

Deliberation 2020-043 of April 9, 2020 Commission Nationale de l'Informatique et des Libertés Nature of the deliberation:

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2020-043 of April 9, 2020 providing an opinion on a draft decree amending the decree of October 13, 2004 creating the

automated control system (request for opinion no. 19022550) The National Commission for Computing and Liberties,

Seizure by the Minister of the Interior of a request for an opinion concerning a draft decree amending the decree of October

13, 2004 establishing the automated control system (SCA);

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 natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention and detection of crime criminal proceedings, 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 Code of Criminal Procedure, in particular its articles 495-19, 537, 529 to 530-3 and D. 45-3;

Having regard to the Highway Code, in particular its articles L. 121-3, L. 130-9, L. 225-1 to L. 225-9, L. 330-2 to L. 330-5, R. 121-6, R. 130-8, R. 130-11 and R. 330-1 to R. 330-5;

Considering the law n° 78-17 of January 6, 1978 modified relating to data processing, files and freedoms, in particular its articles 31-I and 33;

Having regard to Law No. 2016-1547 of November 18, 2016 on the modernization of justice in the 21st century;

Having regard to Decree No. 2011-348 of March 29, 2011, as amended, creating the National Agency for the automated processing of offences;

Having regard to Decree No. 2016-1955 of December 28, 2016 implementing the provisions of Articles L. 121-3 and L. 130-9 of the Highway Code;

Having regard to decree n° 2018-687 of August 1, 2018 taken for the application of law n° 78-17 of January 6, 1978 relating to data processing, files and freedoms, modified by law n° 2018-493 of June 20, 2018 relating to the protection of personal data;

Having regard to the decree of October 13, 2004 amended creating the automated control system;

Having regard to deliberation n° 04-076 of October 5, 2004 giving an opinion on a draft inter-ministerial decree creating a

device called an automated control system aimed at automating the observation, management and repression of certain traffic offences;

Having regard to deliberation no. 2019-098 of July 18, 2019 of the National Commission for Computing and Liberties giving an opinion on a draft decree amending the decree of October 13, 2004 creating the automated control system;

After having heard Mrs. Sophie LAMBREMON, Commissioner, in her report, and Mrs. Nacima BELKACEM, Government Commissioner, in her observations, Issues the following opinion: The SCA makes it possible to ascertain, by means of approved automatic control devices, certain infringements to the highway code, to identify the holder of the registration certificate of the vehicle concerned and to manage the operations relating to the corresponding notices of contravention. This processing is implemented by the National Processing Center (CNT), managed by the National Agency for the Automated Processing of Offenses (ANTAI) and has, moreover, been examined on several occasions by the Commission.

The draft order submitted today for the opinion of the Commission amends the order of October 13, 2004 in order to extend the use of the SCA to the processing of non-traffic offences, subject to a fixed fine, recorded by means of electronic devices allowing the establishment of an electronic report (hereinafter PVe).

The Commission takes note that an update of the impact analysis relating to the automated control system was carried out in April 2020 in order to take account of the draft decree amending the decree of October 13, 2004. extension of the scope of the SCA in order to allow the processing of non-traffic offenses subject to a fixed fine:

Article 1 of the decree of October 13, 2004 sets out nine purposes pursued by the SCA.

In this respect, article 1 of the draft decree provides, for the purpose relating to the recording and storage of data collected by the reporting agent by means of electronic devices when the contraventions are observed and offenses relating to road traffic, that the words: contraventions and offenses relating to road traffic are replaced by the words: offenses subject to a fixed fine procedure. This draft amendment was preceded by an extension of the powers of the ANTAI to offenses other than traffic offenses which may be the subject of a fixed fine by decree no. 2019-725 of July 9, 2019 which amended the article 2 of decree no. 2011-348 of March 29, 2011 creating this agency.

The Commission notes that the proposed modification, which extends the scope of the SCA to the treatment of non-road offenses subject to a fixed fine, is part of the development of the flat-rate fines and the simplification of the collection of offenses detected by an electronic verbalization solution.

The extension of the scope of the SCA to all offenses punishable by a lump sum fine is justified in particular by the ministry by the desire to rely on the expertise acquired at the CNT since its creation in 2004, then by the ANTAI since its creation in 2011 in the development of information systems and processing of data from the PVe.

