

Deliberation 2020-133 of December 17, 2020 Commission Nationale de l'Informatique et des Libertés Nature of the deliberation:

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n° 2020-133 of December 17, 2020 providing an opinion on a draft decree authorizing the processing of personal data called

"File of persons prohibited from gambling" (request for opinion no. 20021156) The National Commission for Computing and

Liberties,

Seizure pursuant to the provisions of I of Article 31 of Law No. 78-17 of January 6, 1978 as amended relating to data

processing, files and freedoms, by the Minister Delegate to the Minister for the Economy, finance and recovery, in charge of

public accounts and the Minister of the Interior for a request for an opinion on a draft order authorizing the processing of

personal data called File of persons prohibited from gambling;

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 (GDPR);

Having regard to the internal security code, in particular its articles L. 320-9 and L. 320-9-1;

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

Having regard to law no. 2010-476 of May 12, 2010 as amended, relating to the opening up to competition and the regulation

of the online gambling sector;

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 decree no. 2010-518 of May 19, 2010 as amended, relating to the gaming and betting offer of gaming

operators and the provision of gaming data to the National Gaming Authority;

Considering the decree of May 19, 1993 authorizing the creation at the Ministry of the Interior and Regional Planning of an

automated file of casinos, gaming clubs and those excluded from gaming rooms;

On the proposal of Mr. Christian KERT, commissioner, and after having heard the observations of Mr. Benjamin TOUZANNE,

government commissioner, Issues the following opinion: registered within the framework of Ordinance No. 2019-1015 of

October 2, 2019 reforming the regulation of gambling and the texts taken for its application which entrust in particular the keeping, management and distribution of the file of persons prohibited from games to the new National Gaming Authority (hereinafter ANJ). The ANJ will now have the following missions:

- the management of the entire file, by registering the voluntary bans on gambling but also the administrative bans pronounced by the Minister of the Interior and the legal bans pronounced by the judicial authorities, and its availability to the operators of relevant games;

- control of gambling operators of the obligations mentioned in articles L. 320-9 of the internal security code (prohibition for operators to allow persons banned from gambling to participate in their gambling activities) and 22 of Decree No. 2010-518 of May 19, 2010 as amended (question by game operators of the ANJ information system to verify the ban on games). the management of this file from the Ministry of the Interior, which had been authorized by order of 19 May 1993 to create an automated file of casinos, gaming clubs and those excluded from gaming rooms and which ensured its management, the ANJ. This transfer of competence leads to conferring on the ANJ the quality of data controller for the file of persons banned from gambling, the purposes of which, which appear in article 1 of the draft decree, are well determined, explicit and legitimate.

The ANJ is now also competent, pursuant to the combined provisions of Article L. 320-9-1 of the Internal Security Code and R. 321-27 and R. 321-28 of the same code, to process and pronounce requests for voluntary gambling bans.

The processing thus implemented by the ANJ is based on new obligations for keeping, managing and disseminating the file of gambling bans and monitoring compliance by gambling operators under Ordinance No. 2019- 1015 of October 2, 2019 reforming the regulation of gambling and the regulatory provisions taken for its application and modifying the internal security code.

The draft decree calls for the following observations from the Commission. On the legal regime applicable to the processing implemented by the ANJ The Commission notes that the legal regime adopted for the entire file of prohibited gambling is the GDPR . Indeed, it was indicated to the Commission that if certain parts of the processing relating to so-called administrative and judicial prohibitions implemented by the ANJ pursue the purposes provided for in Article 87 of Law No. 78-17 of 6 January 1978 amended (Data Protection Act) for the prevention and detection of, investigation and prosecution of criminal offenses or the execution of criminal penalties, including protection against threats to public security and the prevention of such threats, the ANJ's only mission in this respect would be to manage the file, which does not allow it to retain the qualification of

competent authority within the meaning of article 87 of the law.

In this respect, the Commission takes note of the Ministry's confirmation that the ANJ is required to pronounce gambling bans at the request of the judicial judge, and that it is not up to it to rule on the legality of these bans. nor to assess their opportunity.

On the modification of the decree of May 19, 1993 authorizing the creation at the Ministry of the Interior and Regional Planning of an automated file of casinos, gaming clubs and those excluded from gaming roomsIn order to allow the transfer of the management of the file of prohibited games from the Ministry of the Interior to the ANJ, the draft decree provides in its article 10 certain modifications of the decree of May 19, 1993 which had authorized the creation of this file by the ministry.

