

Deliberation 2018-322 of October 4, 2018 National Commission for Computing and Liberties Nature of the deliberation:

Opinion Legal status: In force Date of publication on Légifrance: Friday December 14, 2018 Deliberation No. 2018-322 of October 4, 2018 providing an opinion on a draft decree in Council of State relating to the validation of the long-stay visa equivalent to a residence permitThe National Commission for Computing and Liberties,Request by the Minister of the Interior of a request for an opinion concerning a draft decree relating the validation of the long-stay visa equivalent to a residence permit; 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 natural persons with regard to the processing of personal data and on the free movement of such data, and repealing the di Directive 95/46/EC; 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 the competent authorities for purposes of prevention and detection of criminal offences, investigation and prosecution in this area or execution of criminal penalties; Having regard to the code for the entry and stay of foreigners and the right to asylum (CESEDA), in particular its articles L. 611-5, R. 311-3, R. 611-1 to R. 611-7; Considering the law n° 78-17 of January 6, 1978 modified relating to data processing, files and freedoms ; Considering the decree n° 2005-1309 of October 20, 2005 modified taken for the application of the law n° 78-17 of January 6, 1978 relating to data processing, files and freedoms; Having regard to the deliberation n° 2016- 284 of September 20, 2016 providing an opinion on a draft decree in Council of State taken for the application of law n ° 2016-274 of March 7, 2016 relating to the rights of foreigners in France and containing various provisions relating to the fight against irregular immigration; On the proposal of Mr. Jean-François CARREZ, commissioner, and after having heard the observations of Mrs. Nacima BELKACEM, government commissioner, Issues the following opinion: The Commission received, from the Minister of the Interior, a request for an opinion concerning a draft decree from the Council of State, relating to the validation, by dematerialized means, of the long-stay visa equivalent to a residence permit. (VLS-TS). It notes that this teleservice, which is part of the program for the development of digital administration for foreigners in France (ANEF), will be based on the application for managing the files of foreign nationals in France (AGDREF 2). In this context, the draft decree amends, in its chapter I, articles R. 611-1, R. 611-5 and annex 6-4 of the code of entry and residence of foreigners and the right to (CESEDA) relating to the automated processing of AGDREF 2 personal data, in order to draw the consequences of the implementation of this teleservice (modification of the purposes, data collected and access to AGDREF 2

processing). , in accordance with article L. 611-5 of the CESEDA and article 30-II of the amended law of January 6, 1978, the modifications made to this processing must be the subject of a decree in Council of State taken after consulting the CNIL. The dematerialization of the validation of the VLS-TS also requires the modification of the provisions of article R. 311-3 of the CESEDA relating to the conditions allowing holders of certain visas to stay in France beyond a period of three months as well as the abolition of the long-stay visa validation procedure exceptions to the application of users' right to contact the administration electronically, provided for by decree no. 2015-1423 of 5 November 2015. The Commission notes that these modifications, listed in chapter II of the draft decree, only to ensure the overall consistency of the regime applicable to the validation of the long-stay visa equivalent to a residence permit without an opinion, within the meaning of the amended law of 6 January 1978, being required. On the legal framework applicable to modifications of AGDREF 2

The main purpose of the automated processing AGDREF 2 is to guarantee the right of residence of foreign nationals in a regular situation and to fight against the irregular entry and stay in France of foreign nationals. It thus constitutes the main file for the administrative management of foreigners in France and in particular allows the management, by the prefectures, of the files of foreign nationals, the production of residence permits and the management of removal measures. With regard to these elements, the Commission considers that the AGDREF 2 processing, taken as a whole, falls under the provisions of articles 70-1 and following of the Data Protection Act which transposed the aforementioned directive of April 27, 2016. In addition, in accordance with articles L. 611- 3 and R. 611-2 of the CESEDA, AGDREF 2 contains the fingerprints of the ten fingers of certain foreign nationals. It therefore comes under the provisions of Article 27 of the amended law of 6 January 1978.

However, there are processing operations which fall both within the scope of the aforementioned directive, because of some of their purposes, and within the GDPR or internal law, due to their other purposes. Indeed, when the data is processed for purposes other than those of prevention, investigation and prosecution of criminal offenses or the execution of criminal penalties, the GDPR applies, to unless the purposes assigned to the processing relate to State security or defence, activities which do not fall within the scope of Union law. Thus, when one purpose among others relates exclusively to one or other of these fields of application, the processing of personal data pursues mixed purposes which imply that a dual regime applies. In this respect, the Commission notes that the present modification of the AGDREF 2 processing is solely intended to dematerialize the VLS-TS validation procedure, thanks to the deployment of a teleservice. This modification thus adds, to the AGDREF 2 processing, a new functionality whose purpose is clearly distinct, on the one hand, from the prevention and

