

Deliberation 2019-096 of July 11, 2019 National Commission for Computing and Liberties Nature of the deliberation:

Opinion Legal status: In force Date of publication on Légifrance: Thursday October 24, 2019 NOR: CNIX1928759 Deliberation No. 2019-096 of July 11, 2019 providing an opinion on a draft decree amending decree no. 2017-1224 of 3 August 2017 creating an automated processing of personal data called "Automation of centralized consultation of information and data" (ACCRéD) (request for opinion no. 19005968) 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 decree no. 2017-1224 of August 3, 2017 creating a automated processing of personal data called Automation of centralized consultation of information and data (ACCRéD); Having regard to Convention No. 108 of the Council of Europe for the protection of s persons with regard to the automatic processing of personal data; Having regard to Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data personal data by the competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offenses or the execution of criminal penalties, and on the free movement of such data, and repealing the Framework Decision 2008/977/JHA of the Council; Considering law n° 78-17 of January 6, 1978 modified relating to data processing, files and freedoms, in particular its articles 31-II and 33; Considering law n° 95-73 of January 21, 1995 on orientation and programming relating to security and in particular its article 17-1; Having regard to law n ° 2018-778 of September 10, 2018 for controlled immigration, an effective right of asylum and successful integration and in particular its article 5; Considering the decree n ° 2017-588 of April 20 it 2017 modified creating a service with national competence called Specialized Command for National Security; Considering the decree n ° 2017-668 of April 27, 2017 modified creating a service with national competence called national service of administrative security investigations Having regard to decree n° 2019-536 of May 29, 2019 as amended, taken for the application of law n° 78-17 of January 6, 1978 relating to data processing, files and freedoms; Having regard to deliberation n° 2017- 152 of May 18, 2017 issuing an opinion on a draft decree creating an automated processing of personal data called ACCRED; After having heard Mrs. Sophie LAMBREMON, Commissioner in her report, and Mrs. Nacima BELKACEM, Government Commissioner, in observations, Issues the following opinion: The Commission has been asked by the Minister of the Interior for an opinion on a draft decree amending decree no. 2017-1224 of 3 August 2017 creating an automated data processing system personal character called Automation of centralized consultation of information and data (ACCRéD). This processing, on which the Commission has already ruled in its aforementioned opinion no. Title III of the amended law of

January 6, 1978 transposing the aforementioned directive (EU) 2016/680 of April 27, 2016 (hereinafter the directive), as well as the questioning of processing operations involving State security and falling within, consequently, of article 31 of this same law. It must also allow the centralization of information collected in the context of these investigations. The Commission notes that ACCReD processing, implemented for the purposes of protection and prevention against threats to public security within the meaning of the aforementioned directive, also partly state security. It recalls that it follows from the evolution of the legal framework relating to the protection of personal data that the provisions applicable to the processing of data appearing within this system and relating to State security, are excluded from the scope of application of Directive 2016/680 and fall specifically under Articles 1 to 41 and 115 to 124 of the law of 6 January 1978 as amended. Finally, insofar as the data mentioned in I of article 6 of this same law are likely to be recorded, the modification of the ACCReD processing must be the subject of a decree in Council of State, taken after opinion and published by the Commission in accordance with its Articles 31-II and 89. Reminder of ACCReD processing and presentation of the main changes envisaged

