

Deliberation 2023-026 of March 23, 2023 National Commission for Computing and Liberties Nature of the deliberation: Opinion

Legal status: In force Date of publication on Légifrance: Thursday April 20, 2023 Deliberation n° 2023-026 of March 23, 2023 providing an opinion on the article 6 of the bill relating to the modernization of customs action capacities Date of the opinion: 23 March 2023 No. of the deliberation: No. 2023-026 No. of request for opinion: 23003250 Text concerned: bill relating to the modernization of customs' capacity for action Themes: ANPR system, customs services Basis for the referral: article 8-I-4°-a) of the law of 6 January 1978 as amended The essentials: 1. In view of the justifications provided by the Ministry, the Commission considers that the planned processing allowing the use by the customs services of data from the LAPIs is legitimate, and notes that the draft law includes significant guarantees in terms of data protection. It welcomes the evaluation report. 2. The planned very significant increase in the data retention period (from fifteen days to four months) is likely to significantly increase the number of data collected. Without questioning this period, the CNIL proposes that this period be reduced at the start of the experiment and, if necessary, gradually increased to four months if this appears necessary and proportionate. The evaluation report must contain elements justifying the proportionality of the duration which will ultimately be adopted. The National Commission for Computing and Liberties, Seizure by the Minister for the Economy, Finance and Industrial and Digital Sovereignty of a request for an opinion concerning a bill relating to the modernization of action capacities of customs; Considering the modified law n° 78-17 of January 6, 1978 relating to data processing, files and freedoms, in particular its article 8-I-4°-a); After having heard the report of Mrs Sophie LAMBREMON, Commissioner, and the observations of Mr. Damien MILIC, Deputy Government Commissioner, ADOPTS THE FOLLOWING DELIBERATION: I. The referral A. Context of the referral The police, gendarmerie and customs services are authorized to implement fixed or mobile devices for automatic number plate readers (LAPI) under the conditions set out in articles L.233-1 et seq. of the code of internal security (CSI). These systems can be implemented at any appropriate point of the territory for specific and limited purposes (in particular for the purposes of preventing and repressing terrorism, facilitating the observation of offenses related to the organized crime, certain offenses provided for and punishable by the Customs Code, as well as the theft and concealment of stolen vehicles, with a view to facilitating the observation of these offenses and the search for their perpetrators). vehicle identification data (license plate) by taking a photograph of motor vehicles and their occupants. The data collected is kept for a maximum period of fifteen days, beyond which it is erased as soon as it has not given rise to any positive "matching" with the data contained in the "File of objects and vehicles" processing. reported" (FOVES) and "Schengen Information System" (SIS). Data which is the

subject of a positive "matching" is kept for a period of one month, without prejudice to the need for their conservation for the needs of a criminal or customs procedure. The CNIL recalls that it results from article L. 233-2 of the CSI, as interpreted by the ministry and by itself, that the data from the LAPI can , for the purposes set out in these provisions, only be used in a particularly restrictive manner. On the one hand, while in principle the connections are not exhaustively listed and provided for by the constituent texts of the data processing, in this case the connections with the FOVES and SIS processing are provided for by Article L. 233-2 of the CSI. No other connection is possible, which constitutes a guarantee in terms of data protection. On the other hand, it follows from the economy of the law that the LAPI data collected can only be used for querying the FOVES and the SIS, for a period of fifteen days, and cannot be subject to searches according to certain "criteria" (search by itinerary, with a license plate number, etc.), without prejudice to the need to consult them for the purposes of ongoing criminal or customs proceedings, during the fifteen-day period.

B . Purpose of the referral The CNIL is requested, as a matter of urgency, to issue an opinion on article 6 of the draft law relating to the modernization of customs action capacities. This article aims, in the form of an experiment, to extend the retention period of the data collected by certain ANPR devices to four months, and to allow the competent customs services to carry out multi-criteria searches on them. This development is made necessary, according to the ministry, in order to adapt ANPR devices to the hardening of organized crime and to the evolution of the operating methods of offenders. This project has two dimensions: a retention period extended from fifteen days to four months: all data from ANPR sensors falling within the scope of the experiment will be kept for up to four months, whether or not there has been a positive match with the FOVES and SIS processing. These data can only be consulted in the event of a positive connection with the aforementioned processing; a possibility of carrying out detections via the application of multi-criteria searches to the data captured, without pre-identification of a license plate. This part of the experiment will apply to all the data collected, and not only to the data that has been the subject of a positive reconciliation with the FOVES and SIS processing. Multi-criteria searches will reveal plaques of interest corresponding to the patterns of these searches. These license plates will then require an enrichment and filtering work, to retain only those which seem relevant and which will be intended to be the subject of an attention signal and registration in the FOVES and SIS. It follows from what was said in point 5 that such an experiment requires the intervention of a law.

