

Deliberation 2018-340 of October 18, 2018 National Commission for Computing and Liberties Nature of the deliberation:

Opinion Legal status: In force Date of publication on Légifrance: Tuesday, December 04, 2018 Deliberation No. 2018-340 of October 18, 2018 providing an opinion on several provisions of the mobility orientation bill. (Request for opinion n° 18020512)

The National Commission for Computing and Liberties, Seizure by the Ministry of Ecological Transition and the Ministry of Transport of a request for an opinion concerning a mobility orientation bill ;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 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 Directive (EU) 2016/680 of 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 offenses and the investigation and prosecution of matter or execution of criminal penalties, and to the free movement of such data, and repealing Framework Decision 2008/977/JHA of the Council; Having regard to the general code of local authorities, in particular its article L. 2213-6-1; Having regard to the general tax code, in particular its article 1609 quater A; Having regard to the highway code, in particular its article L.130-9; Having regard to law n° 78-17 of January 6, 1978 as amended relating to data processing, files and freedoms, in particular its article 11-4°-a); Having regard to law n° 2017-55 of 20 January 2017 on the general status of independent administrative authorities and independent public authorities, in particular its article 22; Having regard to decree n ° 2005-1309 of October 20, 2005 amended taken for the application of law n ° 78-17 of January 6, 1978 relating to data processing, files and freedoms; Considering the file and its complements; After hearing Mr. Eric PERES, Commissioner, in her report, and Mrs. Nacima BELKACEM, Government Commissioner, in her remarks ments, Issues the following opinion: The Commission has received a request for an opinion on Articles 16 bis, 22 bis and 22 ter of the mobility orientation bill, on the basis of Article 11 4°. a) of the amended law of 6 January 1978. In accordance with article 22 of the aforementioned law of 20 January 2017, this opinion will be made public. mobility and infrastructure policies with the aim of protecting the environment and taking climate issues into account, the legitimacy of which cannot be disputed. The three articles concerned relate, on the one hand, to the methods of automated control of traffic lanes or areas in order to facilitate the observation of certain infringements of the highway code and, on the other hand, the establishment of urban tolls by local authorities and the authorities organizing the mobility authorities. The Commission notes that these articles

set out the general framework of the control mechanisms and will be supplemented later by regulatory acts which, in particular, specify the characteristics of the necessary personal data processing. Thus, when it is asked for an opinion on these regulatory provisions, the Commission will pay the greatest attention to the proportionality of the measures proposed, taking into account the risk of infringement of individual freedoms posed by the introduction of automated control mechanisms for and traffic areas, potentially on a large scale. Firstly, article 16 bis aims to introduce a new article L. 130-9-1 into the highway code, allowing the gendarmerie and national police services to put implement an automated check of the identification data of vehicles using lanes reserved for the circulation of certain categories of vehicles (low-emission vehicles, buses and taxis in particular). The use of such devices will be authorized by order of the representative of the State in the department and, in Paris, of the prefect of police. It may be initiated at the request of a local authority or a public establishment for inter-municipal cooperation whose authority vested with traffic police powers has reserved the use of a traffic lane for certain categories of users. or vehicles or to certain modes of transport, within the framework of an agreement with the State. the rules reserving the use of certain lanes to vehicles carrying a minimum number of occupants (in particular for carpooling) by the national police and gendarmerie services. Secondly, article 22 bis aims to introduce a new article L 2213-6-2 in the general code of local authorities allowing the implementation of an automated control system for low-emission (or restricted-traffic) zones by the gendarmerie and national police services, as well as by local authorities or public establishments for inter-municipal cooperation (EPCI). Thirdly, Article 22 ter aims to establish an automated system for controlling the payment of the congestion charge in the context of urban tolls. This provision amends Article 1609 quater A of the General Tax Code and provides for the possibility for the mobility organizing authority to introduce an urban toll in urban areas with more than 100,000 inhabitants wishing to set up this system. rates put in place by the mobility organizing authority are set for each category of vehicle. The system for collecting the tariff is implemented by the local authorities concerned. On the legal regime applicable to processing

