Deliberation 2022-118 of December 8, 2022National Commission for Computing and LibertiesNature of the deliberation: OpinionLegal status: In force Date of publication on Légifrance: Wednesday January 04, 2023Deliberation n° 2022-118 of December 8, 2022 providing an opinion on a draft law relating to the 2024 Olympic and Paralympic Games (request for opinion no. 22017438) The National Commission for Information Technology and Liberties, Requested by the Minister of the Interior and the Minister responsible for sports and the Olympic Games and Paralympics of a request for an opinion concerning a bill providing an opinion on a bill relating to the Olympic and Paralympic Games of 2024; Having regard to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 relating to the protection of individuals with regard to the processing of personal data and to the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation or GDPR); of sport, in particular its articles L. 232-9 and following; Having regard to the civil code, in particular its articles 16-10 and 16-11; Having regard to the law n ° 78-17 of January 6, 1978 modified relating to data processing, files and freedoms, in particular its article 8-I-4°-a); After having heard the report of Mrs. Sophie LAMBREMON and Mr. Claude CASTELLUCCIA, commissioners, and the observations of Mr. Benjamin TOUZANNE, government commissioner, BEING RECALLED THE FOLLOWING ELEMENTS OF CONTEXTThe Commission was seized by the Ministry of the Interior and Overseas Territories as well as by the Ministry of Sports and the Olympic and Paralympic Games, of Articles 4, 5, 6, 7, 9 and 10 of the draft law relating to the Olympic and Paralympic Games. These articles relate to: the authorization of the examination of genetic characteristics or the comparison of genetic fingerprints for anti-doping analyses; compliance with the internal security code (CSI) with the GDPR and the amended law of January 6, 1978; the use of algorithmic processing of images captured by video protection devices or aircraft in order to detect and report in real time predetermined events likely to threaten the safety of persons; the extension of the video protection images that the agents of the internal services of the French National Railway Company (SNCF) and the Autonomous Parisian Transport Board (RATP) can view when they are assigned within the information rooms and command under the State; the extension of the screening procedure provided for in article L211-11-1 of the CSI to fan-zones and participants in major events; the possibility of setting up body scanners at entrance to sports venues. In general, the Commission regrets having to take an urgent decision on the changes envisaged by the draft text, given the predictability, widely known in advance, of the event and important issues with regard to the privacy of the persons concerned. The articles of the bill before it call for the following observations. or the comparison of the athlete's genetic fingerprints for the purposes of the fight against doping (article 4)Article 4 of the draft law authorizes, for the sole

purposes of the fight against doping, the analysis of genetic characteristics or the comparison genetic fingerprints from biological samples taken from athletes during doping control (demonstration of a substance or the use by the athlete of a method, prohibited under article L. 232-9 of the sports code). It introduces a new derogation to the various provisions which until now strictly limited the cases for which the examination of a person's genetic characteristics or their identification by their genetic fingerprints is authorized. Indeed, on the one hand, with regard to genetic tests (article 16-10 of the Civil Code), the consent of the living person must systematically be obtained except in a very specific case linked to research, a case in which a right opposition is provided for (article L.1130-5 of the Public Health Code). On the other hand, the rule also applies to genetic fingerprints (article 16-11 of the Civil Code). Apart from the hypothesis of biological material which would have naturally detached from the body of the person concerned, only persons convicted of a crime or declared guilty of an offense punishable by ten years' imprisonment may be forced to submit to the carrying out of such fingerprints on written requisitions from the public prosecutor (article 706-56, I, 5th paragraph of the Code of Criminal Procedure). The exception introduced by article 4 of the bill is therefore much broader than those that existed previously, both with regard to persons (all athletes are covered here) and the examination carried out (examination of the genetic characteristics constitutional status of a person and not a simple identification by his genetic fingerprints). This article responds to the need to bring French law into compliance with: the provisions of article 6-2 of the World Anti-Doping Code (CMA) which came into force on January 1, 2021; several anti-doping regulations adopted by the World Anti-Doping Agency (WADA). The bill also responds to the need to authorize the French anti-doping laboratory (LADF) to carry out the analysis, if necessary, of the genetic characteristics of samples taken from athletes. Indeed, during the 2024 Olympic and Paralympic Games, such analyzes will be carried out by the LADF on behalf of the International Testing Agency (ITA), an independent body commissioned by the International Olympic Committee (IOC) and the International Paralympic Committee (CIP) to apply the world anti-doping program. The bill indicates that the conditions for carrying out genetic analyzes for the purposes of the fight against doping will be specified by a decree in Council of State, issued after consulting the CNIL. place, the CMA harmonizes the anti-doping policies, rules and regulations of sports organizations and public authorities throughout the world. , will be analyzed for the Prohibited Substances and Prohibited Methods listed in the Prohibited List and any other Substances the detection of which is requested by WADA pursuant to Article 4.5, or to assist an Anti-Doping Organization in to profile from relevant parameters in the Athlete's urine, blood or other matrix, including DNA profile or genomic profile, or for any other legitimate anti-doping purpose. The international standard