II. The opinion of the CNIL A. General comments Article 6 of the bill is not intended to change the purposes of the ANPR devices that may currently be installed: the processing operations allowing multi-criteria searches to be carried out would be intended exclusively to prevent and record offenses of smuggling,

importing or export committed in an organized gang as well as the observation of the realization or the attempt of realization of money laundering offenses, when they relate to the funds coming from the aforementioned offenses. currently authorized (consultation of FOVES and SIS processing) in order to find out the modus operandi of criminal organizations on the road network by carrying out searches, without a predetermined target (detection of foreign license plates over a given period and route or of suspicious behaviour). This new use of data justifies, according to the ministry, a longer retention period (four months instead of fifteen days). modification of the provisions of the CSI governing ANPR devices. The CNIL therefore considers the processing that could be implemented to be legitimate. individual decision or act of prosecution; only customs officers assigned within a specialized intelligence service of the National Directorate of Intelligence and Customs Investigations (DNRED), individually designated and specially authorized by the Minister responsible for customs, could have access to and process data; ban on using photographs of vehicle occupants; ban on any interconnection or automated linking with other processing of personal data; ban on a subcontractor private to carry out any data collection, processing and storage operation, with the exception of the design of data processing tools; the experimentation would relate to a limited number of LAPIs used by customs, on a geographical perimeter limited to certain traffic routes. The CNIL considers that the parts of the photographs showing the occupants of the vehicles, which will not be used in the context of the experiment, should be deleted or blurred as soon as possible in accordance with the principle of data minimization. This point should be the subject of particular attention in the impact analysis relating to the protection of personal data (AIPD) which will be carried out and transmitted beforehand to the CNIL. The CNIL considers that the sentence of the draft law stating that "they may not carry out any interconnection or automated linking with other processing of personal data" should be supplemented with the statement: "other than those authorized by Article L. 233-2 of the homeland security code. The ministry specified that the bill will be supplemented on this point, which the CNIL welcomes. The experiment will be framed by a Conseil d'Etat decree issued after consulting the CNIL, which must determine in particular the search criteria used, the maximum number of ANPR devices concerned and the traffic routes where they will be installed. The CNIL considers that the draft decree must also include the elements provided for in Article 35 of the "Informatique et Libertés" law, in particular the categories of data processed (photographs, registration number, date and time of the statement, etc.), and the procedures for informing the persons concerned. The CNIL takes note of the ministry's commitment that the draft decree will include these elements. B. On the increase in the retention period of ANPR data Article 6 of the bill provides that, by way of derogation from Article L. 233-2 of the CSI, the data collected is kept for

a maximum period of four months, without prejudice to the need for their retention for the purposes of criminal or customs proceedings. In addition to the operational reasons already mentioned above, the Ministry wishes to extend the retention period in order to increase the volume of data that can be used by processing allowing multi-criteria searches to be carried out. He underlined that it follows from the practice of the customs services that the investigation of the offenses in question requires observing the journeys of the vehicles suspected of being linked to them for a period clearly exceeding 15 days and possibly several months. The CNIL does not call into question this assessment by the customs services, but it stresses that the increase in the retention period will lead, given the large number of vehicles concerned, to a sharp increase in the stock of data retained. These data make it possible to follow the journeys of the vehicles in question, over a longer period. This form of surveillance is a strong invasion of privacy. Setting the retention period for the data collected as part of this experiment is therefore of particular importance. Without calling into question the fact that the law would set a maximum period of four months, the CNIL considers that this period should not be mandatory. and that the effective shelf life tested should be less at the start of the experiment and, if necessary, gradually increased if this appeared necessary and proportionate. The evaluation report must contain elements enabling the proportionate nature of the duration finally adopted to be assessed, in particular by comparing the increase in the number of data collected and the effectiveness of the system in detecting suspicious behavior. The CNIL considers that privacy-protecting security measures relating to the storage of collected data (encryption for example) should be implemented. C. On the evaluation report Article 6 of the bill provides that this experiment would be the subject of an evaluation report, the results of which would be sent to Parliament and the CNIL no later than six months before its end. This report must measure the benefit of the experiment for the fight against organized crime, and assess the effectiveness of the guarantees provided to ensure the protection of personal data and respect for privacy. The CNIL welcomes this provision. The President M.-L. DENIS