Firstly, the Commission observes that the provisions of Articles 16 bis and 22 bis, which are intended to establish or pursue criminal offences, fall within the scope of the amended law of 6 January 1978 and the Police Justice directive. It recalls that the processing concerned must be the subject of a regulatory act, taken after reasoned and published opinion of the Commission, in accordance with the provisions of article 70-3 of the law of January 6, 1978 as amended. with regard to the provisions of article 70-4 of the amended law of January 6, 1978 and the Regulation on the protection of personal data (RGPD), the person responsible for this processing must carry out an impact analysis on data protection before the implementation of the planned

processing, which meets several criteria (systematic monitoring, collection of personal data on a large scale, innovative use, etc.), the combination of which creates a high risk for the rights and freedoms of the persons concerned. The Commission recalls that the impact analysis must be attached to the request for an opinion for the processing operations covered by Article 70-3 of the aforementioned law. automated control can only be done after obtaining authorization from the prefecture. The Commission observes that this authorization does not in itself constitute a prior formality falling within the scope of the directive, since its purpose is not to ensure the proper application of the rules relating to data protection. personal. Thus, this authorization will in no way exonerate data controllers from compliance with their obligations arising from the directive of April 27, 2016, transposed in article 70-3 of the amended law of January 6, 1978, in particular on the procedures relating to prior formalities. Secondly, the Commission notes that unlike the processing provided for in Articles 16a and 22a, those implemented in the context of the urban toll provided for in Article 22b are subject to all provisions of the GDPR. It will be up to the data controllers concerned to ensure, in particular, compliance with the principles of transparency, minimization, data quality and the rights of individuals, by default and from the design of this processing. The Commission recalls in particular that automated control is likely to fall under the provisions of Article 22-2-b of the Regulation, relating to automated individual decisions, which in particular impose appropriate measures to safeguard the rights and freedoms of the data subject. . On the purpose and proportionality of the processing As a preliminary point, the Commission notes that Articles 16 bis and 22 bis create mechanisms for controlling and, where appropriate, issuing a fine for vehicles not authorized to use lanes subject to traffic restriction. Thus, these provisions refer to the installation of fixed or mobile devices for the automated control of vehicle identification data, this wording referring to automated registration plate reading devices (LAPI). The Commission observes that LPR devices for checking vehicle identification data using video cameras, making it possible to capture and read the license plates of all vehicles passing in their field of vision, and to store an image of the registration as well as a broader image of the same vehicles including the photograph of the occupants, were implemented for three specific purposes (noting offenses of theft and concealment of stolen vehicles, preventing and repressing acts of terrorism and facilitating the observation of related offenses and to preserve public order, on the occasion of special events or large gatherings of people). The Commission notes the potentially considerable extension of the deployment of these devices on a national scale. However, the growing use of devices capable of collecting information revealing the whereabouts of everyone presents significant challenges in terms of data protection. . The legal framework governing this processing must therefore provide strong

