Deliberation 2020-73 of July 16, 2020Commission Nationale de l'Informatique et des LibertésNature of the deliberation: OpinionLegal status: In force Date of publication on Légifrance: Tuesday October 06, 2020NOR: CNIX2026368VDeliberation No. 2020-073 of July 16, 2020 providing an opinion on a draft decree relating to the anti-reconciliation bracelet (request for opinion no. 20010563)

The National Commission for Computing and Liberties,

Seizure by the Minister of Justice of a request for an opinion concerning a draft decree relating to the anti-reconciliation bracelet;

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 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 criminal offences, investigation and prosecution in this area or the execution of criminal penalties, and on the free movement of such data and repealing Council Framework Decision 2008/977/JHA;

Having regard to the Civil Code, in particular its articles 515-11 and 515-11-1;

Considering the penal code, in particular its articles 132-45 and 132-45-1;

Having regard to the Code of Criminal Procedure, in particular its Articles 138 and 138-3;

Considering the law n° 78-17 of January 6, 1978 modified relating to data processing, files and freedoms, in particular 32 and 89-II;

Having regard to Law No. 2010-769 of July 9, 2010 relating to violence specifically against women, violence within the couple and its impact on children;

Considering the law n° 2019-1480 of December 28, 2019 aiming to act against violence within the family;

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. 2012-029 of February 2, 2012 providing an opinion on a draft decree by the Conseil d'Etat relating to the experimentation of an electronic device intended to ensure the effectiveness of the prohibition imposed on a convicted person or indictment to meet a protected person (DEPAR); After having heard Mrs. Christine MAUGÜE,

commissioner in her report, and Mrs. Nacima BELKACEM, government commissioner, in her observations, Issues the following opinion: After having heard Mrs. Christine MAUGÜE, Commissioner in her report, and Mrs. Nacima BELKACEM, Government Commissioner, in her observations,

Gives the following opinion:

The draft decree submitted to the committee for its opinion is intended to apply the provisions relating to the anti-reconciliation bracelet (BAR) resulting from law no. 2019-1480 of December 28, 2019 aimed at acting against violence within the family.

The committee notes that it has already had to rule on a similar device in its deliberation n° 2012-029 of February 2, 2012 relating to the electronic anti-reconciliation device (DEPAR) which had been created, on an experimental basis, by the law no. 2010-769 of July 9, 2010 relating to violence specifically against women, violence within the couple and its impact on children.

It is provided for by the aforementioned law n° 2019-1480 that the conditions and methods of implementation of the anti-reconciliation mobile electronic device are specified by decree in the Council of State, taken after the opinion of the National Commission for Information Technology. and freedoms. The committee observes, moreover, that the said law also broadens the conditions for granting a telephone grave danger (TGD) and that the two devices are thus intended to coexist.

The planned processing, implemented by the Directorate of Prison Administration (DAP), is intended to ensure the remote control of persons placed under a mobile anti-reconciliation device in execution of a decision taken pursuant to Articles 138 and 138-3 of the Criminal Procedure Code (CPP), Articles 132-45 and 132-45-1 of the Criminal Code or Articles 515-11 and 515-11-1 of the Civil Code.

The BAR can thus be pronounced as a specific obligation:

- in the criminal context, on a pre-sentence basis, in the context of judicial review and, on a post-sentence basis, in the context of probationary suspension and adjustments to sentences;
- in the civil context, the family court judge may order the BAR against the defendant within the framework of the civil protection order, after obtaining by the judge the prior consent of the two parties and if the prohibition to meet the protected person is pronounced. On the general conditions of implementation of the device

Firstly, the commission notes that the BAR must make it possible to determine in real time the position of the wearer of the bracelet in relation to that of the protected person, using geolocation devices given to each party. When the wearer of the bracelet approaches at a determined distance from the protected person, the system will generate a signal intended for the

teleoperator, who can then trigger an injunction to the wearer of the bracelet to move away from the protected person or even, in the event of refusal, a request for the intervention of the police and, if necessary, contact with the protected person in order to ensure their safety.

