

Deliberation 2022-047 of April 21, 2022 Commission Nationale de l'Informatique et des Libertés Nature of the deliberation:

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CNIX2226654X Deliberation No. draft decree implementing Article 46 of Law No. 2021-646 of May 25, 2021 for comprehensive security preserving freedoms and relating to the implementation of processing of personal data from individual cameras of country guards (request for opinion no. 22003518) 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 article 46 of the law n° 2021-646 of May 25, 2021 for global security preserving freedoms and relating to the implementation of processing of personal data from the individual cameras of rural wardens es; Considering the law n° 78-17 of January 6, 1978 modified relating to data processing, files and freedoms, in particular its title III; Considering the decision of the Constitutional Council n° 2021-817 DC of May 20, 2021; After having heard the report of Mrs Sophie LAMBREMON, Commissioner, and the observations of Mr Benjamin TOUZANNE, Government Commissioner, Issues the following opinion: The Commission was seized for opinion by the Ministry of the Interior of a draft decree implementing Article 46 of Law No. 2021-646 of May 25, 2021 for global security preserving freedoms and relating to the implementation processing of personal data from the individual cameras of rural wardens. law enforcement officers. Article 46 of Law No. 2021-646 of May 25, 2021 for comprehensive security preserving freedoms has opened up the possibility, on an experimental basis, to country guards, in the exercise of their missions of rural police, to make an audiovisual recording of their interventions by means of individual cameras when an incident occurs or is likely to occur, given the circumstances of the intervention or the behavior of the persons concerned. The conditions for carrying out this experiment are set by this draft decree from the Council of State. Article 1 of the draft decree provides that the experiment applies until 24 November 2024. The Commission notes that this article draws the consequences of article 46 of the aforementioned law of 25 May 2021 which provides that this experimentation applies for a period of three years from the entry into force of this draft decree, and at the latest six months after the publication of the law. On the purposes of processing and the applicable legal regime Article 3 of the draft decree provides that the purposes of processing are: the prevention of incidents during the interventions of rural guards; the observation of offenses and the prosecution of their perpetrators through the collection of evidence; the training and education of agents. The Commission considers that these purposes, set by the legislator, are determined, explicit and legitimate, in accordance with t in Article 4-2° of the law of January 6, 1978 as amended. The Commission also considers that it results both from the main purposes pursued by the systems and from the

rural police missions entrusted to rural wardens, that the processing projects fall under the provisions of Directive (EU) 2016/680 of April 27, 2016 (police-justice directive) as transposed in Title III of the amended law of January 6, 1978. On the quality of a single regulatory act and the implementation of Firstly, the Commission notes that the Ministry intends to mobilize the provisions of IV of Article 31 of the law of 6 January 1978 as amended, which provide that processing for the same purpose relates to identical categories of data and have the same recipients or categories of recipients may be authorized by a single regulatory act, in which case the controller of each processing operation sends the Commission a compliance commitment. In this respect, the Commission observes that II of Article 2 of the draft decree provides that upon notification of the decree of the prefect of the department, the mayor, or, where applicable, all the mayors of the municipalities concerned, sends the compliance commitment and the technical file presenting the planned processing to the Commission. Secondly, insofar as the planned processing is likely to create a high risk for the rights and freedoms of natural persons, they relate to sensitive data, the Ministry of the Interior carried out an impact assessment relating to the protection of personal data (DPIA), which was sent to the Commission with the request for an opinion. The Commission Points out that, although the Police-Justice Directive does not explicitly provide that a single DPIA can relate to a set of similar processing operations which present similar high risks, carrying out such an analysis of impact, in the present case, is likely to constitute an additional guarantee for the protection of the rights and freedoms of the persons concerned with regard to the planned processing. Indeed, it considers that this AIPD framework is intended to constitute the reference base of the minimum guarantees to be implemented by all the country guards who will be equipped with individual cameras, with regard to the risks identified in the context of the use of these devices. In this context, the Commission regrets that minimum security measures are not provided for in the DPIA in order to justify the pre-assessment carried out. The absence of a minimum level of measurement and the acceptance of measures with widely varying levels of guarantees do not make it possible to guarantee the level of risk assessment pre-indicated in the framework DPIA. In this context, the Commission recommends that the Ministry explicitly require minimum measures, or, at the very least, request that the measures implemented make it possible to reduce the risks to the level indicated in the framework DPIA. devicesAs regards situations in which rural guards are authorized to trigger recording, article 46 of the law of 25 May 2021 for comprehensive security preserving freedoms provides that recording is not permanent and that cameras may be used when an incident occurs or is likely to occur, given the circumstances of the intervention or the behavior of the persons concerned. The Commission notes that the draft decree does not provide any further details as to the