The Commission takes note of this desire and has no particular comments to make since the purposes pursued by the SCA, with regard to the management of PVe in connection with fixed fines, are determined, explicit and legitimate, in accordance to article 6-2° of the Data Protection Act and that its scope of processing is clearly delimited by the applicable legislative and regulatory texts.

It observes in this regard that the procedure for the fixed fine applicable to contraventions is governed by Article 529 of the Code of Criminal Procedure (CPP) in the following terms: For contraventions, the list of which is fixed by decree in the Council of State public action is extinguished by the payment of a fixed fine which is exclusive of the application of the rules of recidivism. However, the fixed fine procedure is not applicable if several offences, of which at least one cannot give rise to a fixed fine, have been observed simultaneously or when the law provides that the repetition of the offense constitutes a offense. With regard to offenses liable to be the subject of a fixed fine, the Commission notes that Article D. 45-3 of the CPP introduces the use of a fixed fine for offenses established by a report, but only when the law provides for it.

In this regard, the Commission notes that the scope of offenses liable to be the subject of a fixed fine has been considerably extended with the adoption of emergency law n° 2020-290 of 23 March 2020 to deal with to the covid-19 epidemic, by creating fines sanctioning the violation of prohibitions or obligations enacted in application of the state of health emergency. Thus, Article L. 3136-1 of the Public Health Code now provides that such a violation is punishable by a fourth-class fine, which may be subject to the fixed fine procedure provided for in Article L. 3136-1 of the Public Health Code. article 529 of the code of penal procedure. The Commission also takes note of the inclusion of the 5th class fine in the list set out in article R. 48-1 of the aforementioned CPP, in accordance with the procedure provided for in article 529 of the CPP.

The extension of the scope of the SCA therefore makes it possible to process, by means of PVe and by means of a pre-existing information system, already proven in the processing of traffic offences, new offenses sanctioned by a fixed fine introduced by the emergency law of March 23, 2020. On the new data collected:

Article 2 of the draft order amends and completes the data that can be collected within the SCA.

The Commission considers that the categories of data referred to are adequate, relevant and limited to what is necessary in

relation to the purposes for which they are processed.

With regard more specifically to the collection of filiation data, the Commission takes note of the application by the Ministry of the recommendations already expressed in its deliberation n° 2018-321 of October 4, 2018 leading to limit this collection to cases of risk of homonym, or when the person was born abroad. On the accessors and recipients of the data:

Firstly, article 3 of the draft decree lists the persons who can access all or part of the data and information recorded in the SCA processing, by reason of their attributions and within the limit of the need to know, to on the one hand, for offenses relating to road traffic, and on the other hand, for other offenses subject to a fixed fine procedure.

Given the purposes pursued by the planned processing, access to the data of the planned processing for these people does not call for any particular comments on the part of the Commission.

Secondly, with regard to offenses other than road traffic offenses subject to a fixed fine procedure, Article 3 of the draft decree provides that the recipients of all or part of the data stored in the processing are the bodies for international cooperation in matters of judicial police and foreign police services under the conditions set out in II of Article 3. In this respect, the Commission takes note of the clarifications provided by the Ministry according to which, with the exception of exchanges of information with Monaco on the basis of article 16 of the mutual legal assistance agreement signed in Paris on November 8, 2005 and in strict compliance with the conditions set out in article 112 of the law of January 6, 1978 as amended, no exchange nor transfer of data takes place with other countries or organizations located outside the European Union. On data retention periods:

Article 2 of the draft decree amends and supplements the retention periods for data that may be collected and processed within the SCA. These are kept for a maximum of ten years for offenses and for offenses provided for by the Highway Code. For other offences, the maximum duration is five years. In this regard, the ministry specifies, firstly, that the maximum period of five years for fines other than those provided for by the highway code is that currently applied to the files of fine procedure on paper and this, since the circular DPACI/RES/2003/009 of September 10, 2003 relating to the management of the archives of the judicial order.

Secondly, in criminal matters, the retention period of ten years is to be linked to the combined reading of articles 133-3 of the criminal code which provides that correctional sentences are prescribed by six years from the date on which the sentencing decision has become final and article 495-19 of the CPP relating to the increased fixed fine.

