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CNIX2212471VDeliberation n° 2021-154 of December 16, 2021 providing an opinion on a draft decree creating a processing of personal data relating to the identification of aircraft traveling without anyone on board, called "Infodrones" (request for opinion no. 21011814)The National Commission for Computing and liberties,Seizure by the Minister of the Interior of a request for an opinion concerning a draft decree creating a processing of personal data relating to the identification of aircraft circulating without anyone on board, called "Infodrones "; Considering the law n ° 78-17 of January 6, 1978 modified relating to data processing, files and freedoms, in particular its article 89-I; After having heard the report of Mrs Marie-Laure DENIS, p resident, and the observations of Mr. Benjamin TOUZANNE, Government Commissioner, Issues the following opinion: a draft decree creating a processing of personal data relating to the identification of aircraft traveling without anyone on board, called "Infodrones". This processing is part of the overall electronic reporting detection project called "State Information System (SIE)". As an extension of Law No. 2016-1428 of October 24, 2016 on strengthening the security of the use of civilian drones, this project includes two entities: "Infodrones" processing, under the responsibility of the Ministry of the Interior and implemented at the national level, which is linked with drone reporting systems (SSD) and with the processing called "AlphaTango" of the General Directorate of Civil Aviation (DGAC) of the Ministry of Ecological Transition. This last processing is a web portal made available to users of remotely piloted aircraft, which allows them in particular to register aircraft of which they are the owners in accordance with the aforementioned law of October 24, 2016. Although the Commission notes that all the data collected in "Infodrones" does not directly identify the owner of the aircraft, certain data indirectly identify natural persons and therefore constitute personal data, as recalled by the recital 21 of Directive 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 the prevention and detection of crime criminal proceedings, investigations and prosecutions in this area or the execution of criminal penalties, and on the free movement of such data, which provides that "to determine whether a natural person is identifiable, it is necessary to take into consideration all means reasonably likely to be used by the controller or any other person to identify the physical person directly or indirectly ".drone reporting systems (SSD), which are local detection systems with no direct link to the processing of the DGAC, of which the Commission has also been seized. They provide access to the flight data of an aircraft traveling without anyone on board detected in a specific geographical area

and to its unique identifier number. The responsibility for this processing lies with each ministry implementing it for particularly sensitive sites and placed under their responsibility. The Commission notes that, at European level, two acts have been adopted by the European Commission: the implementing regulation (EU) Commission 2019/947 of 24 May 2019 on the rules and procedures applicable to the operation of unmanned aircraft on board; Commission Delegated Regulation (EU) 2019/945 of 12 March 2019 on unmanned aircraft on board and operators, from third countries, of unmanned aircraft systems on board. developed by the ministry a project intended to put in place a risk control solution. ve that it appears from the data protection impact assessment (DPIA) transmitted that the SIE project is intended to apply: in areas which are subject to a restriction or a ban overflight provided for by Articles L. 6211-4 and L. 6211-5 of the Transport Code, Articles L. 131-3 and R. 131-4 of the Civil Aviation Code and Article 4 of the decree of December 3, 2020 relating to the use of airspace by unmanned aircraft on board; in the areas prohibited from aerial photography, which are provided for by article D. 133-10 of the civil aviation; areas where overflight is likely to affect public security. The Commission notes that "areas where overflight is likely to affect public security" refers to areas which are not covered by the aforementioned provisions while overflight of these areas may present a risk to public safety and the safety of personnel nnes. It also acknowledges that these areas cannot be listed exhaustively in the texts insofar as these events may concern various places and take place on an ad hoc or recurring basis and are not necessarily foreseeable (for example, gatherings of people, the site of a train disaster or the routes of sensitive convoys). In the latter cases, the Commission draws the Ministry's attention to the need for a legal basis for carrying out the missions of interception or observation of offenses envisaged in these areas. On the purposes and the applicable legal regime Article 1 of the draft order specifies that the purpose of "Infodrones" processing is to prevent attacks on public security likely to result from the use of aircraft traveling without anyone on board, by centralizing the reporting data of these aircraft and by identifying their status, owner and user. This processing is part of a system aimed at detecting aircraft circulating without anyone on board, the use of which would characterize an offense and/or "non-cooperative". Indeed, the fact that a remote pilot causes an aircraft circulating without anyone on board to overfly, through clumsiness or negligence, an area of French territory in violation of a prohibition imposed for military or public security reasons (first paragraph of Article L. 6211-4 of the Transport Code) is punishable by six months' imprisonment and a fine of fifteen thousand euros. In addition, a penalty of one year's imprisonment and a fine of forty-five thousand euros is imposed for a remote pilot to engage or maintain an aircraft circulating without anyone on board above this same area and not to not comply with the requirements of article L. 6211-5 of the same code (for example,