adopted by WADA on the Prohibited List lists among the prohibited methods those likely to modify genomic sequences and/or alter gene expression and those involving the use of genetically modified cells. Finally, various technical documents developed by WADA describe the DNA analyzes to be carried out to reveal a prohibited substance or method. the framework of the international convention against doping in sport, adopted on October 19, 2005 under the aegis of the United Nations Educational, Scientific and Cultural Organization (UNESCO). In France, Ordinance No. 2021-488 of April 21, 2021 relating to the measures falling within the scope of the law necessary to ensure compliance of domestic law with the principles of the World Anti-Doping Code and to strengthen the effectiveness of the fight against doping has transposed into domestic law in the sports code the principles of the new CMA. However, in view of the questions that such a process could raise and the timetable for adopting the ordinance, the genetic analyzes of the samples were not authorized by this text. According to the ministry, the AMA considered that the impossibility, in France, of carrying out a genetic analysis of samples taken from athletes was not in accordance with the CMA.Secondly, with regard more particularly to the protection of personal data, the CNIL takes note that the analyzes consisting of the examination of genetic characteristics or the comparison of genetic fingerprints – and the resulting processing of data – may only be implemented for the sole purpose of highlighting the presence and use of a substance or method prohibited under Article L. 232-9. Any other use of this data is therefore prohibited. Article 4 of the bill calls for the following additional comments: obligation to obtain express consent, obtained in writing prior to the examination of genetic characteristics (article 16-10 of the civil code) or the identification of a person by his genetic fingerprints (article 16-11 of the civil code). The CNIL considers that the formulation adopted by the draft text (even in the absence of the consent of the athlete concerned) appears ambiguous and should be clarified in order to distinguish the cases in which the consent of the athlete is or is not obtained (if in particular concerning the collection of biological samples and the genetic examination likely to be carried out) as well as the consequences in the event of the athlete's refusal. In this sense, according to the details provided by the ministry, the bill is currently being revised in order, in particular, to provide for guarantees incidental to the absence of consent. The Commission considers that informing the athlete, prior to his participation in the competition, concerning the possibility that his samples may be the subject of genetic analysis, constitutes one of these guarantees. Next, draft article L. 232-12-2 of the sports code provides for prior information of the athlete concerned, but only in the event of an analysis relating to his constitutional genetic characteristics. The ministry specified that information on the possibility that the sampled product may be the subject of authorized genetic analyzes will be systematically delivered to the athlete during the sample. Finally, the

bill envisages informing the athlete concerned in the event of discovery, during the performance of these analyses, of genetic characteristics that may be responsible for an illness justifying preventive measures or treatment for himself or for the benefit of potentially affected family members. The Commission considers this information justified. In this case, unless he has previously opposed it, the bill provides that the athlete is invited to go for a consultation with a doctor qualified in genetics in order to be able to benefit from adequate care. The bill refers to the provisions of II of Article L. 1130-5 of the Public Health Code (CSP) which concerns the reuse of biological samples to carry out examinations of the genetic characteristics of a person for the purposes of scientific research. The Commission wonders about the reference to this article which is likely to create confusion as to the possible reuse of the athlete's biological samples, even though this is, according to the clarifications provided by the Ministry, excluded by applicable international anti-doping standards. Against this risk of confusion, the ministry specified that referring to the conditions of article L. 1130-5 of the CSP means that only the procedural conditions are applicable and not the entire legal regime of scientific research, which which deserves to be more explicit in the draft law. The other points of Article 4 of the draft law do not call for any specific comments from the Commission. On the compliance of the CSI with the GDPR and the law of 6 January 1978 as amended (article 5) Article 5 of the draft law aims to bring the video protection regime provided for by articles L251-1 to L255-1 of the CSI into compliance with the GDPR and the law of 6 January 1978 as amended .The Commission has repeatedly recalled that several provisions of the CSI have been obsolete since the evolution of the regulations on the protection of personal data in 2018. Indeed, they no longer allow data controllers to know the real state of their obligations in this area or to the persons concerned to know how to exercise their rights, even though these provisions constitute the general legal framework in this area. While it thus welcomes the Ministry's compliance approach, the Commission notes that it has chosen to modify the existing provisions as a minimum and underlines the fact that a more comprehensive reform of the processing of images in open spaces to the public will be necessary to secure the actors and regulate the uses. Firstly, the main changes envisaged aim to specify, in article L251-1 of the CSI, that the automated processing of personal data resulting from the visual recordings of video protection are governed by the applicable provisions on data protection and to remove the provisions relating to the powers of the Commission which are derogatory from those provided for by the law of January 6, 1978 as amended. Without calling into question the desire of the Ministry to maintain special rules for video protection systems in the CSI, the evolution of article L251-1 raises questions. The Ministry specified that the purpose of the proposed modification was to clarify the fact, on the one hand, that the CSI supervises the video