situations in which rural guards are authorized to activate their cameras. It also emphasizes that it is seized of a single regulatory act and therefore does not have the technical elements relating to the operation of the cameras. In this respect, the Commission takes note of the details provided by the Ministry of what a doctrine of employment relating to the use of individual cameras will be formalized and distributed to the prefectures. This will expressly mention that the prefects must inform the municipalities of this doctrine when committing to compliance with this single regulatory act, and will also mention the conditions of use of individual cameras. In addition, the Commission notes that, as part of their training, rural guards will be instructed on the circumstances in which the triggering of individual cameras is justified as well as on their conditions of use. It nevertheless considers that the draft decree should provide for objective criteria governing the use of these devices, which will be specified in the employment doctrine. In this respect also, the Commission notes that the draft text does not provide for the conservation of data in buffer memory and therefore considers that such storage is not possible in the current state of the text. implement individual cameras in all locations. The Commission notes that the draft decree does not provide any further details as to the places concerned. As such, it considers that the ministry should provide specific rules when these are used in places that are particularly sensitive to people's privacy, such as places of residence, for example. In these situations, the Commission considers that the supervision of the possibility of filming should be particularly strict. It asks that the criteria likely to define these circumstances be specified in the employment doctrine. Finally, article 5 of the draft decree provides that the recordings can only be consulted at the end of the intervention and after their transfer to the secure computer medium, and that no transmission system allowing remote viewing of the images in real time can be implemented. of May 25, 2021 for comprehensive security preserving freedoms which provides that the personnel to whom the individual cameras are provided cannot have direct access to the recordings they make. In addition, it notes that the employment doctrine issued to prefects of departments for municipalities will include the guarantees intended to ensure that rural guards carrying cameras do not have direct access to their content. On the data processedL Article 4 of the draft decree mentions the data processed. If the use of sound recording systems coupled with video devices may pose difficulties with regard to the requirement of proportionality resulting from the texts relating to the protection of personal data personal, the collection of sound data nevertheless appears relevant in this case and proportionate to the objective pursued by these devices. In addition, article 4 of the draft decree provides that the processing may collect sensitive data within the meaning of I of article 6 of the law of January 6, 1978 amended insofar as these data are necessary for the pursuit of the purposes, with the exception of genetic data uses and

biometrics. However, I of article 6 of the aforementioned law lays down the principle of a ban on the processing of such data.

Article 89-II of the amended law of January 6, 1978 provides that the processing of such data is possible insofar as it is authorized by legislative or regulatory provisions, which is the case of this draft decree in the Council of State, taken after reasoned and published opinion of the CNIL. The processing should then offer appropriate safeguards for the rights and freedoms of the data subjects. In this respect, the Commission points out that it will be prohibited to select a particular category of persons in the processing operations on the basis of these data alone. It takes note of the ministry's commitment that sensitive data can only be processed in the event of absolute necessity in accordance with article 88 of the law of 6 January 1978 as amended. Under these conditions, the Commission considers that the data processed are adequate, relevant and not excessive with regard to the purposes pursued, in accordance with the provisions of article 4-3° of the law of January 6, 1978 as amended.