guarantees such as to prevent the deployment of these devices from disproportionately affecting the rights and freedoms of the persons concerned, in particular their freedom to come and go anonymously. The Commission will appreciate the respect of this proportionality requirement, in the context of the opinion it will issue on the implementing regulatory acts, with regard to all the guarantees provided for by law and the GDPR. The Commission observes that the Ministry has chosen to set up a system requiring people wishing to travel in the areas concerned to pay the tariff before entering the perimeter subject to an urban toll. The automated control system would thus make it possible to check that incoming vehicles have paid the corresponding tax beforehand, at the entry points delimiting the zone subject to toll. Article 22 ter specifies that the mobility organizing authority makes available users a teleservice allowing them to pay the amount of the tariff before crossing the perimeter of the zone and may, without this constituting an obligation for users, offer users who have subscribed to a package an on-board electronic device. The Commission notes that the bill could usefully specify the operating conditions of the teleservice, as well as the way in which the automated control devices interact with the on-board electronic devices in order to define more precisely the guarantees required, where applicable, by Article 22.2.b ) of the GDPR. In any case, and in the absence of details on the nature of the processing implemented, the Commission draws the attention of the authorities designated as data controllers concerned to the need to measure their impact on the protection of users' personal data. Carrying out a data protection impact analysis, within the meaning of Article 35 of the GDPR, will be necessary in particular when this processing is carried out on a large scale, is likely to produce automatic decisions with on the persons concerned or allow systematic monitoring of persons. this draft text under, in particular, Article 11 4° a) of the Data Protection Act. On the data collected With regard to the fixed or mobile devices for the automated control of vehicle data referred to in Articles 16a and 22a As a preliminary point, the Commission observes that the devices provided for in Articles 16a and 22a collect data from same nature; consequently, the observations which follow will be applicable to the two systems. The data collected to carry out the controls instituted by these two articles comprise, on the one hand, descriptive data as well as those relating to the characteristics of the vehicle and its contribution to the limitation atmospheric pollution and, on the other hand, the data making it possible to ascertain the number of people present on board the vehicles, which amounts to collecting data relating to the occupants of the vehicle in the context of carpooling. The collection of identifying data by automatic control systems give rise to the consultation of several files, to ensure the possibility for the vehicle to use the lanes reserved or subject to traffic restrictions. This is, on the one hand, the file of vehicles for which an identification based on the contribution to the limitation of

atmospheric pollution has been issued (art. L318-1 of the Highway Code) and, on the other hand, the file of vehicles authorized to travel on the roads concerned. Finally, and only if these consultations do not make it possible to ensure that the vehicle is authorized to circulate, a consultation of the vehicle registration system (SIV) (art L.130-1 of the highway code) is carried out. In this respect, the Commission takes note of the fact that these consultations, which take place immediately after the identification data has been collected, relate only to data relating to the characteristics of the vehicle and its contribution to the limitation of atmospheric pollution and cannot be intended to identify the holder of the vehicle registration certificate and only when the consultation of these files (...) made it possible to ensure compliance by a vehicle with the traffic rules mentioned in the first paragraph of I, the data relating to this vehicle is immediately destroyed. However, the Commission observes that the nature of the data relating to vehicles that have not been identified as authorized to circulate and, more broadly, the processing intended to identify offenders and report them, do not appear clearly in the draft law. This part of the system entails the most risks for the rights and freedoms of data subjects, so that the draft law should specify the major guarantees provided to protect the personal data of data subjects. data which allow the identification of the occupants of the vehicle, (...) can only be recorded and stored after completion of processing intended to mask this identification. Insofar as only the number of occupants is necessary to meet the purpose of the processing, namely to detect the vehicles authorized or not to use the road, the Commission observes that the retention of data allowing their identification would be excessive. Therefore, the masking carried out must be irreversible and take place immediately after the collection of the data. articles 16 bis and 22 bis. The Commission nevertheless wonders about the relationship between the principle of masking occupant data and the procedure aimed at communicating the data allowing the identification of the occupants of the vehicle at the request of the holder of the registration certificate or of one of the persons mentioned in the last three paragraphs of Article L. 121-2, recipient of the fixed fine, or the officer of the public prosecutor's office in the event of a request or complaints . The Commission will not be able to provide a proportionality analysis of this part of the system until it receives the regulatory texts necessary for their implementation, in accordance with Article 26 of the Data Protection Act. With regard to urban tolls Similarly to the systems provided for in the aforementioned Articles 16 bis and 22 bis, the data collected in the context of urban tolls are the identifying data of the vehicles, the data relating to the characteristics of the vehicles and also the data relating to the occupants. of the vehicle. The Commission therefore reiterates the observations presented above. In addition, in the context of urban tolls, Article 22 ter of the draft law provides for the possibility for the owner of the vehicle to equip himself with an

