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2022-006 of January 13, 2022 providing an opinion on draft decree implementing Articles L. 242-1 et seq. of the Internal  
Security Code and relating to the implementation of the processing of personal data from cameras installed on aircraft traveling  
without anyone on board (request for opinion n° 21021309)The National Commission for Computing and Liberties,Seizure by  
the Minister of the Interior of a request for an opinion concerning a draft decree implementing Articles L. 242-1 et seq. of the  
Code of internal security and relating to the implementation of processing of personal data from cameras installed on aircraft  
traveling without anyone on board; 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); Considering the modified law n° 78-17 of January 6, 1978 relating to  
data processing, files and freedoms, in particular II and IV of its article 31; After having heard the report of Mrs Sophie  
LAMBREMON, commissioner, and the observations by Mr. Damien MILIC, Deputy Government Commissioner, Issues the  
following opinion: decree implementing articles L. 242-1 et seq. of the internal security code (CSI) and relating to the  
implementation of the processing of personal data from cameras installed on aircraft traveling without anyone on board.  
articles L. 242-1 and following of the CSI were created by article 47 of law n° 2021-646 of May 25, 2021 for global security  
preserving freedoms, on which the Commission has already issued an opinion (deliberation ° 2021-011 of January 26, 2021).  
These provisions determine the conditions under which the professional and volunteer firefighters of the fire and rescue  
services, the personnel of the State services and the soldiers of the units invested on a permanent basis with civil security  
missions, as well as the members approved civil security associations within the meaning of article L. 725-1 of the CSI can  
proceed anywhere, by means of cameras installed on aircraft traveling without anyone on board and operated by a remote  
pilot, to capture, recording and transmission of images. Article L. 241-3 of the CSI provides that the terms of application of Title  
IV of Book II of the same code and use of the data collected must be specified by decree. in the Council of State, taken after  
reasoned and published opinion of the Commission.On the general conditions of implementation of the deviceIn the first place,  
in accordance with what is provided for by article L. 242-6 of the CSI, the draft article R. 242-1-I of the same code provides that  
the processing of personal data from cameras installed on aircraft traveling without anyone on board and operated by a remote  
pilot or on captive aircraft can be implemented "in any place". On this point, the Commission notes that the Ministry has

indicated that the processing may be carried out in private places and more particularly in private homes, when the operational situation so requires, in the event of impossibility of access, of dangerous engagement for relief, or insufficient other means. In this respect, the ministry specified that no particular guarantee for private places is planned at this stage, but that specific measures could however be taken by each actor of civil security, at the local level in order to limit the attacks to the privacy of the persons concerned. The Commission invites the Government to specify in the draft decree that aircraft may only be sent to private places when this is strictly necessary for the objective of civil security pursued (i.e. the missions prevention, protection and fight against civil security risks, protection of persons and property and emergency relief). It notes that the draft decree will be supplemented in order to indicate that the aircraft may be used anywhere "including in private places when strictly necessary". Secondly, the Commission notes that the "framework" data protection impact assessment (DPIA) sent to it indicates that for the two purposes mentioned in draft article R. 242-1 of the CSI, namely the prevention of natural and technological risks as well as the rescue of people and the fight against fire, "the damage" can be quickly assessed thanks to algorithmic processing. On this point, the ministry specified that the evaluation of the damage is carried out today by "human" comparison between images taken before an event (earthquake, floods, etc.) and images taken after it. However, the Ministry indicated that technological developments could lead to the use, in the more or less near future, of "intelligent" or "augmented" (so-called "intelligent") video devices in order to automate these comparisons, for example. Commission notes that such "enhanced" video devices were not provided for in Articles L. 242-1 et seq. She regrets not having had more details on the planned devices, which are still at the exploratory stage according to the ministry. It recalls that, since they may concern personal data, these devices can be particularly intrusive for individual freedoms and that it must be kept informed and informed of any substantial modification affecting the characteristics of the processing. In this respect, the Commission takes note of the guarantees provided by the Ministry that it will not be planned to use algorithmic image analysis processing for the purposes of facial recognition or analysis of the behavior of natural persons through the use of data biometrics. It notes that these guarantees appear in Article L. 242-1 of the CSI and are repeated in draft Article R. 242-2 of the CSI. Thirdly, the Commission notes that transfers of data outside the European Union will be the responsibility of data controllers, who will have to inform the Commission if necessary, on the occasion of the compliance commitment or subsequently if they subsequently use a subcontractor who transfers data outside of the European Union. In this regard, the Commission recalls that any transfer of data outside the European Union must be carried out in accordance with the conditions