**On accessors and recipients** Article 6 of the draft decree indicates the accessors and recipients of planned processing data. Among the recipients, 3° of II of article 6 of the draft decree mentions the agents in charge of training country guards. The ministry indicated that the trainers used by the National Center for the Territorial Public Service (CNFPT) are experienced rural guards. The heads of municipal police departments can also carry out the continuous training of their officers. In addition, some services made up of several rural wardens can carry out this type of continuous training, using video extracts from individual cameras in the service. The Commission considers that the category of recipients responsible for training could be specified in the draft decree.

**of a video extract to the agents responsible for training country guards.** On the retention period of data Article 46 of the law of 25 May 2021 for global security preserving freedoms provides that audiovisual recordings are erased after six months, except where they are used in the context of legal, administrative or disciplinary proceedings. Article 7 of the draft decree specifies the starting point of this retention period, namely six months from the date of their registration. Article 7 of the draft decree specifies that at the end of this period, the recordings are automatically erased, and that when the data has been extracted within the six-month period and transmitted for the purposes of a judicial, administrative or disciplinary procedure, they are kept according to the rules specific to each type of procedure. The AIPD specifies that the automatic deletion mechanism must be implemented on the system in which the data is transferred and from the transfer . In order to limit the risk of a period passing between the retention period provided for by the text and the actual retention period in the event that the data are transferred several days after their recording, the Commission notes that the instructions for use will remind that the rural wardens must, after its use, proceed as soon as possible to unload the camera. If

this downloading is not done as soon as possible, the latter may be subject to disciplinary action. which they are collected and processed, in accordance with article 4-5° of the law of January 6, 1978 as amended. On the rights of the persons concerned Article 46 of the law of May 25, 2021 for global security preserving freedoms provides that the cameras are worn visibly by the officers and a specific visual signal indicates whether the camera is recording. It also provides that the triggering of the recording is the subject of information of the persons filmed, except if the circumstances prohibit it. The Commission recalls that this exception was subject to a reservation of interpretation by the Constitutional Council in its decision no. 2021-817 DC of 20 May 2021 with regard to the individual cameras of national police and gendarmerie the municipal police, which considers that these circumstances cover only cases where this information is made impossible for purely material reasons and independent of the reasons for the intervention . In this respect, it notes that the cases in which the recording is carried out without the knowledge of the person concerned will be specified in the doctrine of use. The Commission nevertheless considers that the draft decree should include objective criteria which could be specified in the employment doctrine. general public information on the use of individual cameras is organized by the Minister of the Interior. The Commission observes that Article 9 of the draft decree specifies that this information will be provided on the municipality's website or, failing that, by posting in the town hall. The rights of the persons concerned, other than the right to information, do not call for any observation on the part of the Commission. On security measures The Commission notes that the Ministry indicates that the recordings made using individual cameras can only be consulted after of the intervention. It recommends that this condition be technically guaranteed by the solutions chosen in the implementation of the processing. The Commission takes note of the possibility of logging in a register specially opened for this purpose. Non-automatic logging of access, modification and deletion of videos cannot provide the same level of guarantee as integrated logging. Indeed, the likelihood of logging fraud to cover up improper processing of a video remains high in this case. In this context, the Commission recommends that data controllers independently assess the seriousness of the specific risks of non-detection of fraud and their impact on the purpose of the processing and on the data subjects. If the seriousness of this residual risk is high, the Commission should be seized. As regards the use of audiovisual recordings for educational and training purposes, Article 7 of the draft decree provides that these will be pseudonymised in order to reduce the risks to the people filmed. On the transmission of an experiment report Article 10 of this draft decree provides that, within a period of six months before the end of the experiment, the mayor or , when the agent likely to be equipped with individual cameras is employed under the conditions provided for in Article L. 522-2 of the

Internal Security Code, all the mayors of the municipalities where the agent is assigned address the Minister of the Interior a report on the use of individual cameras by country guards. The Commission asks that this report also be sent to it. that it can make a decision with full knowledge of the facts if this type of system were to be made permanent. The President,M.-L. Denis