In general, the Commission observes that recent years have been marked by the successive implementation of new administrative inquiries testifying to a significant widening of the field of intervention of the latter. It recalls that particular vigilance is required with regard to these systems which aim to strengthen the controls carried out in particular to prevent the carrying out of terrorist attacks or acts likely to undermine State security. The Commission considers that the carrying out of administrative inquiries must be accompanied by strong guarantees to ensure that the inquiries thus carried out, which lead to the processing of particularly sensitive data on an increasingly large number of people, do not no excessive interference with the right to respect for the private life of the persons concerned. framework of the adoption of new legislative measures imposing the carrying out of these surveys in order to condition, for example, access to certain jobs or sensitive sites. This system, which is part of a more general context of facilitation and acceleration of the processing of the increasing volume of administrative investigations, is implemented by the General Directorate of the National Police (DGPN) and the General Directorate of the Gendarmerie rie (DGGN) of the Ministry of the Interior, to which are attached the National Service for Administrative Security Investigations (SNEAS), created by Decree No. 2017-668 of 27 April 2017 referred to above and the Specialized Command for Nuclear Security ( CoSSeN), created by Decree No. 2017-588 of 20 April 2017 referred to above, which are the departments with national jurisdiction in charge of carrying out some of these surveys. The Commission notes that this referral is mainly intended to take into account the he evolution of the missions entrusted to the SNEAS which, with regard to the clarifications provided by the ministry, is

intended to become the interministerial service responsible for carrying out certain administrative investigations, with the aim of simplifying, rationalizing and standardizing procedures. In this context, it observes that the scope of investigations intended to fall under ACCReD processing has been widened, in particular for the purpose of adding the examination of applications for the acquisition of French nationality, as well as for the issue and renewal of documents relating to the entry and residence of foreigners. In addition to this development, the draft decree submitted to the Commission aims to extend the categories of data that can be collected and provide for the possibility of consultation and querying of new processing of personal data. These general elements recalled, the draft decree calls for the following observations.

On the purposes and scope of the processing

Firstly, the Commission recalls that under the terms of Article 1 of Decree No. 2017-1224 of August 3, 2017, the purpose of ACCReD processing is to facilitate the carrying out administrative investigations in application of articles L. 114-1, L. 114-2 and L. 211-11-1 of the internal security code and using the information collected in this context . As a preliminary point, the Commission notes that Article 5 of Law No. 2018-778 of September 10, 2018 referred to above, amended Article L. 114-1 of the Internal Security Code (CSI), in order to provide that administrative inquiries may be carried out under the conditions provided for in the second paragraph of I of this article for the issue, renewal or withdrawal of a residence permit or authorization on the basis of articles L. 121-4, L. 122-1, L. 311-12, L. 313-3, L. 314-3 and L. 316-1-1 of the code for the entry and stay of foreigners and the right to asylum [CESEDA] or equivalent provisions of international conventions as well as for the application of Articles L. 411-6, L. 711-6, L. 712-2 and L. 712-3 of the same code. The CESEDA provisions cited above aim in particular, in certain cases, to condition the issue or renewal of a permit on the absence of a threat to public order, justifying the possibility of carrying out administrative inquiries in this context. It notes that this change results in an extension of the scope of ACCReD processing, which relates in particular to the administrative inquiries referred to in Article L. 114-1 of the aforementioned CSI. The Commission also emphasizes that the missions of the SNEAS such as mentioned in Decree No. 2017-668 of April 27, 2017 referred to above were amended by Decree No. 2017-1594 of September 10, 2018. natural or legal persons is not incompatible with (...) the use of materials or products presenting a dangerous nature. As a result, the SNEAS, initially competent for administrative investigations based solely on Articles L. 114-2 and L. 211-11-1 of the Internal Security Code (CSI), is now responsible for certain administrative investigations referred to in article L. 114-1 of the CSI, hitherto carried out by the territorially competent national police or gendarmerie services, subject to the powers of the CoSSeN for investigations relating to the nuclear sector. Without commenting on the reasons having led to such changes, the Commission