the aircraft entering a prohibited area is required to land at the nearest aerodrome outside the area prohibited). Insofar as the "Infodrones" processing is implemented for the purposes of preventing threats to public security and detecting offenses and that the Ministry of the Interior constitutes a "competent authority" within the meaning of the directive (EU) 2016/680 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by the competent authorities for the purposes of prevention and detection of criminal offences, investigations and prosecutions thereof matters or the execution of criminal penalties (hereinafter "the Directive"), the Commission considers that it falls within the scope of this Directive and must be examined in the light of the provisions of Articles 87 et seq. of the law of January 6, 1978 modified. With regard to these elements, the Commission considers that the intended purposes are determined, explicit and legitimate in accordance with article 4-2° of the law of January 6, 1978 modified. Firstly, the Commission notes that the "Infodrones" processing is interconnected with the local "SSD" processing. Thus, each local SSD processing will transmit to "Infodrones" the position and identifier of the aircraft traveling without anyone on board and "Infodrones" will respond to the SSD processing concerned by transmitting the status of the aircraft in question. that the "Infodrones" processing will be fed by a partial extraction of another processing called "AlphaTango" from the DGAC but that "Infodrones" will not feed this database in return. Secondly, the draft decree specifies that this processing can be linked by comparison with the following processing: the software for drafting the procedures of the police and the national gendarmerie (referred to as "LRPPN" and "LRPGN") in cases where the overflights constitute a criminal offence, so that the investigator can enrich the legal procedure with elements making it possible to establish the materiality of the facts; the processing "Information management and prevention of breaches of security té Publique" (GIPASP) or "Prevention of attacks on public security" (PASP) when an overflight likely to affect public security has been observed or has characteristics justifying the drafting of a note allowing the dissemination of information; the "File of reported objects and vehicles" (FOVeS) so that a drone, identified as presenting a potential threat to public safety, can be registered as a reported vehicle in this processing. The Commission takes note of that these reconciliations will be characterized only by a one-way flow, manual and not automated. It also takes note of the clarifications provided by the Ministry according to which, for links with LRPGN, LRPPN, GIPASP and PASP processing, all the data mentioned in the draft decree will be likely to be affected by this linking. . On the other hand, with regard to the linking with the FOVeS processing, only the data relating to the identity of the persons and to the aircraft will be likely to be integrated. Without calling into question the planned links, the Commission recalls that only the data whose collection is provided for and framed by the texts governing