provided for in Chapter V of the GDPR. In particular, it recalls that transfers of data to States that do not belong to the European Union can only be carried out subject to compliance with the conditions set out in Articles 45 and following of the GDPR. In the absence of an adequacy decision adopted by the European Commission, such transfers can only be carried out provided that appropriate safeguards are implemented in accordance with Article 46 of the GDPR. It acknowledges that the AIPD will be completed in order to indicate that, in the event of data transfers outside the European Union, these will be carried out in accordance with the conditions provided for in Chapter V of the GDPR and that the Ministry also undertakes to disseminate this information concerning transfers made outside the European Union by means of an employment doctrine to data controllers. On the purposes and the applicable legal regime In accordance with Article L. 242 -6 of the CSI, the draft article R. 242-1 of the CSI specifies that the purposes of the planned processing are: the prevention of natural or technological risks; the rescue of people and the fight against fire. In addition, the draft article R. 242-4 of the CSI specifies that "the data mentioned used for educational and training purposes are pseudonymised". Firstly, the Commission takes note of the clarifications provided by the Ministry according to which, on the one hand, "technological risks" are linked to human action and more specifically to the handling, transport or storage of substances which are dangerous for health and the environment (e.g. industrial, nuclear, biological risks, etc.), and on the other hand, that "natural risks" cover all the threats that certain phenomena and natural hazards pose to populations, structures and equipment (floods, landslides, earthquakes, forest fires, storms, etc.). Secondly, if the draft decree repeats the purposes as provided for in the provisions of Article L. 242-6 of the CSI, the Commission considers, for the sake of readability and clarity, that the wording of the draft article R. 242-1-II of the CSI should better distinguish the main purposes of the device and the fact that the images captured can be reused for the purposes of training or pedagogical action for agents, these purposes not being not of the same nature. Thirdly, the DPIA transmitted indicates that the planned processing operations ensure risk prevention, operational intelligence and emergency functions. The Commission notes that the "operational intelligence function" is a function dedicated to an officer in a command post to analyze the intervention zone (identify sources of danger, potentially threatened targets, resources in the zone regarding accessibility, etc.). Intelligence helps to prioritize the actions of the relief operations commander. It notes that this function is indeed linked to the two purposes mentioned in article L.242-6 of the CSI and draft article R. 242-1 of the CSI, insofar as it does not purpose the prevention, investigation, observation or prosecution of criminal offenses or the execution of criminal convictions or security measures. individual cameras by firefighters, the use of cameras installed on aircraft traveling without