The aforementioned article 495-19 provides in this case, on the one hand, that the prescription of the penalty begins to run from the signature by the public prosecutor of the writ of execution, and, on the other hand, that the subsequent challenge to the sending of the notice of increased fixed fine remains admissible as long as the penalty is not prescribed, if it does not result from an act of execution or from any other means of proof that the person concerned has aware of the increased fixed fine. In this context, the deadlines for appeal and payment of fines explain the need to provide for an additional period which exceeds the strict application of the theoretical limitation period for the penalty.

Finally, the Commission takes note of the information provided by the Ministry according to which an automatic purging mechanism to guarantee compliance with retention periods has also been in place since January 2020. On information and the rights of data subjects:

The ministry indicates that the procedures for informing persons affected by a non-traffic offense subject to a fixed fine raised by means of an electronic ticketing solution are the same as for traffic offences. The offender or defendant receives a notice of violation or a notice of fixed fine in tort on which appear the same information relating to the use of their personal data and the exercise of the rights of persons.

Finally, the Commission takes note of the clarifications provided by the Ministry concerning the application of procedures for exercising the rights of individuals identical to those provided for in terms of traffic offences. On safety measures:

With regard to existing or planned measures, the infrastructure of the automated control system has been analyzed by the Commission on various occasions.

Concerning the compartmentalization of data relating to traffic offenses and those relating to non-traffic offenses subject to a lump sum payment, the Ministry indicates that due firstly to the same sensitivity of these two types of data and , on the other hand, due to the absence of specific legal provisions, no logical or physical partitioning measure is planned to separate the processing of this data.

The Commission considers that such partitioning would have made it possible to better secure the data processed, but notes however that relevant technical measures have been put in place upstream of the processing in order to limit the risk of harm to personal data (network partitioning of the all sensitive data in relation to the rest of the SCA's information system, VPN tunnels based on state-of-the-art algorithms for electronic verbalization editor applications or use of the ministry's network, filtering by several levels of firewall -fire, etc).

Concerning the technical and organizational measures making it possible to limit access to the data, the Commission notes that only the agents and service providers in charge of the operation and maintenance of the SCA can access the entire database, in particular in order to request manually the database to view offense data. The Commission reminds the Ministry that these operating and maintenance interventions must be subject to specific traceability measures. It also reminds the Ministry that operation and maintenance interventions must be carried out with limited authorization profiles, allowing access to data in infringement files to be restricted as much as possible.

As for other accesses, the Commission notes that authorization profiles are planned in order to manage access to data as needed and that strong authentication by smart card allows secure access to the workstations of agents and electronic ticketing terminals. For specific and limited access that does not allow the use of strong authentication, the Commission reminds the Ministry that the password policies adopted by the organizations and service providers accessing the data must comply with the recommendations of Deliberation No. 2017 -012 of January 19, 2017 adopting a recommendation on passwords.

Concerning the technical logs as well as the functional traces not impacting the infringement file, the Commission recalls that the retention period usually recognized as proportionate for security purposes is six months. It therefore invites the Ministry to justify with specific technical arguments the need to keep this data for one year, and failing to limit the storage of this data to six months.

Regarding the strengthening of the accountability of actions on infringement files, the Commission notes that an implementation of the electronic signature of traces was initiated in 2020 and invites the Ministry to ensure that this electronic signature is applied to the set of systems that can generate traces relating to offense files.

Finally, the Commission notes that the additional security measures provided for in the Ministry's previous action plans, such as the encryption of database data, the implementation of pseudonymisation methods, particularly in the case of statistical analysis and the overhaul of the archiving system, are currently under study or technical definition.

Given the volume and sensitivity of the data processed by the SCA, the Commission considers that these security measures are essential to the security of the processing and strongly encourages the Ministry to implement these security measures as a matter of priority. In any case, it asks to be informed of developments on this point, independently of any future referral.

Subject to the previous observations, the Commission considers that the technical and organizational security measures

described by the data controller are comply with the safety requirement provided for by article 99 of the law of January 6, 1978 as amended. In any case, it recalls that the obligations provided for in the aforementioned article require the updating of security measures with regard to the regular reassessment of risks. In this respect, the Commission recalls that specific attention should be paid to the reassessment of these measures in the context of the update of the impact assessment.

M. L. Denis