considers it essential that the scope of the system be strictly regulated. It recalls that the investigations referred to in Article L. 114-1 of the CSI condition the adoption of numerous administrative decisions, very diverse and not all presenting the same degree of sensitivity. The Commission also recalls that the consultation of particularly sensitive processing involving State security must be reserved for investigations prior to certain decisions, given their specific purpose. In this context, and given the constant extension of the scope of the administrative investigations, and as a consequence of the ACCReD processing, the Commission points out that if the aforementioned decree of August 3, 2017 does indeed refer to the investigations provided for in Articles L. 114-1, L. 114-2 and L. 211-11- 1 of the CSI, no clarification as to the scope of the system is provided by this draft decree, in particular with regard to the investigations specifically targeted in this context. It also notes that it follows from the clarifications provided by the ministry that 'as a service with national competence, the SNEAS could be invested - in the long term - with the realization of other administrative investigations coming under article L. 114-1 of the CSI, without any limits. This scope is not precisely defined. Under these conditions, the Commission considers it essential that clarification be provided on the scope of implementation of the ACCReD processing, in particular to ensure the transparency of the system implemented. It therefore requests that the draft decree be clarified in this regard. Secondly, the Commission notes that Article 1 of the draft decree provides for adding to the scope of the ACCReD system, the surveys referred to in Article 17- 1 of the aforementioned law of January 21, 1995. This provision specifies that the consultation provided for in article L. 234-1 of the internal security code may be carried out for the processing of applications for the acquisition of nationality. French language and the issuance and renewal of permits relating to the entry and residence of foreigners as well as for the appointment and promotion in national orders. The Commission notes that the carrying out of these investigations, which will be entrusted to the SNEAS (with the exception of appointment and promotion in national orders), is currently shared between the prefectural services and the police and gendarmerie services. national. It also notes that Article 2 of Decree No. 2017-668 referred to above, which sets the scope of competence of the SNEAS, provides that the administrative investigations that it is required to carry out are intended to verify that the behavior of natural or legal persons is not incompatible with the authorization of access to sensitive sites or the exercise of sensitive missions or functions which they hold or to which they claim, or with the use of materials or products presenting a dangerous nature. The Commission notes therefore that the SNEAS is not currently tasked with carrying out administrative inquiries relating to the examination of applications for the acquisition of French nationality and the issue and renewal of permits relating to the right of residence of foreigners on the one hand as well as asylum applications

and subsidiary protection on the other hand. Without calling into question the legitimacy for this service to carry out administrative investigations in this context, it considers - in any event - that the provisions of the aforementioned decree of 27 April 2017 should be amended in order to expressly provide for entrusting these missions to the SNEAS, and this, before allowing this specialized service to carry out the investigations thus referred to. In this respect, the Commission takes note of the ministry's commitment to modify the aforementioned decree before the effective implementation of such a possibility. On the data collected Article 2 of the draft decree provides that the subject of a record in the ACCReD processing, the document summarizing the relevant elements from the survey. In this respect, the Commission takes note of the clarifications provided by the Ministry according to which this document is intended to contain the relevant elements resulting from the analysis carried out by the SNEAS and the CoSSeN following the interrogation of the files and the additional verifications carried out without they do not state their opinion. It notes that, in addition to the administrative inquiries for which these two departments remain competent to issue an opinion or decision, the SNEAS and the CoSSeN may contribute to the administrative inquiries conducted by other departments. It is in this context that a summary document produced by these two specialized services may be produced, for the benefit of third-party services responsible for carrying out their own administrative investigations. The Commission notes that this document, including the relevant elements resulting from the analysis carried out by the SNEAS and the CoSSeN following the interrogation of the files as well as the additional checks carried out, allows third-party services to formally issue an opinion or decision. If the production of such a document does not call for any particular observation with regard to the purposes pursued by the processing, the Commission is particularly reserved as regards its communication to agents other than those belonging to the two aforementioned specialized services, taking into account the data it is likely to contain, a fortiori for the purposes of administrative inquiries which would not come under their jurisdiction. It therefore recalls the need to ensure that only the data strictly necessary for the objective assessment of the situation of the person concerned are transmitted and this, within the limit of the need to know of these third parties. On the planned connections The Commission notes that Article 5 of the draft decree provides that the national computer system N-SIS II may be consulted automatically by the ACCReD processing in order to verify whether the identity of the person concerned is recorded. It is also planned that the SIREX processing as well as the DGSE file will be linked and questioned by the people who can access the ACCReD processing, in accordance with article 5 of the decree n ° 2017-1224 referred to above. With regard to links with other processing of personal data, the Commission recalls – in general terms – that it is important to ensure that only

