

Deliberation 2021-093 of July 22, 2021 Commission Nationale de l'Informatique et des Libertés Nature of the deliberation:

Opinion Legal status: In force Date of publication on Légifrance: Tuesday November 09, 2021 NOR:

CNIX2132824V Deliberation n° 2021-093 of July 22, 2021 providing an opinion on a draft decree pursuant to I of Article R.

3120-40 of the Transport Code (request for opinion no. 21011170) The National Commission for Computing and Liberties,

Seizure by the Minister for Ecological Transition of a request for an opinion concerning a draft order issued pursuant to I of

Article R. 3120-40 of the Transport Code;

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 Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of

individuals with regard to the processing of personal data by competent authorities for the purposes of prevention and

detection of criminal offences, investigation and prosecution thereof or the execution of criminal penalties, and on the free

movement of such data, and repealing Council Framework Decision 2008/977/JHA;

Having regard to the transport code;

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

the report of Mrs Marie-Laure DENIS, President, and the observations of Mr Benjamin TOUZANNE, Commissioner of

Government; Issues the following opinion: The National Commission for Computing and Liberties (hereinafter the Commission)

was seized, on March 19, 2021, by the Ministry for Ecological Transition, of a draft decree taken pursuant to I of article R.

3120-40 of the transport code. Article L. 3120-6 of the transport code, introduced by law no. accountability and simplification in

the sector of private public passenger transport, provides for the obligation, in particular for reservation centres, to

communicate to the administrative authority any data useful for monitoring compliance with the legislative and regulatory

provisions relating to the access to transport professions and particular public of persons (T3P), to their conditions of exercise

and to the activities of connection, with the exclusion of personal data relating to passengers. Paragraph I of article R. 3120-40

of the code transport lists the agents who may request the communication of this data and provides that, except in cases

where legislative or regulatory provisions provide otherwise, the nature, anteriority and retention period of this data and, where

applicable, the minimum periodicity of their communication by the persons intervening in the sector of the private public

transport of people are fixed by joint decree of the Minister of the Interior and the Ministers in charge of transport and work.

The Commission, which had ruled on the decree introducing this provision, had asked to be seized for opinion of any draft regulatory act taken in application of this decree. If the provisions relating to anteriority and period of storage of the data and, where applicable, the minimum periodicity of their communication, do not call for any particular comments from the Commission, it nevertheless recalls the need to limit the data requested in the context of suspicion of fraud (data listed in appendix I) and invites the ministry to specify the agents who will have access to the data collected periodically (data listed in appendix II). Finally, it wonders about the collection of certain data with regard to the ban on collecting personal data relating to passengers. On the data likely to be requested on an ad hoc or periodic basis Article 1 of the draft decree distinguishes the data likely to be requested from reservation centers for control purposes depending on whether they are likely to be collected on an ad hoc basis (appendix I) or periodically (appendix II). , as mentioned in deliberation no. 2021-XX of July 22, 2021 providing an opinion on the draft decree creating the processing of personal data called Data for the particular public transport of persons, the processing implemented from these data, if they contribute to the same purpose, must however be distinguished. To confuse them would amount to introducing systematic monitoring of the private passenger transport sector for a very wide range of offenses and on the basis of very precise data, the combination of which is particularly intrusive. As regards the data collected, the Commission takes note of the clarifications provided by the ministry according to which all the data listed in appendix I of the draft decree will not be collected regardless of the nature of the suspicion of fraud concerned. Indeed, the request made will relate only to the data relevant to the suspected offense and the persons concerned. It recalls that only agents authorized by law to carry out checks for a specific purpose may have access to the data, to the extent strictly necessary to carry out the checks for which they are responsible. In addition, the Commission takes note of the clarification provided by the ministry in charge of transport according to which only the agents of the ministry will have access to the data collected periodically. However, it notes that Annex II of the draft decree, with regard to the competent authority that can periodically collect data, refers to I of Article R. 3120-40 of the Transport Code, which aims a larger list of agents. The Commission therefore notes that the draft decree does not guarantee, as it stands, that only officials of the Ministry responsible for transport will be able to process this data for control purposes and invites the Ministry to clarify the draft on this point.

President Marie-Laure DENIS