

Deliberation 2020-107 of October 29, 2020 Commission Nationale de l'Informatique et des Libertés Nature of the deliberation: Opinion Legal status: In force Date of publication on Légifrance: Wednesday March 31, 2021 NOR: CNIX2108541V Deliberation n° 2020-107 of October 29, 2020 providing an opinion on a draft decree in Conseil d'Etat relating to the setting up of a teleservice for submitting applications for certain residence permits (request for opinion no. 20010986) The National Commission for Computing and Freedoms, Seized by the Minister of the Interior of a request for an opinion on a draft decree relating to the establishment of a teleservice for the filing of applications for certain residence permits; 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 individuals with regard to the processing of personal data and on the free movement of such data, and repealing 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 competent authorities for the purposes of prevention and detection of investigation and prosecution of criminal offences, or the 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 in particular its article 33; Having regard to decree no. 2010-112 of February 2, 2010 relating to the general security reference system (RGS); Having regard to decree n° 2019-536 of May 29, 2019 as amended, taken for the application of law n° 78-17 of January 6, 1978 relating to data processing, files and freedoms; Having regard to deliberation no. 91-033 of May 7, 1991 providing an opinion relating to the creation of an automated processing of personal information concerning an application for managing the files of foreign nationals in France; Having regard to deliberation no. 2011-036 of February 10, 2011 providing an opinion on a draft decree relating to the computerized system for managing the files of foreign nationals in France and certain travel documents for foreigners; Having regard to deliberation no. 2012-293 of September 13, 2012 providing an opinion on a draft decree relating to the application of the management of the files of foreign nationals in France and the automated processing of personal data relating to foreigners requesting the issue of a visa ; Having regard to deliberations no. 2017-012 of January 19, 2017 adopting a recommendation relating to passwords and no. 2017-190 of June 22, 2017 amending the recommendation relating to passwords; Having regard to deliberation no. 2018-322 of October 4, 2018 providing an opinion on a draft decree by the Council of State relating to the validation of the long-stay visa equivalent to a

residence permit; After having heard Mrs. Sophie LAMBREMON, commissioner, in her report and Mr. Benjamin TOUZANNE, Government Commissioner, in his observations, Issues the following opinion: . To this end, it modifies in particular the provisions relating to the processing AGDREF 2 (also called AGDREF or AGEDREF) for Application for the management of files of foreign nationals in France . This processing, on which the Commission has had to rule on several occasions, is provided for by Articles L. 611-3 et seq. and R. 611-1 et seq. of the Code of Entry and Residence of Foreigners and Right to Asylum (CESEDA) and aims to better guarantee the right to stay of foreign nationals in a regular situation and to fight against the illegal entry and stay in France of foreign nationals. Including in particular the fingerprints as well as the photograph of the foreign nationals who appear there, it constitutes the main file for the administrative management of foreigners in France and allows the management, by the prefectures, of the files of foreign nationals, the production of residence permits and the management of deportation measures. The Commission notes that the planned online service is a continuation of the implementation of the online service relating to the validation of the long-stay visa equivalent to a residence permit (VLS-TS), on which the Commission had ruled by deliberation n° 2018-322 of October 4, 2018, and must allow foreign nationals who have entered France with a long-stay visa, reached the age of majority or requested the renewal of their residence permit, to benefit from a simplified access route for his application for a title, on the one hand and for the administration to improve the performance of services and to harmonize the methods of examining applications of title, on the other hand. The draft decree provides, on the one hand, for the modification of the purposes of the AGDREF 2 processing, the recipients of the data as well as the list of data collected as they are respectively provided for in articles R. 611-1, R. 611-4 and appendix 6-4 of the CESEDA. On the other hand, the draft decree aims to modify the provisions relating to the rights of individuals in order to bring them into compliance with the regulations following the entry into force of the new legal framework applicable to the protection of personal data, namely the Regulation (EU) 2016/679 of April 27, 2016 referred to above (hereinafter the GDPR) and Directive (EU) 2016/680 of April 27, 2016 referred to above (hereinafter the Directive). In accordance with article L. 611-5 of the CESEDA which provides that a decree in Council of State, taken after the opinion of the National Commission for Computing and Liberties, sets the terms of application of articles L. 611 -3 and L. 611-4 (...), and the provisions of II of article 33 of the law of January 6, 1978 as amended, the modification of this processing is submitted for opinion to the Commission. These modifications call for the following observations .On the legal regime applicable to AGDREF 2 processing The Ministry considers that AGDREF 2 processing taken as a whole falls solely under the GDPR. In this respect, he specified that the