processing involving data that is relevant, adequate and necessary with regard to the object and specific issues of the administrative inquiry carried out are consulted. In the same way, it considers that particular attention must be paid to processing that may be the subject of systematic automated consultation. With regard to N-SIS II processing and the DGSE file, the Commission takes note of the Ministry's clarifications according to which consultation of this processing must make it possible to obtain information on persons of foreign nationality and likely to constitute in their country a threat to public security or state security, particularly in the context of investigations relating to access authorizations to a protected place. As regards the SIREX file, the consultation envisaged presents, according to the ministry, a interest in the case of former soldiers whose behavior has been considered incompatible with their missions within the Ministry of the Armed Forces and who are likely to apply for jobs as police officers, gendarmes, municipal police officers or agents of the prison administration. Without call into question the need to consult or question the processing thus referred to, the Commission recalls that, given the particularly meaningful nature ible of some of this processing and the significant issues for the persons concerned resulting from this questioning, specific guarantees must be implemented so that the automation of these consultations does not lead to opinions or decisions resulting from the sole registration of a person in the processing of personal data. In this respect, it notes that additional checks will be carried out by the investigation services in the event of a positive response (hit) and that consultation of the files relating to State security covered by the draft decree will be limited to certain types of administrative inquiries. For example, the DGSE file may be queried only in the context of applications for asylum or subsidiary protection, applications for the acquisition of French nationality from applicants who are nationals of countries at risk submitted to the French Office for protection of refugees and stateless persons as well as the surveys carried out by the CoSSeN on behalf of the Ministry of the Armed Forces. While the Commission deeply regrets that the Ministry does not intend to modify the regulatory acts governing these files in order to explicitly mention that they can be object of an interrogation by the ACCReD processing, it acknowledges that the Ministry of the Armed Forces, in its capacity as manager of SIREX processing and of the DGSE file, will modify the acts governing them in order to make the SNEAS and the CoSSeN recipients of the information stored there. The Commission recalls, however, that pending the modification of the regulatory acts relating to these two processing operations, which must be the subject of a prior opinion from the CNIL, such consultation cannot be implemented. Finally, the Commission notes that the Ministry has specified that the ACCReD processing is linked to the computerized processing system for travel documents and authorizations (STITCH) whose purpose is to examine applications and manage authorizations, national and individual

allowing personnel to access sensitive airport areas as well as with the management application for the computerized directory of owners and possessors of weapons (AGRIPPA). If it takes note of the clarifications according to which only a list of identities of the persons to be the subject of an investigation is transmitted to the ACCReD processing in this context and that no consultation in return of STITCH or AGRIPPA is carried out, the Commission considers – for the sake of transparency – that such connections should be mentioned in this draft decree. It also notes that, in the long term, it is planned to interconnect ACCReD processing with the two aforementioned processing operations. to the ACCReD system, under the conditions provided for in article 33 of the amended law of January 6, 1978. On the recipients Article 3 of the draft decree provides that the agents of the services, responsible for carrying out the administrative investigations mentioned in Article 1, for the only data relating to the summary document of the relevant elements resulting from the investigation and, if necessary, within the meaning of the opinion or the decision resulting from previous investigations and relating to the same person making the object of the investigation. The Commission recalls first of all that, since the creation of the ACCReD processing in 2017, it had questioned the relevance of the communication of information recorded in the processing to these agents, with regard to the purposes pursued by the processing. Moreover, it notes that, when it was seized of the creation of the system, only the meaning of the opinion intended to provide an additional element of analysis to the services responsible for carrying out an administrative investigation was intended to be communicated. to these agents. While the Commission notes that the draft decree aims to specify that the agents responsible for carrying out one of the administrative investigations mentioned in Article 1 of the decree of 3 August 2017 referred to above are thus concerned, it recalls that, in the Insofar as the scope of the surveys mentioned by this article is particularly broad, it does not allow the surveys concerned to be determined precisely in an exhaustive manner. Article 3 of the draft decree provides that the summary document may be transmitted to these agents in this frame. Insofar as this document is intended to contain a certain amount of information, some of it sensitive, resulting from the consultation, questioning and analyzes carried out by the specialized services, the Commission considers that the need for these persons to access to the data referred to in Article 3 of the draft decree is not sufficiently justified. On the rights of the persons concerned Article 6 of the draft decree provides that the right of opposition does not apply to this processing, which calls for no observation. It also specifies that in accordance with articles 104 to 106 of the amended law of 6 January 1978, the rights to information, access, rectification and deletion of the data mentioned in article 2 are exercised with the Ministry. The Commission notes that these rights may be subject to restrictions, in order to avoid hampering investigations, research or