detection of criminal offences, investigations and prosecutions in this area or the execution of criminal penalties. and, on the other hand, State security and defence. The Commission considers that this modification of AGDREF 2, intended for the implementation of the said teleservice, does not therefore fall under the provisions of articles 70-1 and following of the Data Protection Act, but of the European regulation on the protection of personal data (GDPR) referred to above. On the performance of an impact analysis on the protection of personal data (AIPD) Pursuant to Article 35 of the GDPR, processing that is likely to create a high risk for the rights and freedoms of natural persons, must be the subject of a DPIA. Processing operations presenting a high risk having been the subject of a prior formality before May 25, 2018 are not however immediately subject to the performance of a DPIA. , unless the conditions for implementing this processing have subsequently been the subject of one or more substantial modifications. What it contains, the AGDREF 2 processing is, by its nature, likely to generate high risks for the persons concerned. On the other hand, it considers that the modifications currently examined – addition of a purpose intended to simplify the administrative procedures for users and of data and information relating to their password and payment of the taxes due for obtaining the VLS-TS –, are not substantial. The Commission therefore considers that the change in processing submitted to it does not require, at this stage and given the circumstances of the case, an impact assessment to be carried out. In any event, the Commission takes act of the upcoming overhaul of the AGDREF 2 processing which should in particular allow the deployment of several teleservices allowing, from a single personal space, to carry out various administrative procedures. It points out that insofar as this processing, which contains the fingerprints of foreign nationals, is covered, as a whole, by the aforementioned directive, the request for an opinion which will be sent to it must be accompanied by the impact analysis in accordance with to the provisions of article 70-4 of the modified law of January 6, 1978. In this respect, it takes note of the ministry's commitment to carry out such an analysis for the entire AGDREF 2 processing and recalls that this must, in any case, take place within three years from May 25 2018. On the purposes and operation of the planned teleservice The draft decree adds a purpose to the AGDREF 2 processing intended to dematerialize the procedure for validating long-stay visas equivalent to a residence permit. This teleservice, called VLS-TS and which will be compulsory, is the first in a series which should be accessible by foreign nationals from a single portal whose technical deployment is based on the AGDREF 2 application. With regard to VLS-TS , this concerns foreign nationals applying for a long-stay visa allowing them to enter France and stay there for up to one year without having to apply for a residence permit. This is the case, for example, with visas requested by the spouses of French nationals, students, trainees, researchers or certain employees.

Currently, to validate this type of visa and be in a regular situation, it is necessary, once on French territory, to complete certain formalities with the French Office for Immigration and Integration (OFII). If the applicant's file is complete, a sticker and a date stamp are affixed by the OFII to their passport in order to validate the VLS-TS. With the VLS-TS teleservice, the foreign nationals concerned must enter the references of their visa for verification purposes in VISABIO, the automated processing of personal data of visa applicants. Once their identity and the information relating to the visa have been confirmed, they fill in the additional information relating to their stay in France online (date of entry, address on French territory) and pay the taxes for which they are liable thanks to a electronic fiscal stamp, which can be purchased either beforehand, on the site of the tax administration or from an approved tobacconist, or, after connection to the VLS-TS teleservice, on the site of the national agency for secure documents (ANTS). Once the taxes have been paid, the user obtains the validation of his long-stay visa which is sent to him by email and can be downloaded again, from his personal space, in particular in the event of loss. This new purpose of AGDREF 2 thus aims to facilitate the process of validation of certain visas by the persons concerned and the process of examining these requests. The Commission notes however that if until now the foreign national had a stamp of validation of his visa on his passport, he will now necessarily have to edit this validation and keep it with his identity document in order to be able to avail himself of his long-stay visa. In any event, it considers that the simplification of administrative procedures and the improvement of relations between citizens and the administration constitute legitimate aims, provided that appropriate security measures are provided and that the human rights are respected. In this regard, it considers that to ensure the proportionality of this mandatory system, the Ministry must provide foreign nationals who are unable to access the VLS-TS teleservice with means to guarantee their access. This could, for example, involve the provision of computer equipment within the prefectures or in the offices of the OFII allowing connection to VLS-TS. Subject to its previous observations, it considers that the new purpose of AGDREF 2 processing is determined explicitly and legitimately, in accordance with Article 5-1-b of the GDPR. On the data collected The ministry specified that the validation of the VLS-TS involves the recording of data relating to the identity of the foreign national (surname, first name, sex, date of birth, city and country of birth, nationality, AGDREF 2 number), family situation, contact details (postal address, telephone number and email), languages spoken, visa (visa number, validity dates, date of issue, territorial validity, number of entries, length of stay, status), payment of taxes for which he is liable (amount and date of payment, electronic stamp number, reservation number linked to the purchase of the electronic stamp) and his password. Since data relating to identity, family situation, contact details, languages spoken and