anyone on board is not intended to prevent incidents likely to jeopardize the physical integrity of civil security actors, taking into account the circumstances of the intervention or the behavior of the persons concerned. The purposes are thus strictly attached to the sole missions provided for in Article L. 1424-2 of the General Code of Local Authorities (CGCT) with regard to fire and rescue services. In the state of the aforementioned details relating to the information function and with regard to the purposes mentioned in draft article R. 242-1 of the CSI, the Commission notes that the planned processing operations fall under the legal regime of the GDPR. Under these conditions, the Commission considers that the planned purposes are determined, explicit and legitimate in accordance with article 4-2° of the modified law of January 6, 1978. On the data collected The draft article R. 242-2 of the CSI lists the personal data and information that can be recorded in the processing. Firstly, the Commission takes note that the data relating to "the identification of the agents responsible for the aircraft when recording the data" include the surname, first name, number certificate of aptitude for remote pilot functions issued by the General Directorate of Civil Aviation (DGAC) and the operator number of the entity. In view of these elements, it considers that this category of data, formulated in a general manner, could be clarified and notes the commitment of the ministry to supplement the draft decree on this point. where the data were collected", the Commission notes that these places are filled in manually following the rescue operations and that this information will not be able to reveal the identity of the owners. Secondly, the draft Article R. 242-2 of the CSI provides that sensitive data within the meaning of I of Article 6 of the law of January 6, 1978 as amended may be collected. The Commission recalls its doctrine according to which the mere fact of photographing or filming an image on which it is possible that certain elements may make it possible to deduce personal data constituting sensitive data does not in itself constitute automated processing of sensitive data within the meaning of s Articles 9 of the GDPR and 6 of the "Data Protection" law. It is only if these images are processed in order to extract, interpret or use said sensitive data that the processing will be considered as falling within the sensitive data processing regime. In this case, the Commission wonders about the conditions and circumstances under which the ministry considers that there will be automated processing of sensitive data or data called to appear in a file, and regrets not having had more details on this point. In this regard, it notes that the ministry confirms that there will be no automated processing of sensitive data with regard to the CNIL doctrine. It notes that guarantees are provided for in draft article R. 242-2 of the CSI, namely that the collection of genetic and biometric data is excluded and that it is prohibited to select in the processing a particular category of persons to be from these "sensitive" data alone. Thirdly, draft article R. 242-2 of the CSI provides that the captured images can be transmitted in real

time to the command post of the department responsible for conducting and executing operations. that such a transmission of images in real time meets an operational need and will generally depend on the kinetics of the event and the urgency of the decision-making. The Ministry has indicated that it will draw up a doctrine for use specifying the criteria controlling the real-time transmission of captured images. The Commission welcomes the development of this doctrine for use, and invites the Ministry to define objective criteria governing such transmission. The other categories of data do not call for any observation on the part of the Commission. Subject to these reservations, the Commission considers that the data processed are adequate, relevant and not excessive in relation to the purposes pursued. and recipients Draft article R. 242-3 of the CSI details the list of accessors and recipients of processing. access, by reason of their attributions and within the limits of the need to know, to all or part of the data and information "displayed or recorded by the aircraft . This formulation of the draft decree may, for the processing in question, lead to confusion when the "accessors" are called upon to record data in the processing or only to consult them. The Commission considers that the term "accessor" , which is not used by the GDPR or the "Informatique et Libertés" law but which was created by doctrine, means, in this case an automated processing of data implemented by an administration and supervised by a regulatory act, the persons who, within the controller, will be called upon to carry out the various processing operations and, as such, to access the computer system in question. The authorizations of the various users can be defined by the regulatory act, and are generally not limited to the sole consultation of the data but also include the recording, correction or deletion of the data. Furthermore, within the meaning of the regulations, and in particular the GDPR, the "recipients" are the persons to whom the data controller may be required to communicate the data and on which he must provide information to the persons concerned. In practice, this communication can take several forms, whether it is a transmission of an extract of the data or a simple option of consultation through secure access to the computer system. In this case, the Commission understands of the draft decree that the persons mentioned as "accessors" will not only be responsible for accessing the images but for deciding on the use of the aircraft and triggering the recording. The Commission therefore invites the Ministry to clarify the draft decree on this point to avoid any ambiguity and to indicate that these "first-time buyers" will be authorized to record the data provided for in draft article R. 242-2 of the CSI and to consult them. With regard to the category of "agents in charge of personnel training", the ministry indicated that the choice of these agents is the responsibility of the director of the fire and rescue service (SIS), the commander of military formations and the president of the association or their designated representative. that this provision will be supplemented to indicate that they are "designated by the head of