The draft decree creates Articles R. 18-2-5 of the CPP and 1136-17 of the Code of Civil Procedure (CPC) which provide that: The alert zone may not be less than one kilometer nor greater than ten kilometers . The determination of this zone cannot go below a level of precision of the order of one kilometer. The pre-alert zone is twice the alert zone.

The commission therefore notes that the decision in criminal and civil matters providing for the BAR cannot determine a distance below which the person wearing the bracelet is prohibited from approaching the protected person, corresponding to the alert zone, less than one kilometer with regard to the precision of the geolocation tools and the speed of intervention by the police. In the event that the person to be protected and the person wearing the bracelet reside less than one kilometer away, it observes that Article 132-45-2° of the Criminal Code allows the sentencing court or the judge to application of penalties to require the convicted person to establish his residence in a specific place which could thus be different from that initially envisaged.

Secondly, the committee notes that guarantees are provided for in the draft decree in order to monitor the effective implementation of the BAR system and in particular its compliance with regard to the protection of personal data.

On the one hand, the new article R. 61-43 of the CPP provides that the processing is placed under the control of the magistrate mentioned in article R. 61-12 of the CPP and under the conditions provided for in article R. 61 -13. The commission notes that it will be the same magistrate in charge of the control of the automated processing of data relating to the control of persons subject to placement under mobile electronic surveillance (PSEM) and of the automated processing relating to the control of people placed under electronic surveillance (PSE). It notes that this magistrate may carry out any verification on the spot and obtain from the authority responsible for the planned processing any information relating to the operation of the latter, without prejudice to his possibilities of access to the recorded information.

The commission notes that this magistrate will send an annual report to the Keeper of the Seals on the functioning of the processing. It takes note of the Ministry's commitment to also send it this report and recommends that it include a reflection on the events that occurred during the year in order to assess the relevance of an update of the analysis of Data Protection Impact (DPIA) or its measures. The case could arise, for example, if serious events not covered in the DPIA have taken place

or if the security measures have clearly not been sufficient.

On the other hand, the new article R. 61-52 of the CPP indicates that the authorized private persons in charge of the remote control of the mobile anti-reconciliation device are placed under the supervision of an agent of the penitentiary administration. In this respect, the committee notes that this supervision carried out by the prison administration will make it possible in particular to check the conformity of the personal data collected with the purposes of the processing as well as compliance with the requirements in terms of data retention periods and archiving. In this respect, the committee draws the attention of the ministry to the importance of implementing guarantees so that only the personal data necessary for the purposes of the processing are collected and the need to manage with the greatest vigilance the authorizations of the personnel concerned, in order to limit to what is strictly necessary the persons who may have direct access to the data.

Thirdly, the committee observes that article 1136-19 of the CPC created by the decree provides that, in the event of difficulties in carrying out the measure of wearing the mobile electronic anti-reconciliation device referred to in article 515- 11-1 of the civil code, the family affairs judge is seized under the conditions of article 515-12 of the civil code, so that all or part of the measures set out in the protection order are modified. It acknowledges that such difficulties may be, for example, linked to the appearance of inconveniences for the health of the person concerned.

It notes that, for the criminal framework of the device, articles 139 and 140 of the CPP as well as articles 712-8, 723-11, 732, 739, 763-3, 723-34 of the CPP provide in particular the possibility, for the judge and the sentencing court responsible for monitoring the measure, to modify the measures to which the person placed under judicial supervision or sentenced is subject. The absence of precision, in the part of the decree modifying the CPP, similar to that appearing in the part modifying the CPC, is therefore without impact on the existence of the faculty also available to the judge in the criminal framework of the device.

Fourthly, the commission notes, with regard to the civil framework of the device, that it is provided for in article 515-11-1 of the civil code that the judge may order the wearing of the BAR after obtaining the consent of both parts. It notes that this consent of both parties relates to the measurement itself but does not constitute the legal basis for the processing of their data.