protection device itself (authorization procedure, etc.), on the other hand, that the resulting processing is governed by data protection regulations, as soon as personal data is processed. While the Commission welcomes this interpretation, the wording used in the bill is ambiguous. Indeed, since it is specified by the draft text that video surveillance video recordings come under the CSI, it should be clarified, insofar as they relate to the image of people, that these are data processing of a personal nature which are carried out and subject to the regulations in this area. In this respect, the Commission recalls that any operation – in particular the recording, transmission, modification or consultation – relating to the image of persons who can be recognized constitutes processing of personal data. It therefore considers that the images captured by video protection devices, even if they are not subsequently recorded, are subject to the regulations on the protection of personal data. It would therefore be appropriate to clarify the Article L251-1 of the CSI to provide that video protection systems come under the provisions of the CSI and that the processing (capture, recording, storage, etc.) of images by these systems constitutes processing of personal data personnel subject to compliance with the amended law of 6 January 1978 and the GDPR as well as directive (EU) 2016/680 where applicable. This articulation would not exclude the possibility of providing specific provisions in the CSI concerning the processing of personal data as long as they are compatible with the texts relating to data protection.Secondly, the modifications made by the draft law will not make it possible to solve the more specific difficulties of coordination between the CSI and the regulations on the protection of personal data. In this respect, additional modifications would be necessary to ensure the proper coordination between the regulations relating to the protection of personal data. On the one hand, it would be appropriate to supplement the provisions of the CSI with regard to the rights of individuals, in particular in order to explicitly exclude, where applicable, the right of opposition, provide information for the persons concerned in accordance with data protection regulations, and clarify the relationship between the right of access to the recordings as provided for by the CSI (consultation of unaltered images, including, where applicable, with the presence of third parties) and the right to have access as well as to obtain a copy of the personal data provided for by the GDPR and the law of January 6, 1978 as amended (access to the applicant's images only). For the rights of individuals, a reference to the Data Protection Act and the GDPR could be added to the legislative provisions of the CSI, while the procedures for exercising these rights could be provided for at the regulatory level. The Ministry has in fact specified that the framework for the procedures for exercising rights will be provided for by a Conseil d'Etat decree taken after consulting the CNIL, in accordance with article L255-1 of the CSI. In addition to the difficulty associated with understanding the scope of processing resulting from video protection systems, this article specifies

