

Deliberation 2021-092 of July 22, 2021 Commission Nationale de l'Informatique et des Libertés Nature of the deliberation:

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CNIX2132822V Deliberation n° 2021-092 of July 22, 2021 providing an opinion on a draft order issued pursuant to Article R.

3120-41 of the Transport Code (request for opinion no. 21011170) The National Commission for Computing and Liberties,

Seizure by the Minister for Ecological Transition of a request for an opinion concerning a draft order issued pursuant to Article

R. 3120-41 of the Transport Code;

Having regard to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection

of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive

95/46/EC (GDPR);

Having regard to the transport code;

Considering the modified law n° 78-17 of January 6, 1978 relating to data processing, files and freedoms; After having heard

the report of Mrs Marie-Laure DENIS, President, and the observations of Mr Benjamin TOUZANNE, Commissioner of

Government, Issues the following opinion: The National Commission for Computing and Liberties (hereinafter the Commission)

was seized on March 19, 2021 by the Ministry for Ecological Transition, then on June 25, 2021 by corrective referral, d a draft

order issued pursuant to Article R. 3120-41 of the Transport Code. Article L. 3120-6 of the Transport Code, introduced by Law

No. 2016-1920 of December 29, 2016 relating regulation, accountability and simplification in the sector of private public

passenger transport, provides that the administrative authority may impose, in particular on reservation centres, the periodic

transmission, for statistical purposes, of the data necessary for the knowledge of the activity of the private public passenger

transport sector (T3P). the anteriority and retention period of the data likely to be requested and, where applicable, the

minimum frequency of their communication, are set by order of the ministers responsible for the economy and transport. The

Commission, which had pronounced on the decree introducing this provision, had asked to be seized for an opinion on any

draft regulatory act taken pursuant to this decree. specific observations from the Commission, it considers that, given the

quantity and scale of the data collection envisaged, the processing must present important guarantees relating to lives to data

protection and, moreover, that On the nature of the data likely to be requested Article 1 of the draft decree specifies the data

whose periodic transmission, for statistical purposes, may be requested .The Commission notes that the data likely to be

requested presents a very wide variety (data relating to the location of the race, data relating to the distance traveled, license

plates, etc.) the relevance of which the Ministry justified when exchanges with services. More specifically, the Commission notes that a fine level of granularity is necessary to produce precise statistics, for example to measure the frequentation of specific places (airports, monuments, etc.). The Commission also notes that the draft decree sent by amending referral provides for reducing the intrusive nature of the processing by collecting GPS coordinates rounded to three decimal places (which corresponds to an accuracy of 80 meters). An accuracy of 80 meters can nevertheless, particularly in sparsely populated areas, reveal precise information on journeys. In accordance with the principle of minimization, the Commission therefore invites the Ministry to further reduce the accuracy of the location data collected by using for example, variable precision depending on the size of the IRIS grid concerned, the latter being a reliable indicator of the density of the territory. It also invites him to aggregate, as soon as they are received, the most precise data relating to the races, to prevent specific routes from being identified. Given the quantity and scale of the data collection envisaged, the processing must present important safeguards relating to data protection. The Commission therefore invites the Ministry to be particularly vigilant regarding the security of processing and the need to provide strong guarantees. On this last point, it takes note in particular of the clarifications of the ministry according to which the data listed correspond to those likely to be requested but that only certain data will be the subject of regular collection. It nevertheless invites the ministry to include them in the draft decree, which should indicate the nature of the data subject to regular collection, the persons they concern and the practical arrangements for this collection. of data in nominative form and the use of the non-significant statistical code (CSNS)The draft decree allows the processing of data in nominative form for a period of 5 years from the end of the calendar year in which they are If the Commission does not question the need to process, in this context, identifying data to quantify the activity of drivers, often working simultaneously on several platforms for connecting with customers over a given period, and to monitor their evolution over time, it questions the proportionality of the collection of personal data. In this respect, the ministry has undertaken to use the non-significant statistical code (CSN S) allocated by INSEE in substitution, following a cryptographic operation, of the registration number in the national identification register of natural persons in accordance with The Commission considers that the processing of data in nominative form is not not necessary for the production of statistics since the CSNS, which will soon be operational, is specifically intended to allow processing for the purpose of public statistics to be carried out from pseudonymised data in a framework respecting the right of individuals to protection of their personal data. The processing of personal data must then be limited to the transmission of the necessary civil status elements to INSEE, which is

in charge of converting the NIR into CSNS. For these reasons, the Commission recommends the inclusion, in the draft decree, of the sole recourse to the CSNS for processing for statistical purposes and invites the Ministry to specify, in the draft decree, that personal data will only be processed in the context of their transmission to INSEE for conversion purposes. With regard to the retention period of data in an indirectly identifying form, the Commission takes note of the inclusion in the draft order of a period ten years old. It notes that this duration does not concern the most precise non-aggregated data (start and end times, origin and destination addresses, trip amounts) which can only be kept for five years from the end of the calendar year to which they relate. It also recalls that the inclusion of a retention period of ten years means that, even if the aforementioned Decree No. 2016-1930 allows the renewal of the CSNS to be requested at the end of the maximum of ten years, all identifying data must, in this case, be deleted at the end of the ten-year period. They cannot therefore be kept for a longer period even in the event of renewal of the CSNS, whether this takes place during the period of validity of ten years or at its expiry. On the publication of statistical results The draft decree provides the consolidation of data collected throughout the country, with the aim of obtaining and publishing statistical results. The Commission points out that the anonymization of statistical results must be effective. The ministry must therefore carry out an analysis to demonstrate that its anonymisation processes comply with the three criteria defined by the opinion of the group of article 29 n° 05/2014. Otherwise, if these three criteria cannot be met, a study of the risks of re-identification must be carried out. If necessary, additional measures must be implemented in order to limit the risks of re-identification of persons, in particular by limiting the targeted queries and the level of detail of the data provided. President Marie-Laure DENIS