Deliberation 2021-061 of May 27, 2021Commission Nationale de l'Informatique et des LibertésNature of the deliberation: OpinionLegal status: In force Date of publication on Légifrance: Friday July 16, 2021NOR: CNIX2120009VDeliberation No. 2021-061 of May 27, 2021 providing an opinion on a draft decree amending decree no. 2011-111 of 27 January 2011 authorizing the implementation by the Ministry of the Interior (General Directorate of the National Gendarmerie) of automated processing of personal data to help the drafting of procedures (LRPGN) (request for opinion no. 21009754)The National Commission for Data Processing and Liberties,Seizure by the Ministry of the Interior of a request for an opinion concerning a draft decree amending the decree n° 2011-111 of January 27, 2011 authorizing the implementation by the Ministry of the Interior (General Directorate of the National Gendarmerie) of an automated processing of personal data for assistance with a drafting of the procedures; 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. Sophie LAMBREMON, commissioner, and the observations of Mr. Benjamin TOUZANNE , Government Commissioner, Issues the following opinion: On May 19, 2021, the Commission received an urgent request for an opinion relating to a draft decree amending decree no. 2011-111 of January 27, 2011 authorizing the implementation by the Ministry of the Interior (General Directorate of the National Gendarmerie) of automated processing of personal data to help draft procedures (LRPGN). This corrective referral, which follows an initial opinion from the Commission dated October 1, 2020, aims in particular to take into account the observations it made, as well as the decision of April 13, 2021 of the Council of State on the GendNotes processing (CE, April 13, 2021, LDH and others, no. 439360, unpublished). In this decision, the Council of State, after recalling that the decree governing the processing presented as one of the purposes of the GendNotes application the collection and storage of data with a view to their exploitation in other processing operations, observed that the decree did not include any indication as to the nature and purpose of the processing concerned or as to the conditions of use, in these other processing operations, of the data collected by the processing. Consequently, the Council of State considered that this purpose was not determined, explicit and legitimate, as required by article 4 of the law of January 6, 1978 as amended, and canceled the provision of the corresponding decree. , and to take this decision into account, the draft decree aims to explain the purposes of LRPGN processing, which initially provided for a purpose of linking with the processing of data relating to legal proceedings . In this context, after specifying the safeguards that it believes should generally apply to the implementation of links between processing operations, the Commission makes several series of observations concerning the draft decree. Finally, the Commission welcomes the fact that, in the new draft transmitted, the Ministry makes adjustments

to certain provisions of the decree, in order to take account of the observations made in its aforementioned deliberation, more particularly with regard to the legal regime adopted, the categories of data collected, as well as only retention periods. It nevertheless notes that the data protection impact assessment (DPIA) sent to it has not been updated since the previous referral relating to LRPGN processing, and dating from 2020, which she regrets. The Commission invites the Ministry to update it as soon as possible in order to take account of the changes envisaged.On the guarantees attached to the implementation of links between several processing operationsFirstly, the Commission recalls that there is to distinguish between the purpose and the means of a processing operation. A connection is constituted by any operation aimed at using the data of a first processing operation for an operation, whatever it may be, linked to a second processing operation. In general, the fact of linking two processing operations, whether it is related to an interconnection, a rapprochement or takes another form, does not constitute a purpose in itself but simply a functionality, a means by which a certain purpose may be prosecuted. The Commission recalls that, in accordance with the provisions of Article 35 of the law of 6 January 1978 as amended and within its scope, the purposes of the processing must appear expressly in the regulatory act governing the processing but not all the means to pursue this purpose. On the other hand, the Commission considers that, in the case where a connection with another processing operation pursues a specific purpose, distinct from the purposes listed by the regulatory act, or even constitutes the sole purpose of the processing, then the latter must be sufficiently precise in order to meet the requirements of the Data Protection Act, as recalled by the Council of State in its decision of April 13, 2021. More specifically, in this case, the mere mention of interconnection, reconciliation or connection under the purposes of the processing, is not sufficient, on its own, to meet these requirements. Such a purpose must, as judged by the Council of State, specify the nature and purpose of the processing concerned and, where applicable, the conditions of exploitation of these operations. This type of purpose can also be determined by listing the processing operations with which the connection is possible. By way of illustration, the Commission notes that data processing whose primary purpose is to screen other files (as is the case, for example, with the processing Automation of centralized consultation of information and (ACCReD), expressly mention in the regulatory act governing them, the processing operations that can be queried.Secondly, the Commission recalls more generally, with regard to the general balance of processing and, the assessment of its conditions of implementation, that each connection, whether it constitutes an operation oriented to the purpose of the main processing or a processing in itself tending to another purpose, must respect the rules provided for by the law of January 6, 1978 and, where applicable, Regulation (EU) 2016/679 of the

