

Deliberation 2019-049 of April 11, 2019 National Commission for Computing and Liberties Nature of the deliberation: Opinion

Legal status: In force Date of publication on Légifrance: Wednesday May 15, 2019 Deliberation No. 2019-049 of April 11, 2019 providing an opinion on a draft order amending the order of 2 May 2011 relating to the automated processing of personal data called "files of residents of security zones" created on the occasion of a major event. (request for opinion no. 19004176)

(Recommendation RU-015) 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 the decree of May 2, 2011 relating to the automated processing of personal data called files of residents of security zones created on the occasion of a major event; Having regard to Convention No. 108 of the Council of Europe for the protection of 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 Framework Decision 2008/ 977/JHA of the Council; Considering the modified law n° 78-17 of January 6, 1978 relating to data processing, files and freedoms; Considering the modified decree n° 2005-1309 of October 20, 2005 adopted for the application of ° 78-17 of January 6, 1978 relating to data processing, files and freedoms; Considering decree n ° 2019-219 of March 21, 2019 implementing article L. 211-11-1 of the security code interior at the G7 summit in Biarritz; Having regard to the decree of May 2, 2011 relating to the automated processing of personal data called the file of residents of security zones created on the occasion of a major event; Having regard to deliberation n° 2011 -106 of April 28, 2011 providing an opinion on a draft decree of the Ministry of the Interior, Overseas Territories, Local Authorities and Immigration authorizing the implementation of processing of personal data called files residents of security zones established on the occasion of major events; After hearing Mrs. Sophie LAMBREMON, commissioner, in her report, and Mrs Nacima BELKACEM, government commissioner, in her observations, Issues the following opinion: 1. The Commission has been asked for an opinion by the Minister of the Interior on a draft decree modifying the decree of May 2, 2011 relating to the automated processing of personal data called files of residents of security zones created on the occasion of a major event. It emphasizes that this referral is part of the more specific perspective of the G7 meeting in Biarritz in August 2019, constituting a major event under the terms of Decree No. 2019-219 of March 21, 2019 referred to above.2. The processing that can be implemented in accordance with the abovementioned decree of May 2 is intended for the management of permits allowing access for persons

or vehicles to areas within which restrictions on free movement and exercise of certain activities, in order to prevent disturbances to public order and guarantee the safety of a major event .3. The security zones defined on the occasion of major events delimit a perimeter whose access is controlled by the national police and gendarmerie forces, in order to prohibit in particular any violent demonstrators from approaching the place of the summit and disrupt the course of the event. These areas are defined by prefectural decree and only natural persons have access to them: having their domicile there, exercising a professional activity there, or having a legitimate reason to go there (eg a doctor, home care) . The files of the residents of the security zones must thus allow the production, by an approved service provider, of access titles (individual personal cards for natural persons or badges for vehicles). During the course of the event in question, these files are used for the purpose of controlling access by natural persons to secure areas. new categories of data. It recalls in this regard that it expressed its opinion on the implementation of this system in its deliberation of 28 April 2011 referred to above and notes that the general characteristics of the system are for the most part unchanged.5. In addition to the aforementioned modification, the Commission notes that the Ministry also intends to provide for new methods of issuing badges to residents of the areas concerned. The securities may thus be sent by post to an address different from that of the place of residence of the person in the area affected by the event. It acknowledges that the envelopes will be delivered on presentation of an identity document by the person concerned and that, therefore, a postal address other than that located in the area concerned by the major event, may do the object of collection in the treatment.6. Insofar as the purpose of the processing is the protection of public security and the prevention of disturbances to public order, it must therefore be the subject of an order, issued after a reasoned and published opinion of the Commission. The decree examined constitutes a single regulatory act, in reference to which compliance commitments will be sent to the Commission prior to each implementation of a file of residents of a security zone, in accordance with the provisions of Article 26- IV of the amended law of January 6, 1978. Finally, given the development of the legal framework relating to the protection of personal data resulting in particular from the taking into account of the provisions of Directive (EU) 2016/680 of 27 April 2016 referred to above, the Commission considers that the draft decree submitted to it must be examined with regard to these provisions, and more particularly articles 70-1 et seq. of the amended law of January 6, 1978.7. The draft calls for the following observations from the Commission. On the data collected 8. As a preliminary point, the Commission recalls that the Ministry specified that all the data will be collected directly from the persons concerned on a voluntary basis, on a voluntary basis. exception of persons declaring themselves minors or incompetent