that the decree will notably set the conditions under which the public is informed of the existence of a video protection system without expressly reference to other data subject rights. On this point, the Commission considers that Article L255-1 of the CSI should be supplemented to provide for a regulatory framework for all the rights of the persons concerned. which is intended to constitute a single regulatory act for all of these systems. The Commission wonders about the feasibility of such a framework by a single general text with regard to the diversity of the purposes of the systems concerned, their legal regimes likely to be distinct (in particular, the GDPR and/or the directive (EU) 2016/680) or the plurality of situations that video capture and processing systems are intended to cover. It thus recommends that the Ministry, as far as possible, provide a general but differentiated framework (by means, for example, of several single regulatory acts) depending in particular on the particularities presented by the video protection systems. On the other hand, the purposes of video protection devices are expressly mentioned in article L251-2 of the CSI. The Commission recalls that there are other devices which film public roads or places open to the public for purposes other than those mentioned in Article L251-2 of the CSI (for example: videophone, dashboard cameras, beach cameras). It notes that the bill amends the current article L254-1, in order to clarify the scope of the offence, limited to the devices and purposes of the CSI. It recalls that these devices will be subject to the regulations on the protection of personal data. Finally, the Commission considers that clarifications should be made in the CSI as to the framework for these devices for the purpose of overall clarification. In conclusion, in view of all the above observations, the Commission the fact that a more general compliance of the CSI is essential in order to allow data controllers to know the real state of their obligations in this area and data subjects to know how to exercise their rights. It therefore invites the ministry to supplement the internal security code, in particular on the points raised above. On the use of algorithmic processing of images captured by video protection devices or aircraft in order to detect and report in real time of predetermined events likely to threaten the safety of persons (article 6) Article 6 of the bill establishes an experimental framework allowing the implementation of algorithmic processing for the automated analysis of images from video protection devices and cameras installed on aircraft to detect and report predetermined events in real time. This processing could only be implemented for the sole purpose of ensuring the security of sporting, recreational or cultural events, which, by their scale or their circumstances, are particularly exposed to the risk of acts of terrorism or risk of serious harm to the safety of persons. These devices, more commonly called augmented or smart cameras, could only be implemented by the police and national gendarmerie services, fire and rescue services, municipal police services and internal security services. of the SNCF and the RATP within the framework of their

respective missions, which would assume the quality of data controllers. that the multiplicity of places concerned and the expected level of security make it necessary to optimize the use of internal security forces and civil security forces. Only the real-time processing, by algorithmic processing, of images from video protection devices and drones would be such as to allow this optimization. The Ministry thus considers that it is necessary to allow the use of augmented camera devices to secure all sporting, recreational and cultural events. If such objectives are legitimate, the Commission notes, as moreover indicates the ministry, that the use of such technologies for the purposes of preventing terrorism and undermining the security of persons is unprecedented in France. The Commission recalls, in its position, published in July 2022, relating to the conditions for the deployment of augmented camera devices in public spaces, that the use of these devices raises new and substantial issues in terms of privacy. These automated image analysis tools can indeed lead to massive processing of personal data; they do not constitute a simple technological development, but a change in the nature of video devices, which may entail significant risks for individual and collective freedoms and a risk of surveillance and analysis in the public space. This is why the Commission considers that the deployment, even experimental, of these augmented camera devices is a turning point that will help define the role that will be given in our society to these technologies, and more generally to artificial intelligence. The Commission refers to the position it published on the subject in July 2022, on the need for a global and ethical reflection on the uses of these instruments, and on the importance of guarding against any phenomenon of addiction and trivialization of these increasingly intrusive technologies. These risks are increased when algorithmic processing is used on images from cameras installed on aircraft, which are themselves mobile, discreet devices and whose position at height allows them to film places that are difficult to access or even prohibited for conventional cameras. The Commission stresses that the framework for algorithmic processing, created by the bill, takes into account a large part of its recommendations: CNIL had indicated that the measures implemented for general administrative police or judicial police purposes were likely to affect the fundamental guarantees provided to citizens for the exercise of public freedoms and therefore fell within the domain constitutionally reserved for the law by the CNIL. Article 34 of the Constitution; The use of automated analyzes is reserved for limited hypotheses, since it is only a question of certain types of demonstrations, presenting exceptional risks for public order, so that the automatic analysis will only be deployed in one or more specific locations, for a limited time and for a specific purpose; This framework provides for a certain number of guarantees capable of limiting the risks of breaches of the personal data and people. The Commission notes in this respect that the draft law provides for an experimental and limited deployment in time

