

Deliberation 2018-324 of October 11, 2018 Commission Nationale de l'Informatique et des Libertés Nature of the deliberation: Opinion Legal status: In force Date of publication on Légifrance: Saturday February 16, 2019 NOR: CNIX1904667X Deliberation No. draft decree amending the decree authorizing the creation of an automated processing of personal data called "DOCVERIF" (request for opinion no. 18013763) The National Commission for Computing and Freedoms, Seized by the Minister within a request for an opinion relating to a draft decree amending the decree authorizing the creation of an automated processing of personal data called DOCVERIF; Having regard to convention No. 108 of the Council of Europe for the protection of individuals with regard to the automatic processing of personal data; Having regard to Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 relating to the protection of individuals natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offenses or the execution of criminal penalties, and free movement of such data and repealing Council framework decision 2008/977/JHA; Having regard to the code for the entry and stay of foreigners and the right to asylum, in particular its articles R. 311-13-1 and R. 611-1; Having regard to law n° 78-17 of January 6, 1978 as amended relating to data processing, files and freedoms, in particular its articles 26-I, 30-II and its chapter XIII; Having regard to decree n° 55 -1397 of October 22, 1955 modified establishing the national identity card; Considering the decree n° 2005-1309 of October 20, 2005 modified taken for the application of the law n° 78-17 of January 6, 1978 relating to data processing , files and freedoms; Having regard to decree n° 1726-2005 of December 30, 2005 as amended relating to passports; Having regard to decree n° 2016-1460 of October 28, 2016 amended authorizing the creation of personal data processing relating to passports and national identity cards; Having regard to the decree of August 10, 2016 authorizing the creation of automated personal data processing called DOCVERIF; Having regard to deliberation no. 2016-218 of July 21, 2016 providing an opinion on a draft decree authorizing the creation of an automated processing of personal data called DOCVERIF; On the proposal of Mr. Jean-François CARREZ, commissioner , and after having heard the observations of Mrs. Nacima BELKACEM, Government Commissioner, Issues the following opinion: the creation of an automated processing of personal data called DOCVERIF. This processing, on which the Commission has already ruled in its deliberation of July 21, 2016 referred to above, aims to strengthen the effectiveness of the fight against documentary fraud and identity theft by facilitating the control of the validity national identity cards and passports by the national police and the national gendarmerie and thus to fight against the improper use of these documents, their falsification or counterfeiting. It notes that this amendment aims, to on the one hand, to

extend the control carried out by the aforementioned services to foreign residence permits and, on the other hand, to extend the categories of people who can access the processing. Insofar as the purpose of DOCKERIF processing is prevention, research, the finding or prosecution of criminal offences, this must therefore be the subject of an order, issued after a reasoned opinion and published by the Commission in accordance with the provisions of art. Article 70-3 of the amended law of January 6, 1978. On the purposes of processing: Article 1 of the decree of August 10, 2016 referred to above and authorizing the creation of DOCKERIF processing provides that the purpose of processing is to facilitate the control the validity of documents issued by the French authorities and to fight against the improper use of such documents, their falsification or their counterfeiting. The Commission notes that if the purposes of the processing remain unchanged, the purpose of Article 2 of this draft decree is to modify the scope of the documents that can be checked in order to add to the national identity cards and passports, the documents of stay comprising the electronic component provided for in article R. 311-13-1 of the code for the entry and stay of foreigners and the right to asylum. The Commission first recalls that when the DOCKERIF processing was created, the Ministry had already indicated that the processing was intended to be extended to other documents, in particular to residence permits. It also takes note of the details provided by the latter according to which this extension aims to strengthen the means of combating documentary fraud on all titles, in accordance with the objective pursued by the processing. Under these conditions, the Commission considers that the purposes of the processing are determined, explicit and legitimate, in accordance with the provisions of article 6-2° of the law of January 6, 1978 as amended. On the data collected: Article 3 of the draft decree amends the data that can be recorded in the DOCKERIF processing in order to add the collection of data relating to residence permits, namely: the type and number of the document, its date of issue and end of validity, the mention of the valid character or invalid of the document and, for invalid documents only, the reason for this invalidity. Firstly, the Commission notes that these data are collected by means of a daily feed e by the AGDREF 2 processing on which the Committee has already ruled. In this respect, it recalls that any substantial modification of this processing must be the subject of a Conseil d'Etat decree issued after consulting the Commission, in accordance with the provisions of article L. 611-5 of the CESEDA and Article 30-II of the amended law of January 6, 1978. Although the Commission notes that a draft decree modifying the AGDREF 2 treatment was sent to it within the framework of the examination of a referral relating to a separate treatment, it regrets, for the sake of consistency, that the envisaged modification no has not been the subject of a specific regulatory act. As regards the data recorded in the processing and relating to foreign residence permits, the