the aforementioned processing may be transmitted. these processing operations will have to be updated and invites the Ministry, for the sake of transparency, to mention this in the information it provides on these processing operations on its website. On the data collected Article 2 of the draft decree provides for the categories of personal data and information that may be recorded in the processing. With regard to the recording of "data relating to aircraft traveling without a on board", the Commission notes that, in accordance with the provisions of the decree of 27 December 2019 defining the technical characteristics of the electronic and light signaling devices of these aircraft, the identification number is recorded. It can consist of: either a unique identifier coded on 30 bytes and made up of three fields (the manufacturer's trigram, the model of the aircraft or the model of the signaling device and the serial number of the aircraft); or a unique identifier in accordance with the ANSI/CTA/2063 standard (physical serial number). The Commission thus notes that the aircraft identification number will not contain personal data relating to the owner of the aircraft traveling without anyone on board. As regards data relating to the remote pilot, the operator or the owner of the aircraft, the legal representative of the remote pilot if applicable, the representative of the legal person operating the aircraft, the Commission notes that these are the identification data present in the "AlphaTango" processing and necessary to the identification of the persons concerned. The other categories of data do not call for any observation on the part of the Commission. Under these conditions, the Commission considers that the data processed are adequate, relevant and not excessive in relation to the purposes pursued. On buyers and recipients The list of buyers and recipients is mentioned in article 4 of the draft decree. he national gendarmerie and national police officers, the Commission notes that they include the "functional data controller" who is an officer of the air transport gendarmerie as well as the "general inspectorates of the national police and the National Gendarmerie". Furthermore, if all national police and gendarmerie officers are likely to be accessing and receiving, the Commission notes that access remains subject to a reasoned individual authorization and the need to know. Under these conditions, it considers the framework sufficient. On storage periods Article 3 of the draft decree provides that personal data are kept for one year from their recording. 'AIPD that "the flight data and the associated identifier are kept pending use if necessary for one year". The Ministry indicates that this retention period is made necessary for the purposes of legal investigations or for the identification of risks to public security (for example, to determine whether the person in question has already been able to commit similar acts or, in the context of preventing threats to public security, in order to cross-check information and consolidate intelligence). The Commission emphasizes that the data primarily serve an immediate operational purpose, to prevent a possible threat to public security

linked to the overflight of a drone: the data retention period necessary for this purpose seems to be much less than one year. If the subsequent retention of the data for an in-depth investigation or possible legal proceedings is legitimate, the Commission regrets not having had more details enabling it to assess the retention period adopted. Although it notes that the prevention of attacks on public security can also be achieved by putting into perspective different overflights to determine a potential threat on other sites, it nevertheless questions the retention of all data on an active basis even when they are no longer necessary for the purpose pursued by the processing; if data could prove necessary to constitute, for example, evidence, they can be kept in intermediate archiving, which it invites the ministry to do. In this case, it would then be up to the ministry to carry out a case-by-case analysis in order to determine the data which should necessarily be archived and their retention periods. On the rights of the persons concerned Article 6 of the draft decree provides for the terms exercise of the rights of persons. Firstly, with regard to the information of the persons concerned, the Commission considers that the wording of the draft decree relating to the right to information is ambiguous and should be clarified in insofar as, in accordance with article 104-I of the law of January 6, 1978 as amended, it is the responsibility of the data controller to provide the person concerned with the information listed and not of the person to request communication of this information. Secondly, with regard to the procedures for exercising the right of access, the draft decree provides that the persons concerned may only exercise it by post, the answer being provided by the same channel. The Commission considers that these rights should also be able to be exercised electronically, on the ministry's website for example, in order to facilitate the exercise of the rights of data subjects. Thirdly, the Commission notes that the draft decree provides that the rights of access, rectification, erasure and limitation of data may be subject to restrictions pursuant to 2° and 3° of II and III of article 107 of the law of January 6 1978 as amended and that the right to object provided for in Article 110 of the aforementioned law does not apply, which calls for no comment. On security measures The Commission notes that access to processing is performed via SSO Proxyma (GN) or Cheops NG (PN) for authorized agents, thus corresponding to strong authentication and has no comments to make on this point. The Commission observes that access to "Infodrones" is also possible on the move for users of the national gendarmerie and police. This access is carried out through traditional authentication by username and password. Access to the "mobile consultation terminal" is subject to entering a PIN code. The Commission invites the Ministry to take the utmost account of the Commission's recommendation on the subject, in order to define a level of security that complies with legal requirements. The Commission notes that access to the system as well as exchanges between local SSD systems and "Infodrones", just like the

exchanges between the aforementioned DGAC processing and "Infodrones", take place through encrypted channels and has no comments to make on this point. that the processing implements a logging system, for a period of three years. This logging concerns user identifiers, "date-time group" information (date, time, time zone), the actions carried out (collection, consultation, interconnection and deletion), the reasons for consultation and communication and, where applicable , the recipients of the data. During exchanges with the Commission, it was confirmed that "the traceability data logically include the identifier of the drones, in order to be able to identify the agents who carried out a search on this aircraft" .The Commission is however wondering about the choice of such a long retention period (three years) knowing that the data collected within the "Infodrones" processing is only kept for one year. The President Marie-Laure DENIS