application of this legal regime alone is explained by the fact that the main purpose of the file is to guarantee the right of residence of foreign nationals, without prejudice to the fact that this processing may also have for the purpose of preventing, investigating, ascertaining or prosecuting criminal offenses when it also serves to combat illegal entry and residence. GDPR, the data of foreigners subject to a deportation measure may be recorded in the processing (Article R. 611-2, 3° of the CESEDA), and that among the various purposes attributed to the processing AGDREF 2 at I article R. 611-1 of the CESEDA, includes in particular that of improving the conditions for verifying the authenticity of residence permits and those of the identity of foreigners in an irregular situation (3° of the preceding article). you). It therefore considers that certain personal data are collected and, more generally, processed, not for the processing of residence permit applications but with a view to their usefulness in managing removal measures, and that the fight against illegal entry and stay in France constitutes one purpose of the processing. Consequently, the Commission considers, on the one hand, that in this case, the prevention, investigation and finding of criminal offenses really constitutes one of the purposes of the processing, and not an object without impact on its legal regime (CE, Ass., July 19, 2019, No. 424216, Rec.). On the other hand, the Directorate General for Foreigners in France (DGEF) can be considered as a competent authority within the meaning of Article 3.7 of the Directive since it draws up the regulations relating to expulsion, administrative detention, illegal work and document fraud involving foreign nationals. The Commission therefore considers that the AGDREF 2 processing falls under a mixed regime, namely the GDPR for the purpose of guaranteeing the right of residence, in which the teleservice falls in particular, and the Directive for the purpose of combating illegal entry and stay in France. It therefore considers that the regulatory provisions should reflect this mixed regime and that the DPIA should be updated accordingly. On the implementation of the planned teleservice Article 2 of the draft decree provides for the addition of the relative purpose the implementation of the teleservice for the purposes of the AGDREF 2 processing provided for in article R. 611-1 of the CESEDA. The Commission notes that, in its current wording, that purpose relates more to processing functionality aimed at simplifying administrative procedures by means of a teleservice. a long-stay visa and, in a subsequent deployment, beneficiaries of international protection known to the Asylum IS. The Commission notes that foreign students will be the first concerned, for the examination and the issue of the temporary residence permit bearing the mention "student" and the multi-year residence permit bearing the mention "student-mobility program" (articles L. 313-7 and L. 313-27 of the CESEDA), by the dematerialization of the procedures for applying for permits, which will be gradually extended, by a separate decree, to all the permits concerned. The Commission considers that the

simplification administrative procedures and the improvement of relations between users and the administration constitute legitimate purposes, provided that appropriate security measures are provided and that the rights of individuals are respected. It considers that the implementation of teleservices must be backed by means to meet the specific support needs of users (provision of computer equipment, support by agents, etc.). Consequently, the Commission considers that the Ministry must provide foreign nationals who are unable to access the teleservice with easily accessible means to guarantee them truly effective access. In this respect, the Commission takes note of the procedures provided by the Ministry for the assistance of a user who is not able to use the service, namely a reception in a dedicated space in the prefecture to be accompanied in the online filing of his application for residence, as well as personalized telephone assistance by the citizen contact center of the National Agency for Secured Documents (ANTS). On this point, the Commission notes that 2° of Article 3 of Chapter II of the draft decree provides for the access of ANTS agents, individually designated and specially authorized, for the sole purpose of accompanying foreign nationals in their procedures online. Finally, it is noted that the person who applied for a pass online using the teleservice envisaged may, in accordance with the guidelines of the National Observatory of Online Procedures, give his opinion on the degree of satisfaction related to the use of the teleservice via a dedicated button. The Commission takes note of the clarification provided by the Ministry that this action does not involve the processing of personal data. In view of the foregoing, the Commission considers that the intended purpose, linked to the simplification of administrative procedures, is determined, explicit and legitimate in accordance with b) of 1 of Article 5 of the GDPR. On the rights of individuals With regard to the mixed GDPR-Directive regime to which the AGDREF 2 processing is subject, since the data on which the data subject requests to exercise their rights cannot be exclusively linked either to the purposes provided for by the directive, or to the other purposes of data processing, the Commission considers, in accordance with the opinion of the Council of State of on a draft adaptation law to European Union law of law n° 78-17 of January 6, 1978 relating to data processing, files and freedoms (CE, General Assembly (interior section), n° 393836, 7 December Member 2017), that the act authorizing the processing of data for mixed purposes should be based on Article 23 of the GDPR to determine a coherent data subject rights regime for all data processed for various purposes. In accordance with the second paragraph of this article 23, the provisions providing such limitations must be precise and cannot take the form of general authorizations. The regime thus defined may be based on the fact that the Ministry planned to place the processing under the sole regime of the GDPR. Although the Commission considers that the processing falls under a mixed regime, it nevertheless invites the Ministry to keep the procedures for exercising rights