It also notes that if the protected person no longer wishes to benefit from the protective measure or if the wearer of the bracelet withdraws his consent, they may, at any time, seize the family court judge on the basis of article 515-12 of the civil code in order to obtain the modification of the order of protection which was pronounced.

Fifthly, the committee notes that it is not excluded that data relating to minors are recorded in the BAR processing, in particular

with regard to articles 515-11 and 515-11-1 of the civil code. It considers that specific measures should be implemented by the Ministry to ensure that the processing of data relating to minors, which may be sensitive data, is subject to appropriate safeguards for the rights and freedoms of the latter, in accordance with the provisions of article 88 of the law of January 6, 1978 as amended. On the applicable legal regime and the purposes of the processing

The purpose of the processing is to ensure the control of persons placed under a mobile anti-reconciliation device and makes it possible to guarantee the effectiveness of the prohibition imposed on the person wearing an anti-reconciliation bracelet from meeting a protected person, victim of an offense committed within the couple.

The projected treatment thus allows:

- to alert the authorized personnel responsible for the remote control of the anti-reconciliation mobile electronic device that the person wearing the bracelet is approaching the protected person at less than a certain distance fixed by the court decision as well as in the event of an alteration in the operation of the technical device;
- to locate the protected person and the person wearing the bracelet, in order to take appropriate protection measures when an alert is issued.

The processing also pursues a statistical purpose. The commission notes that these statistics will be compiled by the data office of the prison administration directorate (DAP) in particular to produce statistics aimed at defining public policies internal to the DAP or the Ministry of Justice, to be used for publications such as socio-economic analyzes or internal DAP research.

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 as amended.

With regard to the legal regime applicable to BAR processing, the committee takes note of the information provided by the Ministry according to which the planned processing falls under the provisions of the Police-Justice Directive and that in the civil context, the purpose of the processing does not differ from that of the penal framework since the prevention of criminal offenses relating to domestic violence is also sought.

The commission considers that the determination of the legal regime applicable to BAR processing is made complex by the fact that it has the particularity of being able to be pronounced as an obligation in criminal matters but also in civil matters when both parties consent to it. . With particular regard to the question of the legal regime applicable to the civil framework of the planned processing, it notes that it could be considered that it is subject 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 (the GDPR) insofar as the protection order is not directly part of the purpose of preventing criminal offences, since it aims to protect the victim and that it can moreover be pronounced by the family court judge in the absence of any criminal proceedings. The committee notes, however, that the planned mechanism is governed by provisions of a criminal nature, Articles R. 61-43 to R. 61-50 of the CPP, and that it has a common purpose, whether it is pronounced in a context criminal or civil, namely to prevent the commission of offenses linked to violence within the family.

Insofar as BAR processing is implemented for the purpose of ensuring the remote control of persons placed under a mobile electronic anti-reconciliation device and to prevent the commission of offences, the commission considers that it falls within the scope of application of Directive (EU) 2016/680 of April 27, 2016 referred to above (hereinafter the directive) and must be examined in the light of the provisions of Articles 87 and following of the law of January 6, 1978 as amended. On the data collected

Article 6 of the draft decree lists the personal data that may be collected according to the categories of data subjects:

- the person wearing the anti-reconciliation bracelet;
- the protected person;
- the authorized personnel of the central and decentralized services of the penitentiary administration;
- authorized personnel responsible for remote control of the mobile electronic anti-reconciliation device;
- the judicial authority in charge of monitoring the decision ordering a mobile anti-reconciliation device;
- the persons, other than the wearer of the bracelet and the protected person, mentioned in the decision ordering a mobile electronic anti-reconciliation device and any amending decision.