and space of algorithmic processing. This processing may not use any biometric data for the purpose of uniquely identifying a natural person in accordance with Article 9 of the GDPR (which notably excludes facial recognition devices), nor carry out any reconciliation, interconnection or connection automated with other processing of personal data or even found, by themselves, any individual decision or automated prosecution. The implementation of this processing is also conditional on the existence and robustness of human control measures and a risk management system to prevent and correct the occurrence of any biases or misuse. experimental framework and the role of the CommissionArticle 6 of the bill creates a legal framework for the experimental implementation of these algorithmic processing operations, the term of which is set for December 31, 2024. Given all the issues raised by augmented camera devices, the CNIL considers that an experiment is essential. From the start of the experiment, the Government will have to reflect on the implementation of an evaluation protocol making it possible to measure in a rigorous, contradictory and multidisciplinary the contribution of automated image analysis technologies. This experiment can in no way prejudge the possible sustainability of these systems. The legal framework provided for by the bill must, itself, be limited to the experimental and temporary period and cannot prejudge a possible framework and the governance scheme applicable in the perspective of the proposed regulation for intelligence currently being developed at European level. The Commission is currently working on the development of a general doctrine on artificial intelligence in order to support data controllers, and which will result in particular in the publication of recommendations in in the course of 2023. At the same time, the Commission will be at the disposal of data controllers to support them in the compliant deployment of the systems referred to in Article 6 of this draft law. The legality of the devices deployed may, in any case, be controlled by the Commission within the framework of the powers of control provided for in Article 19 of the Data Protection Act. An evaluation report must be produced within a maximum period of six months before the end of the experiment and submitted to Parliament. However, the Commission questions the consistency of this timetable, which would lead to the submission of the evaluation report to Parliament before the 2024 Olympic and Paralympic Games are held. The Commission requests that this report also be sent to it. Although it notes the fact that its content will be fixed by decree, it already recommends that, in addition to the elements referred to in paragraph VIII of article 6, it should contain at least: an exposition of the evaluation protocol (the stages of the evaluation, its concrete organization, in time and space, the indicators and criteria of success and failure, etc.) in order to allow a contradictory examination faithful to the scientific methodology; a detailed presentation: of the results obtained during with regard to technical performance: this involves providing a scientifically substantiated assessment

of the tools developed after the phases of learning, validation and correction of the parameters of the algorithms (error rate, analysis and interpretation of these errors, feedback on the gain in performance obtained during the various phases, measurement of discriminatory biases, comparison with the state of the art, etc.); the results obtained with regard to the needs or operational objectives: it is a question of measuring, once these deployed, the real contribution for the task or tasks to be carried out of the tools developed and to question the impact of the errors of the device for the achievement of the objective. A typology of the reported reports could in particular be produced, associated with the follow-up that will have been made; the results obtained with regard to the societal impacts: this involves assessing the perception of the tools developed by the persons concerned, once the systems have been deployed , and to question the impact of the system's errors for the people concerned. a presentation of the evaluation of the human control measures and the risk management system to prevent and correct the occurrence of any biases or misuse; elements relating to the implementation of guarantees for the protection of privacy such as pseudonymization or the blurring of images and, in the event that the choice is made not to apply such measures, an analysis demonstrating that their impact on the level of performance of the algorithm in the operational phase would harm the achievement of the purposes of the processing; elements relating to the information of the persons concerned (media used, possible reasons for exclusion of the right to information, etc.); quantitative and qualitative information concerning the exercise of rights by data subjects; information on the security measures put in place to ensure the availability, confidentiality and integrity of the data processed. The Commission also recommends that the evaluation is carried out in association with independent experts.On the legal regimeParagraph V of the bill provides that algorithmic processing will be authorized by a decree, issued after consulting the CNIL, which will notably aim to list the predetermined events who are subject to it. A prefectural decree must then authorize the use of processing concerning the detection of a particular event with regard to the circumstances of the case which must justify its implementation. Article 6 provides that the algorithmic processing referred to in I is governed by the GDPR and by the Data Protection Act (in particular its title III concerning the provisions applicable to processing under Directive (EU) 2016/680, known as police-justice). It will be up to each data controller to determine the legal regime applicable to the processing that he plans to implement. For processing under Title III of the Data Protection Act, an impact analysis relating to data protection to character (AIPD) must be carried out and transmitted for consultation to the CNIL under the conditions provided for in its article 90. Given the novel nature of the framework for the deployment of these technologies, the CNIL recommends that the creation and transmission of a DPIA for each algorithmic