the service, unit or association mentioned in Article L. 242-6 or their designated representative". On storage periods Draft article R. 242-4 of the CSI provides that data and information are kept for a period of thirty days from their recording. It is specified that when the data, within the period of thirty days, have been extracted or transmitted for the purposes of a judicial, administrative or disciplinary procedure, they are kept according to the rules specific to each of these procedures by the authority which The Commission takes note of the clarifications provided by the Ministry according to which in the event that they have been extracted or transmitted for the purposes of a legal, administrative or disciplinary procedure, the data will be deleted at the end of the period thirty days in the present processing. Under these conditions, the Commission considers that the data are kept for a period not exceeding that necessary with regard to the purposes for which they are processed, in accordance with Article 4-5 law of January 6, 1978 as amended. On the rights of the persons concerned Firstly, with regard to the procedures for informing the public about the use of cameras installed on aircraft traveling without anyone on board and operated by a remote pilot or on captive aircraft, the Commission notes that Article L. 242-3 of the CSI provides for individual information of the public by any appropriate means of the implementation of airborne devices of image capture and the responsible authority, except when circumstances prohibit it. This provision also indicates that general public information on the use of airborne image capture devices must be organized by the Minister of the Interior. In this respect, it observes that appropriate means of informing the public individually are cited in the DPIA, such as sound or visual devices making it possible to warn the public that an action is in progress and that it is likely to be filmed or a physical zoning device. It also takes note of the fact that it is planned that this information be issued on the website of the service, unit or association authorized to use these cameras or, failing that, by way of display in their premises, unless the circumstances forbid it. in the event that this information "would conflict with the objectives pursued" in accordance with article L. 242-3 of the CSI, the ministry having withdrawn this mention in the draft decree. It notes that the wording retained "unless circumstances prohibit it "as mentioned in I of article R. 242-6 of the CSI is particularly broad. Without calling into question the need to limit the information given to people in the event of an emergency and although the Commission takes note of the clarifications provided by the ministry according to which the list of appropriate means is not exhaustive, it nevertheless considers that the ministry should determine objective criteria making it possible to assess the circumstances referred to in the draft decree and which could be specified in an employment doctrine. Secondly, the draft article R. 242-6 of the CSI provides that the right to opposition does not apply to planned processing. It notes that the ministry intends to mobilize, under article 23 of the GDPR, public security. It notes that

the AIPD will be supplemented on this point and considers that the draft decree could also specify the exception mobilized under 1) of Article 23 of the GDPR. do not call for any particular comments. On the status of the draft decree as a single regulatory act

The Commission notes that, according to the referral, the draft decree submitted to it for opinion constitutes a "single regulatory act", within the meaning of IV of article 31 of the amended law of 6 January 1978, allowing the fire and rescue services, the State and military services of units permanently invested with civil security missions and approved civil security associations within the meaning of Article L. 725-1 of the CSI to implement in all places the processing of personal data from cameras installed on aircraft traveling without anyone on board. It observes that one and the same DPIA relating to a set of similar processing operations was sent to it in accordance with Article 35-10 of the GDPR. It notes that the draft decree provides that each data controller must, when sending the compliance commitment to the Commission, send it, where applicable, the elements required by the local circumstances of implementation. processing, complementary to the "framework" DPIA. It recalls that this regime of the single regulatory act concerns, as provided for in Article 31 of the law of January 6, 1978 as amended, only the planned processing, on the one hand, implemented "on behalf of the State" and, on the other hand, which concern "State security, defense or public security" or which "have as their object the prevention, investigation, observation or prosecution of criminal offenses or the enforcement of criminal convictions or security measures". In this case, the Commission notes that the Government considers that civil security falls within the concept of "public security" within the meaning of this article. -2 of the general code of local authorities (CGCT) that the fire and rescue services and the soldiers of the units invested on a permanent basis with civil security missions have as their missions the prevention, protection and fight against security risks civil service, protection of persons and property and emergency relief. It also notes that these services belong to the military engineers or are placed, for employment, under the authority of the mayor or the prefect acting within the framework of their police powers. As such, they perform many missions "on behalf of the State" within the framework of the planned processing. It observes that the personnel of the State services within the demining intervention group (GID) come minister responsible for civil security, on civilian land and the minister of defense in the event of the discovery of isolated pyrotechnic objects on land under his responsibility. The condition therefore also appears to be fulfilled for these personnel.