As a preliminary point, the commission notes that the data recorded in the processing are likely to reveal sensitive data within the meaning of I of article 6 of the law of January 6, 1978 modified but that it is prohibited to select in the processing a particular category of people based on this data alone. It recalls that, in accordance with Article 88 of the said law, the processing of such data is only possible in the event of absolute necessity, subject to the appropriate safeguards for the rights and freedoms of the person concerned. It notes the guarantee provided with regard to the photograph of the person wearing the bracelet, since the draft decree specifies that this does not allow use for the purposes of biometric checks.

Firstly, the committee notes that it emerges from the information provided by the ministry in the context of the data protection

impact assessment (DPIA) that, in respect of the other persons mentioned in the decision ordering the mechanism electronic anti-reconciliation, may be collected data on the close circle of protected persons, namely identity data and data relating to contact details. It acknowledges that this data will make it possible to contact the protected person if he does not respond to calls from the remote assistance center and could also be necessary in the event of intervention by the police.

It observes that data relating to any person mentioned in the court decisions may also be collected (data relating to identity and function as well as, where applicable, any other information mentioned in the court decision within the framework penal) in order to allow the measurement to be recorded in the BAR processing by the remote assistance/remote monitoring centre.

In view of these details, the committee considers that the draft decree could be supplemented in order to further specify the persons concerned under this category described in a very general manner.

Secondly, with regard to the person wearing the bracelet and the protected person, the commission notes that data relating to identity may be collected and in particular additional information which will be entered in free text areas.

The commission notes in the draft decree that these data correspond to all other physical characteristics necessary for the installation of the bracelet and, if necessary, for questioning by the police and gendarmerie forces. The commission takes note of the details provided by the ministry according to which it may be, for example, the color of the hair or that of the eyes. It also takes note of the clarifications provided by the ministry according to which sensitive data within the meaning of I of article 6 of the law of January 6, 1978 as amended may be collected in these free text areas if they make it possible to identify the person concerned. , in particular for example if the latter is blind, and that the ministry undertakes to insert an information notice recalling the exceptional and strictly necessary nature of the collection of such data.

Thirdly, draft article R. 61-44 of the CPP indicates that biometric data, namely data relating to the voice template for authentication voice biometrics provided for in article R. 18-2-1 with regard to the person wearing the anti-reconciliation bracelet and, where applicable, the protected person. It acknowledges that the purpose of collecting such data is to verify that the person who answers the terminal during a call from remote assistance or remote monitoring is indeed the person concerned.

The commission notes that the implementation of such biometric processing allows the agents of the telesurveillance center to authenticate the person concerned. It notes that the collection of this category of data will be subject to obtaining the consent of the protected person and that the latter is informed of this optional choice at the time of delivery of the material. It also

acknowledges that the protected person who had given his consent to the recording of his vocal template in the BAR processing may revoke his consent at any time without any consequences being attached to this refusal and that his vocal template will then be deleted. of the data collected in the processing. As BAR processing falls under the Police-Justice Directive, it observes that this consent does not constitute an exception allowing the collection of so-called sensitive data within the meaning of Article 9-2 of the GDPR.

Fourthly, it is also indicated in the AIPD that, with regard to the judicial data relating to the wearer of the bracelet and to the protected person which will be processed, a distinction should be made according to whether the measure was decided in a civil context or in a criminal context: in a civil context, only an extract of the decision including the operative part is recorded, whereas in a criminal context the entire decision is recorded. The committee notes that this distinction is justified by the fact that, in criminal matters, authorized private persons are persons who participate in criminal proceedings within the meaning of article 11 of the CCP and that they are therefore subject to the secrecy of instruction whereas such is not the case in civil matters. These data will also be necessary for the creation of the measure in the processing by the remote assistance/remote monitoring centre.

Fifthly, the commission notes that the e-mail address of the person wearing the bracelet and of the protected person may be collected. It acknowledges that the e-mail address is intended to be used as an additional means of communication in order to overcome any communication difficulties.

The other categories of personal data collected do not call for any additional observation by the commission.