processing that would be authorized and tested within the scope of article 6 of the bill. The DPIA must in particular include the elements allowing the Commission to verify the points mentioned in paragraph V of Article 6 (necessary and proportionate nature of the processing, robustness of the human control measures, validity of the design parameters, etc.). On the purpose and scope of deployment of the algorithmic processing mentioned in I Article 6 of the draft law provides that the purpose of the processing is the detection and signaling of predetermined events likely to present or reveal risks of acts of terrorism or risks of serious harm to the safety of persons during the sporting, recreational or cultural events referred to in I. The Commission emphasizes the fact that these criteria may cover a large number of distinct hypotheses. It recommends that, with regard to the issues and risks presented by the systems in question, the criteria used to determine their scope of deployment be assessed in a restrictive manner. It also takes note of the Government's commitment to list exhaustively and in detail in the decree the predetermined events that the algorithmic processing must detect and report. She asks that the bill expressly specify that the decree will list these predetermined events. Algorithmic processing may in certain circumstances have high error rates, making the use of these technologies less effective in operational conditions than human detection. The predetermined events (crowd movement, detection of luggage, suspicious gestures and behavior, etc.) whose detection is sought should be selected with regard to the performance of the algorithmic processing, according to the state of the art of research in the matter. The Commission takes note of the clarifications provided by the Ministry according to which this processing can only be installed on cameras located near the places hosting the events referred to in paragraph I and in the means of transport and the roads serving these events, and not all means of transport and roads in the national territory or in the cities in which the events are held. The Commission stresses that the prefectural authorization referred to in VI must ensure that the geographical and temporal scope of algorithms will be limited to the events defined in I for which they are deployed. On the phases of design, validation and correction of algorithmic processing parameters According to VII of article 6 of the bill, images from video protection systems or of drones can be used as training data, for the sole purpose of allowing the validation of the design parameters of the processing algorithms and possibly reused for the correction of the processing parameters. The CNIL considers that this reuse should be accompanied by the implementation of appropriate safeguards such as, if possible, the pseudonymization or blurring of images, in particular if this is carried out by a third party. In this respect, the Commission requests that the draft law, or at the very least the decree, expressly regulate the possibility for third-party service providers, under the control of the data controller, to carry images from video protection systems or drones into the conditions provided

for in VII. It draws the government's attention to the need to ensure that the images will not be used by these providers for other purposes and will be destroyed once used. It recalls in this respect that third parties reusing the data are subject to the same obligations as the data controllers mentioned in I of Article 6, in particular with regard to the retention periods of the data. processing necessary for the design, validation and correction of the design parameters of the algorithms are subject to the GDPR and the Data Protection Act. As such, access to these images should be restricted to authorized teams only during the design, validation and correction phases. These teams should receive specific training relating to the protection of privacy, in particular if these teams were employed by a subcontractor. stored and processed for a period up to the end of the experiment. The Commission emphasizes that this is a maximum duration: data considered irrelevant must be deleted immediately, without waiting for the expiry of the period referred to above. Moreover, due to the potentially sensitive and shocking nature of the images collected in real conditions if one of the feared events were to take place, the Commission recommends that special precautions be taken when processing them for the purposes set out in Article 6, VII and for learning algorithmic models. These precautions should include specific training for officials who need to be aware of them, as well as reinforced security measures, in particular to guarantee the confidentiality of backups. The Commission welcomes the attention given to the reliability of the data, the objectivity and the relevance of the learning criteria as well as the strict necessity of the methods applied. However, it recommends that the use of models designed during the learning phase be conditional on obtaining a sufficiently high level of performance at its end, both in comparison with the state of the art and with regard to the needs of operational teams. In particular, this level of performance should be assessed with regard to the potential impact for people that a false positive or a false negative may have, for example, at the output of the algorithmic processing. The Commission recommends that the attention paid to the reliability of the data, the objectivity and relevance of the learning criteria, the strict necessity of the methods applied, as well as the existence of any biases during the validation and correction phases, which is at least equivalent to that provided to these same issues during the design phase of algorithmic processing. Indeed, the use of data collected in real conditions during these phases involves a particular risk, due for example to a drift of the data leading to a modification of the performance of the algorithms. The Commission considers that this use should be governed by measures at least as stringent as those implemented during the design phase, and making it possible to guarantee that the modifications made to the algorithms will not lead to their degradation. that the system envisaged does not provide for specific monitoring of compliance with these requirements by solution providers and data controllers. It understands that the provisions of the bill will