administrative or legal proceedings, or to protect public safety and national security, pursuant to 2° and 3 ° of II and III of article 107 of the law of January 6, 1978 as amended. Given the purpose of the processing, the limitation of these rights, which are exercised in this case with the Commission under the conditions provided for in Article 108 of the same law, does not call for any particular observation. however, as part of the strengthening of the security system for airport areas, personnel with access authorization to restricted access areas of airports may be subject to an administrative investigation on a regular basis. Although the Commission notes that this system has not yet been implemented within the ACCReD processing, it already specifies that specific information must be provided to the persons concerned in this case. Finally, the draft decree provides that, by way of derogation, the rights of access, rectification and erasure of the data recorded in the processing and concerning the security of the State are exercised with the Commission, under the conditions provided for in article 118 of the amended law of January 6, 1978. On security measures Firstly, the Commission notes that a logging of the operations of consultation, creation, modification, communication, linking or deletion of data is put in place. The retention period for the logs is six years, which, in view of the potentially serious impact on the persons concerned, is considered proportionate by the Commission. However, it questions the need to retain, after analysis, the data in active database. Indeed, storage in an intermediate archive (i.e. by conditioning access to the data by a hierarchical decision) would seem more appropriate. In any event, the Commission recalls the need for automatic analysis of traces within a short timeframe, in order to detect abnormal behaviour. Secondly, with regard to informing the persons concerned in the event of a breach of data, the Commission notes that the Ministry intends to limit the notification of users, taking into account the potential impacts on national defence. In this respect, it recommends the implementation of a documented protocol integrating the potential impact for the persons concerned, resulting from the absence of notification. Thirdly, with regard to the risk analysis, the Commission wonders about the assessment carried out concerning the risks of breaches of the privacy of individuals as well as the effectiveness of the measures provided for in this context. Concerning the assessment of the likelihood of the risk, she wonders about the choice of scale of the ministry, which considers as having a limited likelihood a risk that has not occurred in the last three years. It considers that the assessment thus carried out does not make it possible to guard against all the potential attacks linked, for example, to changes in processing. As regards the level of seriousness linked to the risk of loss of confidentiality, the Commission notes that seems underestimated given the nature of the data recorded in the ACCReD file and their potentially serious impact on the data subjects. With regard to the level of risk of an unwanted modification of the data, she wondered about the sufficiency of the



justifications transmitted by the ministry in order to consider that the likelihood of the risk on the integrity is negligible. Finally, the Commission recalls the necessary implementation of security and data protection solutions, in coherence with the risk coverage , across the entire data value chain. Consequently, subcontractors and/or service providers will also have to take these needs into account and cover the risks with regard to the data processed. In view of the foregoing, the Commission questions the risk assessment carried out by the Ministry as well as on the measures implemented, with regard to the obligations incumbent on the data controller in accordance with the security requirements provided for in Articles 99 and 121 of the law of 6 January 1978 as amended. It recalls that this obligation requires the updating of the measures safety with regard to the regular reassessment of risks. In this regard, the Commission recalls that specific attention should be paid to the reassessment of security measures as part of the update of the impact assessment. President M-L. DENIS