as simple and unified as possible. the AIPD specifies that the conditions of use and confidentiality of the teleservice will be written in French and in English on the website of the Ministry of the Interior. The Commission notes that the Ministry has specified in this regard that the public for which the teleservice is intended have been living in France for several months or even for several years, it is therefore not desirable to offer the translation of the portal into the language of the country of In this respect, the Commission considers, in accordance with the position adopted by the Article 29 Working Party (G29) and taken up by the European Data Protection Board (EDPB) in the context of its guidelines on transparency within the meaning of Regulation (EU) 2016/679 that, given the planned expansion of requests for passes that can be made via the teleservice and which will be intended to be used by a wide audience including various profiles of foreign nationality (visitors, refugees and beneficiaries of subsidiary protection, stateless persons, beneficiaries of the talent passport, etc.), the information delivered to users of the teleservice should be offered in other languages. The Commission notes that the draft decree excludes the application of the right to object in accordance with Article 23 of the GDPR and that, according to the DPIA, the right to erasure does not apply in accordance with the provisions of b) of 3 of article 17 of the GDPR what the draft decree should explicitly provide. The Commission has no other comments on the procedures for exercising the rights provided for by the decree. On security measures The Commission notes that the Ministry has declared that the teleservice complies with the general security reference system (RGS) provided by Decree No. 2010-112 of February 2, 2010 referred to above (approval issued for 3 years by the approval commission of June 24, 2020) and recalls that the RGS approval certificate must be published on the ministry's website interior. In this context, it invites the Ministry to consult the technical recommendations published by the National Information Systems Security Agency (ANSSI), in particular the elements described in the technical note "recommendations for the security of websites ". In this regard, the Commission notes that access to the teleservice as well as flows to the French Office for Immigration and Integration (OFII) are via the HTTPS protocol using a state-of-the-art version of TLS ss (TLS 1.2). However, it recalls the importance of maintaining an active watch on this protocol in order to maintain the necessary level of security and to use the most up-to-date version of TLS possible. Furthermore, the Commission takes note that any transfer of attached data will be encrypted. In accordance with the RGS, the key management algorithms and procedures used must comply with appendix B1 of said reference system. It also recalls that the transfer of data by attachment must be strictly limited in the event that a lasting solution allowing in particular to ensure the traceability of the exchanges is not possible. Finally, the Commission notes that exchanges with the OFII will take place entirely on a private network controlled by

the State. Concerning the control of logical access, authorization profiles are provided by the Ministry in order to manage access to data as needed and access permissions are removed for any user who is no longer authorized. On this point, the Commission recalls the importance of a comprehensive and regular review of the authorizations granted. It notes that management rules prohibiting access via the internet for profiles that do not need it have been put in place and that the ministry has implemented a password policy for users and agents in accordance with the deliberation n° 2017-012 of January 19, 2017 adopting a recommendation relating to passwords. Finally, a migration to strong authentication, via agent card, is planned. Given the sensitivity of certain data processed in AGDREF 2 , the number and diversity of processing recipients, this move towards a higher level of authentication is particularly relevant. With regard to logging, the Commission notes that the Ministry has maintained the application traceability measures for access, creation, modification and deletion of resources requested by the Commission in its deliberation no. aforesaid, is not modified. In this regard, the Commission recalls the importance of guaranteeing precise methods of access to this logging data, which must be reserved for personnel authorized to use them, as well as technical methods aimed at ensuring the confidentiality of this information. increased risk of computer attacks in the case of a website accessible to the public, the Commission points out that it is possible to supplement this application logging with system logging and an automatic alert mechanism in the event of incident detection. The recommended retention period for this system logging data would then be a maximum of six months. To conclude on logging, while the Commission regrets the current absence of an automated trace analysis device, it encourages the Ministry in its provide such a device. Indeed, such proactive mechanisms contribute to the rapid detection of security incidents, thereby limiting their seriousness. With regard to the anonymization of data, the Commission notes that the Ministry indicates that it plans to set up a data analysis module working on non-personal data for statistical use. However, the Commission wonders about the effective nature of the anonymisation with regard to the clarifications provided by the Ministry. It therefore recalls the importance of carrying out a review of the anonymity of the data, either by carrying out an analysis to demonstrate that the anonymization processes respect the three criteria defined by the opinion of the group of article 29 n°05 /2014, or if these three criteria cannot be met, by conducting a study of the risks of re-identification. Finally, on the risk assessment provided in the DPIA, the Commission takes note of what the Ministry considers the seriousness of the risks associated with unwanted modification or loss of data is reduced because the user has the option of having direct access to his file. Despite this possibility offered to users, the Commission stresses the importance for users of being able to download and keep, outside

their digital space, a copy of the various documents attesting to the application in progress. security measures described by the data controller appear to comply with the security requirement provided for by article 4-6 of the amended law of 6 January 1978. The Commission recalls, however, that this obligation requires the updating of the DPIA and its security measures with regard to the regular reassessment of risks. The President M.-L.DENIS