allow the Commission to verify these properties within the framework of the missions assigned to it.On the information and rights of the persons concernedInformation of the persons is an essential element in ensuring the loyalty of the processing for the purpose of transparency with regard to the public. Its implementation is essential to allow the deployment of augmented camera devices in a climate of trust with regard to public authorities. It seems important that people be informed that an event will give rise to the use of augmented cameras within a certain perimeter, as well as the experimental context, the objectives pursued and the characteristics of this use, in order to be able to contest, if necessary, including before the urgent applications judge, compliance with the criteria and guarantees set by law. contrary to the aims pursued. However, the Commission questions the cases in which such an exclusion would prove necessary and recommends that these be particularly limited. In any case, it will be up to the data controller to ensure, where applicable, the conditions under which the right to information could be excluded with regard to the applicable regime. It will be up to him in particular to check whether partial information, relating to the principle of the use of augmented cameras, can be envisaged without compromising the security of the event. Finally, the bill does not exclude the exercise of the rights of opposition , access, rectification and erasure. The Commission therefore stresses that, in principle, all the rights provided for under the GDPR and the Data Protection Act will apply in accordance with the regime applicable to the processing implemented and that it will be appropriate for each data controller to determine and to respect, except to provide for its exclusion in accordance with the GDPR and the Data Protection Act. In this regard, she wonders about the procedures for exercising the right of opposition to algorithmic processing of the image of people, moreover in a context where the right of opposition is not available for the capture of the image by the fixed or mobile camera. On the retention periods of images analyzed by algorithmic processing Article 6 of the bill provides that algorithmic processing analyzes images only in real time. The Commission therefore takes note of the fact that the implementation of the algorithmic processing referred to in I does not imply any additional retention period – with regard to what is provided for in the framework of the internal security code – of the images from the devices on which they are installed. On the extension of the video protection images that the agents of the internal services of the SNCF and the RATP can view when they are assigned within the information and command rooms coming under the State (article 7)Article 7 of the bill modifies article L2251-4-2 of the transport code in order to extend the video protection images that the agents of the internal security services of the SNCF and the RATP can view when they are assigned to the State information and command rooms (CCOS). This provision now limits the viewing of these agents to the images of the video protection systems transmitted in real time in these rooms from

the vehicles and property rights of way of public passenger transport under their jurisdiction, for the sole purpose of facilitating coordination with the latter. during the interventions of their services within the said vehicles and rights-of-way. The bill widens the possibilities of viewing of the agents of the internal security services of the SNCF and the RATP. SNCF and the RATP will not be able to have access to all the images from the video protection systems likely to be transmitted in real time in the information and command rooms coming under the State, but only to those from the systems located within their vehicles, their areas and their surroundings. the sporting event. The objective pursued by this development, which consists of improving communication between the different people who are called upon to intervene in the flow of people in the context of major sporting events, is legitimate. It is nevertheless recalled that the SNCF and RATP internal security services are solely responsible, as part of a preventive mission, for ensuring the safety of people and property in the grip of their company, protecting their agents, their assets and to ensure the proper functioning of the services. In this respect, the Commission considers that the possibility offered to these agents of viewing more images from the video protection systems transmitted in real time should not lead to extending their powers as defined by the texts, or to allow them to use the images transmitted for purposes other than those provided for. would have the possibility of accessing all the images transmitted in real time within the CCOS (RATP, SNCF but also the police headquarters in particular), without restriction, should be clarified. On the extension of the screening procedure provided for in article L211-11-1 of the CSI to fan-zones and participants in major events (article 9)Article 9 of the bill modifies the access system to major events designated by decree due to their exposure to an exceptional risk of terrorist threat pursuant to article L211-11-1 of the CSI. This article of the CSI now requires the organizers of certain major events to seek the opinion of the competent administrative authority before authorizing a anyone who is neither a spectator nor a participant (for example: athletes, medical team, referees, etc.) to access an establishment or facility hosting these events. This opinion must be issued following an administrative inquiry into the data subject which may give rise to the consultation of certain automated processing of personal data, according to the rules specific to each of them. Article 9 of the bill provides that this procedure also applies to places located in public spaces hosting large gatherings of people in order to attend broadcasts of these events designated by decree, such as fan zones, for example. The Ministry specifies that the notion of places located in public space refers to all spaces intended for the use of all without restriction and aims to encompass both public roads (roads open to public traffic) and places open to the public (places not used exclusively for this event, such as parks, public transport or even shops). In view of the particularly wide perimeter of the places likely to be