"on behalf of the State": it does not question this but considers, in any event, that it will be up to the Council of State to assess this point. It takes note of the clarifications provided by the Ministry according to which, in this case, Article L. 725-3 of the CSI links the missions of approved associations to the prerogatives of the police authorities, that these associations provide

assistance to the services of fire and rescue within the meaning of article R. 725-3 of the CSI and that their participation in a rescue operation must be decided either by agreement with the State, the municipality, or the fire and rescue service, or by requisition from the police authority. On security measures Firstly, the Commission notes that, with regard to security-related aspects, the Ministry indicates that each data controller must demonstrate that he complies with the security measures security described, in particular by an information systems security accreditation (ISS). Secondly, the Commission notes that, to date, the aircraft which will be used in the context of the implementation of the decree are "general public drones" and that there are no measures aimed at not allow the aircraft manufacturer to have access to data relating to the flight operated, such as duration, geolocation, etc. The Commission emphasizes that access to this data by the service provider constitutes a transmission of data within the meaning of the GDPR, or even a transfer if this transmission takes place outside the European Union, and that the latter should be supervised and carried out with all the necessary precautions. It would therefore be appropriate to verify and formalize these points with each chosen industrialist, or even to encourage future data controllers to use products that greatly limit this risk, in particular by going through a dedicated market. Commission notes that the data, in particular the images captured, are stored in clear text on each aircraft, without any encryption measures. Any third party having physical access to an aircraft (by loss or theft of it, or access to its storage location) is thus able to access the data it contains. Moreover, when the aircraft in the course of an intervention transmit video streams by hertzian waves (in particular in order to operate non-tethered aircraft), any person sufficiently close to the intervention zone is able to capture these streams, and consequently to access the images, if the latter are not encrypted. to aircraft encrypting the data transmitted and stored for example, or in its probability of occurrence, by obliging, for example, the services operating these aircraft to integrate external and autonomous GPS plotters limiting the risk of loss. Similarly, the Commission encourages the Ministry to put in place an obligation to protect video streams, for example by requiring them to be encrypted. In addition, the Commission insists on the fact that it should not technically be possible to extract the data recorded on the aircraft without control and that it would be highly desirable, as is done for the systems of individual cameras of agents, that this operation be possible only on a dedicated and recognized dock. This would limit the risk of extraction following the loss of an aircraft, but also the risk of misappropriation of images by an operator. Fourthly, the Commission then notes that the data extracted after an intervention is stored on a secure server. It notes that it is not intended that the data be encrypted and that this possibility is left to the discretion of the controllers. The Commission considers that it would be desirable for the Ministry to encourage the said controllers to proceed



in this way in order to increase the general level of security and to harmonize, at the national level, the practices of each future data controller. It notes that the draft article R. 242-4 of the internal security code will be supplemented in order to specify that the data and information mentioned in article R. 242-2 are kept on "a secure computer medium "and that the Ministry will encourage, in an employment doctrine, data controllers to encrypt the data and information stored. Fifthly, the Commission notes that the videos captured by the aircraft will be pseudonymised in the event that these are used for training purposes. Although the Commission welcomes this pseudonymisation, it nevertheless wonders about the possibility of blurring, a posteriori, a certain part of the images captured, in particular in the case where, during an operation, private areas adjoining the area of intervention would be recorded. The Commission invites the Ministry to reflect more generally on this point. Sixthly, the Commission notes that a large number of the measures, both technical and organizational, relating to the security of processing, such as the aforementioned encryption, but also data partitioning, physical security measures, logical access security, incident and breach management, etc. are left, as indicated in point 1, to the discretion of the future data controller, who will have to carry out a DPIA. The Commission considers it necessary for the Ministry to encourage data controllers to implement certain security measures which would be described in the DPIA that he transmitted, in order to strongly limit the risks and harmonize practices. On this point, it notes that the Ministry undertakes to send it the DPIA completed to this effect at a later date. Seventh, the Commission points out that Article R. 242-5 of the draft decree provides for a system of logging concerning the operations of collection, modification, consultation, communication and deletion of personal data. This logging contains the identifier of the author, the date, the time, the reason for the operation and, where applicable, the recipients of the data. The Commission takes note of the clarifications provided by the Ministry according to which this retention period initially planned for three (3) years is reduced to six (6) months, the retention period of the data of processing being thirty (30) days.

President Marie-Laure DENIS