the issuance of residence permits, the processing of asylum applications and the preparation and implementation of measures to removal, in accordance with article R. 611-12-2° of the CESEDA. the aforementioned purposes, the commission considers that the querying of these two databases by prefecture officials within the framework of the AEM system is likely to extend the cases in which these officials can access or have knowledge of the data recorded in the processing, to the beyond what is currently provided for by articles R. 611-4-2° and R. 611-12-2° of the CESEDA. It therefore considers that the aforementioned texts should be amended in order to provide for these extensions. In this respect, it takes note of the ministry's commitment to modify the draft decree in this direction. On the duration of data retention:

Article 2 of the draft decree provides that the data is erased from the processing mentioned in Article R. 221-15-1 at the end of a period of one year from notification to the prefect of the department and, Paris, to the prefect of police of the date on which the assessment of the person ended. assessed. More specifically, this duration is intended to cover the final placement in child welfare when an educational measure is pronounced by the juvenile judge as well as the stabilization of the administrative situation of the minor. The commission notes that the retained retention period is identical, whether the person is recognized as a minor or an adult at the end of the assessment procedure. The draft decree also provides that data that has not been subject to any update within a period of eighteen months from their registration are erased at the end of this period. The commission notes that this is the case in which the county council does not transmit the results of the person's assessment to the prefecture. As such, it considers that a request for rectification made by the person concerned cannot constitute an update

which would have the effect of extending the retention period of the data recorded in the processing. The committee takes note of the ministry's commitment to modify the draft decree in order to limit the retention of data for eighteen months in the event of a lack of updating, solely in the event of a lack of transmission of the data by the president of the departmental council. Finally, with regard to the information recorded in the AGDREF 2 processing, article 3 of the draft decree specifies that the data relating to persons subject to an educational assistance measure, pronounced by the children's judge seized by the person concerned are erased as soon as the prefect of the department and, in Paris, the prefect of police are notified of this educational assistance measure.

The commission emphasizes the importance of this obligation to erase in the event of subsequent recognition of the minority of a person initially assessed as an adult. decisions of the children's judge are likely to be appealed, and thus the situation will be likely to be reassessed later. It emphasizes, on the other hand, that the aforementioned article does not have the effect of including all the hypotheses, which must be taken into account if necessary, in which a person could subsequently be recognized as a minor, whether this either in appeal on a refusal of the children's judge or following the intervention of the administrative jurisdiction.

In view of these elements, the commission considers that the data recorded in the AEM processing are kept in a form allowing the identification of the persons concerned for a period not exceeding that necessary with regard to the purposes for which they are processed, in accordance with Article 5-1-e of the GDPR. On the rights of data subjects:

Firstly, the draft decree provides that, prior to the collection of his data, the data subject is informed of the processing implemented, in particular by means of a dedicated form written in a language that he understands or of which it is reasonable to assume that it understands it. In general, the commission recalls that insofar as the planned processing is intended for minors likely to find themselves in a situation of great difficulty, guarantees must be implemented in order to ensure the effective nature of the information of the persons concerned as well as the good understanding, by the latter, of the information transmitted. It recalls in this regard that Article 12-1 of the GDPR specifies that the provision of this information must be provided in a concise, transparent, understandable and easily accessible manner, in clear and simple terms, in particular for any information intended specifically to a child. As such, it considers that the aforementioned form should be completed in order to report the following elements: - the query of AGDREF 2 , VISABIO and AEM processing and the data used to carry out this query;

- the deletion of data recorded in AGDREF 2 in the event that a person is finally recognized as a minor by the judge, after having exercised their right to appeal;
- the limitation of the right of opposition of the person to the processing.

The committee also considers that the said form should be explained with regard to the rights actually enjoyed by the persons concerned. In this context, it takes note of the ministry's commitment to modify the explanatory note and to take into account the recommendations thus formulated.

Finally, it notes that the Ministry has indicated that the draft decree will be amended with regard in particular to the provisions applicable to the right of opposition and the reasons leading, in this case, to disregarding it insofar as there is instead of applying the provisions of Regulation (EU) 2016/679 referred to above. Secondly, the draft decree provides that the rights of access, rectification and limitation are exercised with the prefect and department and, in Paris, the Prefect of Police under the conditions provided for respectively in Articles 15, 16 and 18 of Regulation (EU) 2016/679 of 27 April 2016.

In this regard, the ministry specified that requests relating to the exercise of these rights by the persons concerned may be sent by post to the prefect, following which the person concerned will be received at the prefecture where the prefect can check his identity through the production of an identity or travel document and/or by checking their fingerprints in case of doubt. Reasonable doubts as to the identity of the natural person who requests the exercise of his rights, he may request that he be provided with additional information necessary to confirm the identity of the person concerned. In this case, it considers that the verification of the fingerprints of the person concerned, for the exercise of these rights, appears proportionate in the sole event that the prefect cannot establish the validity of the title(s) presented. Subject to this reservation, the commission considers that the rights of access, rectification and limitation of data subjects are effective, in accordance with the provisions of articles 15, 16 and 18 of the GDPR. It recalls, in any case, that any complaints from data subjects relating to the exercise of their rights may be addressed to the ministerial delegate for data protection, whose contact details appear in the aforementioned explanatory note.

Finally, the commission takes note of the exclusion of the rights to erasure and portability, which does not call for any particular observation with regard to the provisions of articles 17-3-b and 20-3 of the GDPR. .On security measures:

With regard to the encryption of biometric data stored in databases, the committee notes that this measure is one of those identified during the performance of the impact assessment relating to data protection as having to be put in place before the

implementation of the treatment. Without calling into question the elements provided by the ministry relating to the technical difficulties of implementing such measures, the commission considers that biometric data should be systematically encrypted when stored in a centralized database. the methods of encryption of the database of correspondence between biometric data and personal identification data, the ministry indicated that this data will be encrypted using the 3DES algorithm, considered obsolete for several years and whose use is not recommended by the National Information Systems Security Agency. The commission therefore invites the ministry to review the methods for encrypting this data in order to ensure that it is state-of-the-art. Concerning the exchange of data in PDF format between the prefectures and the departmental councils , the commission notes that these data exchanges will be encrypted. However, it draws the Ministry's attention to the fact that encryption key generation and management procedures must be put in place, in order to guarantee the effectiveness of the encryption measure. The commission also recalls that the exchange of data between the prefectures and the public prosecutor must be subject to the same encryption measures.

Regarding data transmissions between the AEM application and the workstations of prefectural agents, the commission notes that these exchanges will take place on the internal network of the ministry, which is subject to security measures in the state of the art. art to guarantee the confidentiality of the data transiting there. The commission notes that traceability measures will make it possible to keep a trace of the actions carried out by the users in the tool. The draft decree provides that this data will be kept for 6 years. The ministry has also indicated that once the data relating to people presenting themselves as minors is removed from the application, only the data relating to agents will be kept.

The other security measures do not call for any particular comments from the commission. Subject to the previous observations, the commission considers that the security measures described by the data controller comply with the security requirement provided for in article 32 of the GDPR. However, it recalls that this obligation requires the updating of security measures with regard to the regular reassessment of risks. In this respect, it recalls that specific attention should be paid to the reassessment of security measures within the framework of the imperative update of the impact analysis.

The president,

I. Falque-Pierrotin