Commission notes that no nominative information is transmitted or stored in the processing DOCVERIF , which only concerns documents and does not allow searches to be carried out relating to persons from the data collected. It also notes that the draft decree provides that, contrary to what is currently provided for of identity and passports, the expiry date of the residence permit is recorded in the processing. The Commission takes note of the justifications provided by the Ministry according to which this data must make it possible to know the exact end of the validity of a document in order to establish its status (valid title or invalid title). It notes in this respect that, unlike identity cards and passports, foreign residence permits have very variable periods of validity, including within the same category of residence permit. Finally, the Commission notes that the ministry now intends to collect the date of issue of passports and national identity cards. It considers that this modification does not call for any particular observation with regard to the purposes pursued by the DOCVERIF processing. With regard to these elements, the Commission considers that the data thus collected are adequate, relevant and not excessive, in accordance with article 6-3° of the law of January 6, 1978 as amended. On the recipients of the data: Article 5 of the draft decree provides that two distinct categories of recipients may have access to the processing and are identified as belonging to Circle 1 on the one hand, and Circle 2 on the other. The Commission recalls that the decree of August 10, 2016 referred to above only provides access to treatment for people in Circle 1, ie national police officers and specially authorized national gendarmerie soldiers, within the limit of the need to know. Cercle 1 also includes agents from the Ministry of the Interior in charge of applying the regulations relating to documents falling within the scope of processing, as well as agents from the National Agency for Secure Documents responsible for implementing of the treatment. In this regard, it reiterates the reservation formulated in the deliberation of July 21, 2016 referred to above relating to the creation of the DOCVERIF processing according to which it should be specified that only can have access to the processing, the agents of the national police and the soldiers of the gendarmerie national authority with missions to check the identity of persons and verify the validity of documents. bodies entrusted with a public service mission and credit institutions. provided (such as the Central Arms Service or the National Council for Private Security Activities (CNAPS)); bodies charged with a public service mission: those which, in their legal or regulatory missions, are empowered to carry out verifications of identity documents, such as certain bodies in the social protection sector. The Commission notes that the ministry specified that such an extension of the perimeter to people who can access the device beyond the authorities empowered to carry out an identity check should make it possible to fight more effectively against document fraud, in areas falling within the public domain relationships between private individuals in order to help demonetize

fraudulent securities and make them lose their value, for example in the context of unduly granted social benefits. As regards credit institutions, also referred to as users of the Circle 2, the Ministry specified that access to the data recorded in the DOCKERIF processing must enable them to satisfy area of compliance with the legal obligations to which they are subject, particularly with regard to verification of the identification details of their customers. considers that the formulations adopted do not make it possible to precisely delimit the scope of the Circle 2 users expressly targeted, nor the circumstances in which this access will be authorized. It notes, however, that this new access is subject to the implementation of the following guarantees. As a preliminary point, the Commission notes that the persons affected by the planned extension are not intended to be aware of any information other than that relating to the validity or otherwise of the permit whose number has been entered. Thus, three types of responses can be returned when interrogating the device: valid title, invalid title or unknown title. Contrary to what is provided for users of Circle 1, no personal data, no reason for disability or any course of action will be accessible to users of this second circle. The Commission also notes that article 5 of the decree of August 10, 2016 is amended in order to specify the procedures for querying the processing by users of Cercle 2 , which will be carried out only by entering the type of document, its number and its date of issue. The draft decree specifies that access to the data recorded in the processing by all of these categories of organizations is subject to the conclusion of an agreement with processing, in order to specify the terms of access to said data. Although the categories of information to be provided by the body have been transmitted to the Commission, it nevertheless regrets that a standard agreement has not been communicated to it. In this context, the Commission recalls that particular vigilance is required in terms of updating data, given the significant consequences that any errors in the status of the document presented during an inspection would entail for the persons inspected. In this respect, it acknowledges that the DOCKERIF treatment is fed daily. With regard in particular to the particularly heterogeneous nature of the organizations making up the Circle 2 , the Commission recalls that particular attention should be paid to the consequences linked to the invalidity of a title, which should therefore be governed by the agreement concluded between the organization concerned and the data controller, in order to limit the adverse effects which would result therefrom for the persons concerned. Finally, the Commission notes that the Ministry has indicated that a pilot phase concerning these users will be implemented initially , thus enabling the system to be tested by around ten organisations, before the permanent system is deployed. In this respect, it asks to receive the report that will be drawn up at the end of this first phase. Furthermore, it notes that a standard agreement will be sent to it by the Ministry within the same period, i.e. at the end of the pilot phase. On the interconnection with