adults, who do not have the legal capacity to complete the form themselves. No other file will be consulted for the supply of the processing, the files of the residents of the security zones not allowing any reconciliation with other automated processing of personal data.⁹ These items recalled, the Commission notes that Article 2 of the decree of 2 May 2011 referred to above provides for the collection of the following personal data: surname, first name, date and place of birth; postal and electronic address, telephone number; the number of the national identity card, driving licence, passport or residence permit (at the declarant's choice); the date and time of entering and leaving the secure area, as well as the reason for accessing the secure area. It also recalls that the information that will be mentioned and visible on the access titles is: surname, first name, number of the identity document, serial number of the access title, number of the zone and acronym (for example: G7).¹⁰ Firstly, the Commission notes that Article 1 of the draft decree provides that proof of residence in the zone may be collected. In this respect, it notes that these documents are kept in paper format in a secure cabinet and destroyed at the end of the event.¹¹ If the Commission does not question the need to verify that the domicile of the person falls within the scope concerned by the system, it nevertheless considers that the collection and storage of such proof must be governed by strict guarantees. In this respect, it notes that the procedures for deleting these documents are identical to those provided for data stored in digital format. The Commission therefore considers that it is up to the data controller to draw up a destruction report at the end of the retention period provided for by the 2011 decree, addressed to the Commission.¹² Secondly, the draft order provides that the access pass number is collected during processing. The Commission notes that this number, which is intended to appear on the badge issued to the persons concerned, is identical to that which is mentioned on the shuttle card. It acknowledges that its processing has the sole purpose of avoiding duplicate addresses and thus limiting the risk of identity theft. Thirdly, the Commission recalls the particular attention that must be paid to the processing of data relating to minors, with regard to the general philosophy of European regulations and in particular recital 50 of the aforementioned Directive 2016/680 which specifies that the measures taken by the data controller should include the establishment and implementation of specific safeguards intended for the processing of personal data relating to vulnerable natural persons such as children .¹⁴ It observes that when it was referred to it in 2011, the Ministry had specified that it intended to collect the personal data of all minors residing in the security zones, without distinction of age, insofar as this individual allocation was made necessary in order to allow minors, even relatively young ones, traveling without their parents, to access the areas where they reside. The Commission recalls in this respect that it had considered, in its aforementioned deliberation No. 2011-106, that the issue of an

access badge to all minors, without any distinction of age, and to all least to very young children, did not seem necessary for the achievement of the purposes pursued by the resident files when an adult wearing a badge accompanies the minor.¹⁵

These elements recalled, the Commission takes note of the clarifications provided by the Ministry according to which the data of minors under the age of 13 will not be collected. It notes that the latter must, however, be accompanied by a person with an access badge, during checks. On the recipients ¹⁶. The Commission observes that the decree of 2 May 2011 referred to above provides that only persons have access to any or part of the data, by reason of their attributions and within the limits of the need to know: the individually designated and specially authorized agents responsible for recording the data collected and establishing access titles; the agents of the national police and the soldiers of the national gendarmerie assigned to control access to the security zones.¹⁷ In addition, the persons in charge of producing the access titles may be made recipients of all or part of the data. The Commission recalls that only the data strictly necessary for the establishment of the titles must be communicated to them. In this respect, it notes that only the data present on the access card will be transmitted to these persons. is sent in a secure envelope and delivered upon presentation by the person concerned to the post office employee of an identity document. In this context, it observes that if the Post Office is responsible for sending these envelopes to the persons concerned, it cannot however be made the recipient of the information recorded in the processing.¹⁹ Finally, it notes that the services responsible for preventing threats to public security may be recipients of information recorded in the processing in the sole event of the opening of legal proceedings, and in respect of their quality of third party authorized in this context, which does not call for comment. On the retention period of data ²⁰. Article 3 of the decree of May 2, 2011 provides that data are retained for a period of three months from from the end of the event, and specifies that their consultation beyond three days is only possible within the framework of legal proceedings. The Commission points out that it has been particularly attentive to ensuring that the files of residents of which it has previously had knowledge, which constitute population files, are destroyed as soon as possible. In this respect, it takes note of the obligation for the data controller to draw up a destruction report for each file of residents whose retention period has expired, which must be sent to the Commission.²¹ Without calling into question the operational justifications leading to the retention of such a retention period, which it considers to be proportionate with regard to the purposes of the processing, it nevertheless considers that the establishment of a destruction report, sent to the Commission at the end of this period is an important guarantee, which could usefully be mentioned in the draft decree. On the rights of data subjects²². Article 3 of the draft decree provides that the rights of information, access,

rectification and erasure provided for in articles 70-18 to 70-20 of the law of January 6, 1978 are exercised directly with the file manager service .23. As regards informing the persons concerned, the Commission stresses that it was unable to assess the content and relevance of the information provided in the shuttle sheets sent to the persons concerned, as this document did not been communicated. In any case, it notes that the persons concerned by the system will be informed by means of a display in the premises intended for the withdrawal of access titles. However, it underlines the absence of delivery of this information in the event of a choice of postal delivery of the document and recalls that the information of the persons concerned must be delivered in a clear and complete manner.24. Having made these observations, the Commission considers that the other procedures for exercising the rights of data subjects do not call for any particular comments. On the security measures25. The Commission considers that the security measures, which remain unchanged, comply with the safety requirement provided for by article 70-13 of the law of January 6, 1978 as amended. However, it recalls that this obligation requires the updating of security measures with regard to the regular reassessment of risks. In this regard, she recalls that specific attention should be paid to the reassessment of security measures as part of the update of the impact analysis. The President M-L.DENIS