Subject to the foregoing, the commission considers that the data processed is adequate, relevant and not excessive with regard to the purposes pursued. About users and recipients

The draft decree introduces new articles R. 61-45 and R. 61-46 of the CPP which detail the list of accessors and recipients of BAR processing.

Firstly, draft article R. 61-45 of the CPP provides that authorized personnel from the central and decentralized services of the prison administration as well as authorized personnel in charge of remote control of the mobile electronic anti-reconciliation device.

The commission notes that the authorized personnel responsible for the remote control of the mobile electronic anti-reconciliation device will be able to access the entire court decision in criminal matters in order to create the identity cards

of the bracelet wearers and of the protected persons. While it takes note of the Ministry's commitment to no longer allow these personnel access to the court decision pronouncing the BAR in criminal matters once the relevant information has been entered into the SAPHIR software, it considers that , the Ministry not having justified the need for these personnel to access the whole of the court decision in criminal matters, only the information they need should be communicated to them, insofar as the court decision may include personal data relating in particular to other third parties such as, for example, witnesses, which do not appear necessary with regard to the purposes of the BAR processing.

It also acknowledges that only authorized agents of the DAP data office will be able to access the pseudonymised data that has been collected for the statistical purpose of the BAR processing.

Secondly, the draft article R. 61-46 of the CPP indicates three categories of recipients of all or part of the BAR processing data: magistrates and officials authorized by the courts by the heads of jurisdiction, magistrates and officials authorized the Department of Criminal Affairs and Pardons (DACG), authorized judicial police officers or agents intervening to ensure the protection of the protected person or to apprehend the person carrying the BAR.

If the commission takes note that the magistrates and authorized officials of the DACG are made recipients of the data pursuant to article 35 of the CPP which provides that the public prosecutor's office draws up reports in specific cases on the initiative or at the request of the Minister of which will then be sent to the magistrates of the DACG on duty, it nevertheless wonders about the need to make them direct recipients, by default, of all the data and information contained in the BAR processing. In this respect, it considers that if the magistrates and authorized officials of the DACG are only intended to be recipients of anonymized data produced from the data recorded in the BAR processing, the draft decree should be amended so as not to make direct recipients of the personal data recorded in the processing.

In addition, the commission notes that the concept of authorized officials of the judicial courts includes all the officials contributing to the operation of a judicial service and therefore includes the personnel of the clerks of the judicial services as well as the administrative assistants having to carry out the due diligence relating to a decision to place under BAR, once they have been authorised.

Subject to the foregoing, the commission considers that the consultation of the data by the persons mentioned in the new articles R. 61-45 and R. 61-46 of the CPP appears justified and proportionate. On the retention periods of the data

The new article R. 61-47 of the CPP lists the retention periods for personal data and information contained in BAR processing.

Firstly, in general, the commission observes that the data retention periods set out in the new article R. 61-47 of the CPP vary from a retention period of one month to six years following the date end of placement under an electronic anti-matching device depending on the categories of data concerned and wonders about the reasons justifying such a difference in the setting of these durations. In this respect, it acknowledges that all the personal data collected will be kept on an active basis until one month following the end date of the placement under a mobile electronic anti-reconciliation device and that, except in exceptional cases, these data will be then transferred to the intermediate archive database for a period of five years and eleven months. It considers that the draft decree, which does not expressly mention the retention of certain data in an intermediate archive database, should be supplemented on this point in order to expressly clarify, for all the retention periods mentioned, whether the retention period is provided in an active database or if the data can be kept later in intermediate archiving.

Secondly, the commission notes that the recording of telephone conversations will be kept for a period of three months following the end of the placement under an anti-reconciliation device. It notes that in the event that an action for compensation is brought against the data controller before the end of this period, then this period would be suspended and the data would be kept until the end of the procedure or limitation of appeals against the decision. It invites the Ministry to specify the draft decree on this point for the purposes of clarity.