targeted, the Commission invites the Ministry to establish objective criteria allowing these places to be defined at the regulatory level or in an employment doctrine, in connection with the assessment of the threat which makes it possible to justify carrying out administrative investigations (for example, criteria relating to the number of people, the type of retransmission, or even the definition of the risk with regard to the area, etc.). On this point, it notes that the instruction from the Minister of the Interior of 23 August 2021 relating to the implementation of the procedure for designating a major event will be updated following these legislative developments. secondly, this article adds the participants to the persons whose access is subject to an authorization from the organizer issued after preliminary investigation by the administrative authority. According to the ministry, the notion of participant covers, for example, actors, athletes but also their teams (coaches, doctors, physiotherapists, etc.) and other people involved in the smooth running of the event (referees, timekeepers, etc.) . Thus, with the exception of spectators, all persons accessing the places concerned, whatever their status and functions, will have to be the subject of an administrative investigation. very substantially the scope of the persons concerned by these provisions. This could indeed represent around 50,000 to 60,000 participants for the Olympic and Paralympic Games alone, according to the ministry. On the one hand, if the organization of a major event such as the Olympic and Paralympic Games involves risks that may justify the carrying out administrative investigations, the Commission regrets, however, that it did not have more details on the elements justifying such an extension for the 2024 Olympic and Paralympic Games and in a permanent manner beyond this period (for example with regard to any shortcomings presented by the current network or the need to extend to these categories of people). It also regrets not having had any elements of comparison to determine whether this control is usual for this type of event, in particular in the countries of the European Union or declared adequate for the transfer of personal data. The transmission of all of this information could have enabled it to assess the necessity and proportionality of this particularly significant extension. On the other hand, carrying out these administrative investigations will involve the processing of personal data as well as the consultation of certain so-called police files. The data collected in this context by the National Service for Administrative Security Investigations (SNEAS) may be kept for a period of up to five years in the file implemented by this service, as part of the automated processing of data. of a personal nature called Automation of centralized consultation of information and data (ACCReD). In this respect, the Commission stresses that the data thus processed must be kept for a period not exceeding that necessary for the purposes for which they are processed and considers that they cannot be recorded for a period longer than that of the events concerned. It also recalls the need to put in place guarantees so that the automation of consultations of the

files concerned does not lead to opinions or decisions resulting from the mere registration of a person in a data processing at personal character. Indeed, significant harm to the persons concerned may result from an unfavorable opinion or decision following these consultations. It notes that the service in charge of investigations must carry out additional checks when it becomes aware of data that could a priori justify an unfavorable opinion. On the possibility of setting up body scanners at the entrance to sports arenas (section 10) Section 10 of the bill allows the use of millimeter wave scanners at the entrance to venues hosting sporting events. The use of this technique to carry out people screening operations, already deployed in airports, aims to streamline and secure access to the places concerned. Their use is subject to various conditions defined in the bill: screening can only be carried out with the consent of the persons concerned; the analysis of the images is carried out by operators who do not know the identity of the person and who cannot simultaneously view the image produced by the imaging device; the device must include a system that interferes with the visualization of the face; the recording and storage of images are prohibited; these operations are limited to the areas determined by a joint order of the Minister responsible for sports and the Minister for interior.The implementation of these safeguards is likely to reduce the invasion of the privacy and intimacy of the persons concerned.It recalls that the implementation of a body scanner constitutes a processing of personal data subject to relevant regulations. On this point, it emerges from the Communication from the Commission to the European Parliament and the Council on the use of security scanners at airports in the European Union of 15 June 2010 (COM/2010/0311 final) that the capture and the processing of the image of an identified or unidentifiable person by body scanners in order to allow an examiner to carry out the relevant security assessment falls within the scope of data protection regulations. Indeed, certain technologies can reveal a detailed display of the human body as well as medical particularities. in the body scanner and/or agents may be responsible for directing participants and ensuring their consent. In case of refusal, the person may be subject to another control system. She will then be directed to another line in order to be subjected to manual pat-downs, carried out by an officer of the same sex. guarantee their effectiveness. The latter must also be informed sufficiently in advance of the existence of another control device in order to be able to make an informed choice. Finally, article 31 of the amended law of 6 January 1978 provides that the processing of data which concern State security, defense or public security implemented on behalf of the State, which could be the case in this case, must be authorized by a regulatory act taken after reasoned and published opinion of the CNIL. If necessary, the Commission invites the Minister to specify whether the draft text tends to derogate from this provision and, if this is not the case, considers that the regulatory acts in question should

be adopted. The PresidentMarie-Laure DENIS