visas are already recorded in AGDREF 2, the main purpose of which is the administrative management of foreigners in France, Article 3 of the draft decree provides only adding in c e processing of data relating to the payment of fees and the user's password. Since these data and information are necessary for the dematerialized validation of the VLS-TS, the Commission considers that they are adequate, relevant and not excessive with regard to the purposes for which they are collected, in accordance with Article 5-1-c of the GDPR. It also notes that a large part of this data comes from a connection with VISABIO. The Ministry has indicated that, in the long term, the said data will be transmitted to AGDREF 2 by direct linking with the FRANCE VISAS automated processing which must replace the global network processing visa 2 (RMV 2) allowing the issuance of visas in diplomatic posts. and consular, which the Commission takes note of. In addition, if the foreign national chooses to buy his tax stamp via the VLS-TS teleservice, he is redirected to the AGATI application of the ANTS. The tax stamp thus acquired is then consumed on AGDREF 2 thanks to an exchange of data and information (reason for the visa, stamp number, reservation number). Finally, once the visa has been validated, AGDREF 2 automatically transmits certain data to the automated processing IMMI2 of the French immigration integration office (OFII) which is in charge of summoning foreign nationals to medical visits and reception visits. These connections make it possible, on the one hand, to avoid a new referral of data already recorded by the administration and, on the other hand, to verify their accuracy. Therefore, the Commission considers that they contribute to ensuring the exact and up-to-date nature of the data, in accordance with the provisions of Article 5-1-d of the GDPR.

On the recipients Article 2 of the draft decree amends Article R. 611-5 of the CESEDA, relating to the recipients of the data recorded in AGDREF 2, excluding digitized images of fingerprints, in order to add the foreign national applying for a VLS-TS. Insofar as, on the one hand, foreign nationals currently do not have direct access to AGDREF 2 and, on the other hand, the deployment of the VLS-TS teleservice implies that the applicant for said visa can access his personal space in order to obtain confirmation of payment taxes for which he is liable as well as the validation of his long-stay visa, the Commission considers that this modification is justified and in accordance with Article 5.1.f of the GDPR. On the other characteristics of the processing If the scope of this referral is not intended to modify the provisions of the CESEDA governing the other characteristics of AGDREF 2 processing, such as the provisions relating to retention periods or the rights of individuals, the Commission nevertheless considers that it is necessary for it to take a decision on the overall consistency of the VLS-TS system given the technical architecture adopted. It therefore intends to ensure that the absence of modification of the said CESEDA provisions does not raise major difficulties with regard to the applicable rules on the protection of personal

data. In this context, the VLS-TS teleservice calls for the following observations from the part of the Commission. With regard to the retention period, pursuant to Article R. 611-7-1 of the CESEDA, the data are kept for five years from their recording, unless the file has been object of update. This duration does not appear excessive for the categories of data necessary, after the validation of the VLS-TS, for the administrative management of the foreign national such as in particular the identity of the applicant, his family situation, his visa, payment of taxes. On the other hand, the Commission considers that, with regard to the applicant's password and his personal space, such a retention period does not appear useful, as the procedure for validating a long-stay visa is not intended to be renewed. regularly. While the Ministry intends to take advantage of a uniform duration with regard to the future deployment project of other teleservices for foreign nationals which should be accessible from the same personal space, the Commission recalls that the deployment of the said teleservices will necessarily involve a subsequent modification of the CESEDA by a decree in Council of State after consultation with the CNIL. In this context, it considers that the draft decree, which only concerns VLS-TS, should provide for a retention date proportionate to this functionality for data relating to the user's personal space, like for example of FRANCE-VISA for which the data of the user account can be immediately erased at the user's request or at the initiative of the administration in the event of inactivity of the account taking an uninterrupted period of one year. Pending the overall overhaul of AGDREF 2, it requests that the draft decree be amended to define a retention period for the data recorded in the personal space of the holder of a long-stay visa equivalent to stay, proportionate. With regard to the information of persons, the Commission recalls that it must be effective and contain all the elements provided for in Article 13 of the GDPR. It takes note of the ministry's commitment that it be provided, in several languages, on the site allowing people to submit a request for validation of the VLS-TS. The procedures for exercising the rights of access and rectification provided for in articles

R. 611-7-3 and R. 611-7-4 do not call for any particular observation. On the other hand, the Commission notes that no specific provision relating to the right of opposition is provided for. However, this amendment to the AGDREF 2 processing under the GDPR, recalls that the provisions of Article 21 of the GDPR are intended to apply. It is therefore up to the Ministry to ensure the proper application of these provisions and, if necessary, to modify the draft decree on this point. With regard to security measures, VLS-TS is a teleservice accessible from the Internet and backed by AGDREF 2 processing. Access to the processing is via the HTTPS protocol, which guarantees the confidentiality of the data exchanged as well as the authentication of the processing manager. Regarding the use of this protocol, the Commission recommends using the most up-to-date

version of TLS possible. are carried out via encrypted communication channels and ensuring the authentication of the source and the recipient. Once his visa has been validated, the user receives his validation certificate as well as his personal AGDREF identifier and a temporary password by email. The ministry has indicated that the first time the user logs in, he must change his password. The Commission recalls that, in its deliberation no. 2017-012 of January 19, 2017, it issued several recommendations relating to passwords, whether in terms of their constitution, their storage or their means of transmission to the user. 'user. The Commission invites the Ministry to take cognizance of it, in particular with regard to the transmission of secrets to the user, and to implement the corrective measures which would be necessary, if necessary. It also recommends that the Ministry put in place temporary locking of access after a determined number of incorrect authentication attempts by users. The Commission also recalls that the means of authentication of State agents must also comply with the said deliberation. For The President, The Deputy Vice-President Marie-France MAZARS