Thirdly, the commission notes that personal data and information not referred to in 1°, 2°, 3° and 4° of this provision are kept for a period of six years following the end date of the placement under an electronic device. mobile, because of the interest they may present in the event of litigation. It wonders about the longer retention period of this data in comparison with the other data mentioned in the new article R. 61-47 of the CPP and recalls that the draft decree should be clarified on this point. It notes that the retention period for this data has been determined according to the limitation period for public action for offences, which is six years. Indeed, disputes relating to offenses could require access to the data recorded in the BAR processing such as, for example, a violation of the measures ordered by a protection order.

The other provisions do not call for any particular comments on the part of the committee.

Subject to the foregoing, the commission considers that the data retention period appears proportionate to the purposes assigned to the processing.

Fourthly, with regard to the retention period of the log data, the commission recalls that the main purpose of the processing of

this data is the detection and prevention of illegitimate operations on the main data. If the implementation of these logs and their conservation constitute guarantees for the persons concerned by the processing, the data they include, which may sometimes include or reveal certain personal data of the main processing, may present a certain sensitivity. The duration of storage of these traces must therefore be set in such a way that the invasion of privacy that it represents is itself proportionate to the objective of securing the processing.

The committee considers that, in most cases, a log retention period of six months is sufficient to use this information, provided that automatic or semi-automatic proactive trace analysis mechanisms, as well as certain organizational measures, identify most illegal behavior. It is different only in certain specific cases, due in particular to the existence of legal obligations to retain certain traces or when a particularly significant risk for the persons whose data is processed justifies that it remains possible, during a long period, to access the processing usage history. On the other hand, it considers that the mere possibility that the data may one day be exploited reactively in the context of a criminal investigation does not, for that reason alone, authorize keeping all of these traces preventively for a duration equivalent to the limitation period of the offenses in question. It also recalls that the relevant data from the logs may be kept from time to time for a longer period in the context of investigations into unlawful use of the processing.

In this case, the commission considers that the Ministry, which relies on the limitation period of the criminal offenses in question, has not justified the six-year period of conservation of the newspapers which it proposes. Unless such elements are provided, the committee considers this six-year period to be disproportionate and invites it to reduce this period to that which is necessary for the objectives pursued by these newspapers. In this respect, it emphasizes that an analysis of system traces and application traces is planned and recalls that the implementation of a proactive mechanism for automatic control of traces contributes to the detection of abnormal behavior by the automatic generation of alerts . Furthermore, the collection and use of application traces and system traces being measures aimed at dealing with different risks, the commission recommends that the Ministry determine and justify the retention period of these two types of traces independently. . Finally, it emphasizes that these data must under no circumstances make it possible to obtain information on data whose retention period has expired.

On the rights of data subjects

The new Articles R. 61-49 and R. 61-50 of the CPP specify the procedures for exercising the rights of data subjects. The new article R. 61-49 of the CPP thus indicates that the rights of information, access, rectification, erasure and limitation of data are

exercised directly with the management of the prison administration.

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 insofar as, in accordance with article 104-I of the amended law of 6 January 1978, 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.

In addition, the committee notes that the methods of this information will vary according to the categories of persons concerned:

- the wearer of the BAR will be informed at the time of installation of the device by a PSE supervisor, by the delivery of an information notice;
- the protected person will be informed when the device is delivered by the court, by the delivery of an information notice;
- the people to contact in the event of an emergency will be informed by the sending of an e-mail by the actors handing over the device and creating the file of the protected person;
- the persons mentioned in the court decisions pronounced in the criminal context will be informed by the provision of documentation on this subject in the courts;
- a specific communication will be carried out by the ministry for its personal users of the information system as well as for the magistrates and the clerks.

The commission notes that in the event that the person to be contacted urgently does not have an e-mail address or if this address proves to be incorrect, the person may be informed by post, the draft decree providing that the residence address of these people can be collected as contact details. It also notes that the ministry will provide general information about the BAR on its website.

Without calling into question the procedures for exercising the rights of persons as provided for by the ministry, the commission recalls that it is up to the ministry to provide for specific measures with regard to minors, in order to provide them with information under appropriate terms.