on-board device making it possible to check payment of the fare when passing through the checkpoint. of its comings and goings over time. Finally, the Commission takes note that for the sole purpose of allowing the recovery of the tariff and penalties due for vehicles having circulated in the geographical perimeter subject to the congestion tariff without the amount of the tariff has been paid beforehand, the processing referred to in the first paragraph [the automated control system for vehicle identification data] may include consultation of vehicle identification data provided for in Article L.330-1 of the Highway Code. However, the draft could usefully specify the nature of the data likely to be collected as part of this consultation, in order to provide guarantees as to the proportionality of the processing implemented for collection purposes. On the retention periods for data S With regard to the fixed or mobile devices for the automated control of vehicle data referred to in Articles 16a and 22a The Commission points out that the data relating to the occupants of the vehicle must be immediately deleted as soon as the conditions relating to carpooling are met. It takes note that the consultation of the files of vehicles limited to atmospheric pollution and vehicles authorized to circulate on the roads concerned will take place immediately after the collection of the identifying data of the vehicle and that once it has made it possible to ensure compliance with the rules by a vehicle, the data relating to this vehicle will be destroyed immediately . Finally, the Commission wonders about the purpose justifying the retention of the data of other vehicles (not authorized to use the tracks) for a period of eight days in the absence of details in the text, in particular on the procedure for identifying and to verbalize offenders. This retention period must be taken into account to assess the total retention period of the data of other vehicles, when the implementing texts organizing the procedures for reporting are submitted to it for opinion. control the payment of the tariff by the vehicles, the identification data of the vehicles will be processed immediately after their collection. The Commission notes that, in the event that the user has paid the tariff or is exempt from it, the data is deleted without delay. Otherwise, the data used to calculate the tariff and penalties may only be kept for the time strictly necessary for the settlement and recovery of the tariff and penalties due, and at most for a period of eight days, without prejudice necessities related to disputes relating thereto . On the prior information of persons The Commission notes that the draft law contains only one provision relating to the information of persons, in the context of urban tolls in Article 22 ter. In this regard, a local information campaign is planned one month before the implementation of the congestion charge. The information consists of recalling the geographical scope of application of the tariff, the calculation methods and the technical methods for recovery as well as the rights of access and rectification. Finally, this information specifies the public transport available to people. The Commission notes that signs will be integrated at each

entrance to the geographical perimeter and that a sufficient distance will allow drivers to circumvent this area and stresses that prior information complete, with regard to Articles 13 et seq. of the GDPR, must in any case be provided by the controller, in any medium likely to be brought directly to the attention of the users concerned. Furthermore, the Commission notes that the draft law makes no reference to the procedures for informing people about the measures envisaged in articles 16 bis and 22 bis. Consequently, it draws the attention of the ministries to the need to provide these people with clear, complete and educational information, in accordance with the provisions of articles 70-18 and following of the law of January 6, 1978 as amended.

recipients of the data: Firstly, the Commission observes that for the first system dedicated to reserved lanes, local authorities or public establishments for inter-municipal cooperation (EPCI) can submit a request to the State for the implementation of the system control. The Commission notes that in this case, an agreement will be concluded between the State and the local authority or the EPCI to determine the terms and conditions, but that the draft law, in its current wording, does not by itself make it possible to open access for the benefit of the communities and EPCIs concerned to the data collected. Secondly, for the system concerning the control of low-emission zones, the bill specifies that municipal police officers and public establishments may be data. In this respect, the bill should be clarified with regard to the purpose of this transmission, since, unless the State implements the system on behalf of a community or of an EPCI – hypothesis that the draft law does not expressly provide – he must be regarded as responsible for this processing.

On security measures The Commission recalls that the implementation of the provisions described above must respect the security requirements imposed by law no. 78-17 of 6 January 1978 as amended relating to data processing, files and freedoms. Guarantees must therefore be provided to ensure that the technical and organizational measures surrounding the deployment of the devices will be done with regard to the risks to the rights and freedoms of the persons concerned. On this subject, the Commission recommends that the implementation of the systems be done in compliance with the principles of data protection from the design stage. It will thus be a question in particular of ensuring that only the relevant data are consulted, and that by the only authorized persons. The risks of unauthorized access, unwanted modification and disappearance of data must be analyzed, estimated in terms of seriousness and likelihood with regard to existing or planned measures, and dealt with in a proportionate manner.

President Isabelle FALQUE-PIERROTIN