The Commission notes that the purpose of these amendments is to remove from the initial decree of 1993 all references to persons excluded from gambling and thus to put an end to all processing of personal data of persons prohibited from gambling by the Ministry of interior. The 1993 decree will therefore remain in force only insofar as it authorizes the ministry to implement an automated file of casinos and gaming clubs and no longer of persons banned from gambling, the processing of which is now the responsibility of the ANJ.

In order to ensure the overall consistency of the draft order, the ministry has undertaken to provide for the deletion of paragraph 2 of article 2-1 of the order of 19 May 1993, which provides that the data relating to persons subject to an exclusion measure, whether voluntary or administrative, are kept until the lifting of this measure and for a maximum of twenty years.

Once the file has been transmitted, it does not seem relevant to keep the personal data of persons banned from gambling in the file of casinos and gaming rooms managed by the Ministry of the Interior. On personal data processed within the file of gambling bansAlthough the draft decree provides in its article 3 the list of personal data processed by the ANJ depending, on the one hand, on the nature of the gambling ban pronounced (voluntary, administrative or judicial) and, on the other hand, of the person requesting the measure for so-called voluntary bans, it does not specify the categories of data relating to so-called administrative gambling bans that may be brought to the attention of the ANJ by the Ministry of the Interior, in application of its article 3.IV.2°. The Commission considers that the draft decree should be supplemented on this point.

The Commission also takes note of the clarifications made concerning the absence of processing of data relating to the health of persons banned from gambling in the context of the telephone interviews which take place on a mandatory basis when applying for registration in the file and, optionally, when the measure is lifted. On the retention period of personal data The draft decree provides in its article 7 that the data processed in the file of prohibited games are kept during the ban of gambling and

for a period of six years from the day on which it ends.

The Commission takes note in this respect of the clarifications provided in the context of the referral concerning the six-year duration thus fixed, the purpose of which is to allow, where applicable, the application of Article L. 324-5 of the Safety Code. interior and the penal sanction of operators who allow the gambling of a person subject to a prohibition measure. On the rights of the persons concerned Article 9 of the draft decree provides that the rights of opposition, limitation, erasure and portability of the persons concerned are not applicable in the context of the processing of data from the file of persons prohibited from gambling.

The Commission notes, however, that the right to limit the processing provided for in Article 18 of the GDPR appears to be able to be exercised by the persons concerned, in particular pursuant to a of this article which provides for its application when the accuracy of the personal data is contested by the data subject, for a period enabling the controller to verify the accuracy of the personal data. However, the Commission takes note of the Ministry's commitment to amend the draft decree so that the persons registered in the file can exercise, where appropriate, their right to limit processing.

The Commission takes note of the fact that persons banned from gambling will be informed of their rights, as well as the procedures for exercising them, through the existence of a dedicated page on the ANJ website, regardless of the reason for their ban.

Voluntary bans will also be informed by the registration form and correspondence with the ANJ and when the ban decision is notified. Judicial and administrative prohibitions will also be informed by the ANJ during the registration phase by mail and, if necessary, by e-mail.

The Commission emphasizes in this regard that the information thus transmitted must comply with the requirements of Article 13 of the GDPR. On security measures The Commission notes the fact that the online service offered by the ANJ to process requests for prohibition Voluntary follows the technical recommendations published by the National Agency for Information Systems Security (ANSSI) in its technical note recommendations for securing websites.

The Commission also takes note of the fact that data transfers to casino operators are made using a tool for creating secure encrypted archives approved by ANSSI and that the procedures for transmitting and revoking secrets are satisfactory. With regard to provision via DNS servers, the Commission recommends the use of an algorithm that complies with appendix B1 of the general security reference system as the fingerprint calculation algorithm.

The Commission takes note of the fact that the stored data is encrypted with algorithms and key management procedures in accordance with appendix B1 of the general security reference system and is subject to hash calculations in order to guarantee their integrity.

It also takes note of the implementation of a regular backup, encrypted with a tool validated by ANSSI and kept in a strong cabinet.

The Commission takes note of the implementation of application/system logging. It recalls that the processing of these data is in principle for the sole purpose of detecting and preventing illegitimate operations on the main data. The Commission considers it necessary to provide for organizational measures (for example the generation of regular reports and human control by the data hierarchy for the most sensitive components of the processing) which make it possible to make use of this data and which contribute to the detection of behavior abnormal. The President,

M. L. Denis