Secondly, the new article R. 61-49 mentioned above provides that the right of access may be subject to restrictions in order to avoid harming the prevention or detection of criminal offences, investigations or prosecutions in the matter or the execution of penal sanctions and to protect the rights of others, pursuant to 2° of article 107 of the law of January 6, 1978 as amended, the

draft decree containing a formal imprecision on this point in referring to article 107-II-2° of the same law. It notes that the Ministry also intends to apply Article 107-I-5° of the said law and considers that the draft decree should be amended in order to specify this expressly. It takes note of the ministry's commitment to complete the draft decree on this point.

With regard to the right to rectification, the committee notes that certain data cannot be subject to rectification (namely, technical data, GPS coordinates of the position of the mobile unit, the decision to justice pronouncing the measurement and the recordings of the telephone conversations between the wearer of the bracelet and the remote monitoring center and between the protected person and the remote assistance center) but that the derogations provided for by article 107-II will not be applied of the amended law of January 6, 1978. It considers that if the rights to erasure and rectification will indeed be limited for certain categories of personal data, the draft decree should be amended in order to expressly provide for this.

The commission takes note that the ministry intends to apply article 108 of the law of January 6, 1978 modified for the sole right of access and considers that the draft decree should be modified in order to specify it more clearly.

Thirdly, the new article R. 61-50 of the CPP provides that the right of opposition does not apply, with the exception of the persons to be contacted in the event of an emergency mentioned in 3° of II of article R. 61-44, which calls for no comment. On security measures

The processing has been the subject of a study of the risks to the privacy of the persons concerned in the context of a DPIA and measures have been determined to process them.

One of the most serious risks of the device is that it could be hijacked by the person wearing the bracelet to deduce the position of the victim and attack, or cause an attack, on his safety. The Committee notes that this risk has been duly identified by the Ministry and numerous measures implemented or planned to contain this risk, in particular with regard to the detection of repeated alerts or pre-alerts.

The commission draws the Ministry's attention to the fact that the victims can, in certain cases, hijack the system and create risks for the people wearing the bracelet. In particular, since the device is based solely on the distance between the person wearing the bracelet and the protected person, without the possibility of indicating a delimited area as authorized, there is a risk that protected persons will take revenge on the person wearing the bracelet by preventing them, for example, from returning home or going to work, by going physically close to these areas. Although this risk seems largely addressed indirectly by the planned measures, the committee recommends making it explicit in the next update of the DPIA.

The committee notes that an action plan is planned and that corrective actions are scheduled until the end of 2021. The committee notes that the assessment of certain measures and their planning depend on the choice of service providers. It therefore recommends that the Ministry update its action plan with dated terms as soon as the subcontractors are definitively determined. In any case, it recalls that the system can only be implemented when sufficient measures from the action plan have been implemented in order to reduce the residual risks to a level considered acceptable, pending a implementation of all planned measures. Such temporary approval does not dispense with the implementation of the action plan and cannot exceed one year.

In addition, the ministry must regularly check that the action plan is progressing and running smoothly, as well as the proper implementation of its measures. The conclusions of these regular audits are part of its obligation to regularly reassess risks.

The commission takes note of the ministry's desire to study the possibility of eventually encrypting all data in transport and at rest. In the meantime, she notes that some data produced by the systems is not encrypted. The commission emphasizes the importance of ensuring the highest level of confidentiality regarding the alarms and positions of the persons concerned.

The commission notes that connections to the device will be made by means of strong authentication mechanisms, and that the only exception is limited to a particular case (loss of the means of strong authentication) and limited in time (five days maximum ).

Subject to the previous observations, the security measures described by the data controller seem to comply with the security requirement provided for by article 99 of the law of January 6, 1978 as amended.

The committee recalls, however, that this obligation requires the updating of the DPIA and its security measures with regard to the regular reassessment of the risks.Related links

The president,

M. L. Denis