ALICEM processing: Article 8 of the draft decree provides for linking DOCEVRIF processing with the automated processing called Application for Reading the Identity of a Citizen on the Move (ALICEM), making the subject of a separate referral. The Commission notes that the purpose of the aforementioned processing is to issue digital identities from biometric passports or biometric electronic foreign residence permits. In this regard, the ministry indicated that when registering a user in the ALICEM application and during each request for digital identification, the DOCEVRIF processing will be queried in order to ensure the validity of the titles. allowing the issuance of the digital identity. The Commission considers, in view of the purposes pursued by these two processing operations, that this linking does not call for observation. On the other changes to the processing: Firstly, Article 7 of the draft order provides for the collection of traceability data. In this respect, the operations of collection, consultation and communication are the subject of a recording making it possible to establish the date and time of these as well as, for the operations of consultation and communication, the identification of the author, the type and number of the queried title, the result of the query and the connection mode . These data are kept for a period of one year, which does not call for any comments from the Commission. Secondly, Article 11 of the aforementioned decree aims to modify the rights of data subjects, with regard to the provisions of Chapter XIII of the law of January 6, 1978 as amended. It provides in this regard that the rights of information, access, rectification and erasure, provided for in Article 70-18 to 70-20 of the aforementioned law, are exercised with the Secretary General of the Ministry of interior, which does not call for any particular observation. Finally, the draft decree specifies that in application of article 38 of the law of January 6, 1978 as amended, the right of opposition does not apply to the planned processing. The Commission recalls that, if the provisions of Directive 2016/680 of 27 April 2016 referred to above as transposed into domestic law, do not mention the possibility for data subjects to oppose the processing implemented, the Member States retain, in any event, the possibility of providing more extensive safeguards than those established in the said directive for the protection of the rights and freedoms of data subjects with regard to the processing of personal data by the competent authorities .In this context te, it considers that the aforementioned Article 38, which has not been repealed by the law on the protection of personal data and whose application to the processing operations covered by the aforementioned directive is not excluded by the provisions of the articles 70-1 and following of the Data Protection Act, is also intended to apply to processing falling within the scope of this directive. It notes in this respect that Article 38 provides for the possibility of disregarding the right of opposition when the processing meets a legal obligation or when an express provision of the regulatory act authorizing the processing excludes it. , the Commission considers that the exclusion of the right

to object as provided for in Article 8 of the draft decree is proportionate with regard to the purpose pursued by the planned processing, namely the control of the validity of the documents issued by the French authorities and the fight against the improper use of such documents, their falsification or counterfeiting. In view of the foregoing, it considers that the limitation imposed on the exercise of the right to object falls within the framework of the provisions of national law relating to the protection of personal data and is not likely to excessively interfere with the rights and freedoms of data subjects. On data security and traceability of actions: The Commission observes that two main categories of users are authorized to access the information provided by the DOCVERIF processing: Circle 1 users and those of Circle 2 . The terms of access and consultation by users of Cercle 1 do not present any changes compared to the processing on which it had ruled in its deliberation n ° 2016-218, which does not call for any particular observation. . Regarding access by Circle 2 users, the Commission notes that these are given by the National Agency for Secure Documents (ANTS) after a registration has been made. The Commission notes that the database to which access Cercle 2 users is the result of the partial replication of the DOCVERIF database used by Cercle 1 users. The Commission observes that only the administrators of the processing will be able to consult the reasons for invalidating the documents for the purposes of control, diagnosis, maintenance or traceability. carried out in such a way as to ensure the authentication of the recipients, the confidentiality and the integrity of the transmissions. A management of authorizations makes it possible to assign access to only the data necessary for the recipients. The Commission observes that a logging of the operations of consultation, creation and modification of the data is set up. Access to the logs is restricted to the administrators of the treatment. In order to detect any abusive or fraudulent use, the Commission recommends carrying out regular checks of the traces automatically, in order to detect abnormal behavior and raise alerts. In this respect, it takes note of the Ministry's commitment to study the possibility of carrying out such checks, which could be implemented during 2019. A system of import and purge, automatic and daily, is implemented implemented, making it possible to ensure that the DOCVERIF processing information is up to date. The Commission notes that the network on which the processing is based is subject to filtering measures aimed at restricting the transmission and reception of to identified and authorized machines. Remote access is secured via an encrypted VPN. It also acknowledges that a state-of-the-art algorithm (AES 256 bits) is used for encrypting data in the active database as well as for backed up data. Backups daily are carried out and are stored in a place guaranteeing their security and availability. 1978 amended. The Commission recalls, however, that this obligation requires the updating of safety measures with regard to the regular reassessment of risks. For the

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