European Parliament and of the Council of April 27, 2016, on the protection of individuals with regard to the processing of personal data personal data and the free movement of such data (GDPR). The regulations applicable to the protection of personal data require in particular that data collected for specified, explicit and legitimate purposes cannot be further processed in a manner incompatible with these purposes. Thirdly, when the processing in question are governed by regulatory acts, the connection must comply with the provisions governing the two processing operations. This requires ensuring that the operation complies with the purposes, data and accessors and recipients set by the two regulatory acts. Thus, with regard, for example, to the transfer of data from one database to another, this is only possible if it fits in with or contributes to the purposes pursued by the original database (or those associated with transmissions to recipients), if the transferred data is authorized to appear in the destination database and if at least one person authorized to supply the destination database constitutes a user or a recipient of the original database. , the regulations on the protection of personal data require, in certain cases, the completion of a DPIA. In this respect, the Commission recalls that the DPIA, which must in particular contain a detailed description of the processing carried out (including both the technical and operational aspects) must necessarily, when it is carried out, relate to connections, and in particular interconnections. It must therefore list them as exhaustively as possible, as they are known and envisaged on the date of writing the analysis, specifying their conditions of implementation (purposes, nature of the data transmitted, necessity, conditions of transmission, security of operations, etc.). The Commission also recalls that, when it receives a request for an opinion, this includes, in accordance with 3° of article 33 of the amended law of 6 January 1978, the interconnections, reconciliations or any form linking with other treatments. It must also be informed of any substantial modification of processing (purposes, recipients, etc.) and, if necessary, decide on the planned modifications.Fifthly, the Commission invites data controllers to provide operational guarantees specific to allow only processing operations containing relevant, adequate and necessary data with regard to the purposes of the processing operations concerned to be consulted and recorded. Likewise, precautions must be taken to avoid importing or exporting, from one database to another, erroneous or obsolete data, in particular when dealing with sensitive data. Finally, the Commission underlines the growing evolution of the implementation of interconnections or linking of files, more particularly in the sovereign sphere. While it is not opposed to the very principle of allowing such operations with regard to both operational and legal issues brought about by developments in this area, it considers that transparency vis-à-vis the public as to the conditions for implementation of these different operations also contributes to the balance between the objective pursued by these files and

respect for the privacy of the persons concerned. It follows from what has been said above that the list of all the interconnections, implemented relationship and comparisons does not necessarily have to appear in the regulatory act. The Commission nevertheless considers that, in certain specific cases, mentioning them may constitute good practice, in particular when the main purposes of the processing are closely linked to a few particular connections. Failing this, it strongly recommends that public data controllers, for processing corresponding for example to large databases, describe on their website all the connections made with other databases. the implementation of these safeguards concerning LRPGN processing In general and in accordance with the principles set out above, the Commission draws the Ministry's attention in particular to the need to verify that all the connections it envisages complies with the regulatory provisions governing other processing, and more broadly those relating to the protection of personal data. It considers that failing this, some of the connections indicated in the DPIA cannot be carried out, unless the regulatory acts in question are modified beforehand. On the purposes of the processing Article 1 of the draft decree modifies the purposes of the treatment, and in particular that which initially aimed at the possibility of linking this file with other treatments. It is now provided that the purpose of the LRGPN is to allow the collection of the information necessary for the conduct of these procedures, with a view to their transmission to the administrative and judicial authorities responsible for exploiting them . The Commission notes first of all that this change is intended to take account of the remarks it made in its aforementioned deliberation and more particularly that aimed at considering that the purpose initially adopted corresponded more to a technical functionality, serving other purposes. . In its opinion, the Commission had also stressed that its imprecise nature made it impossible to understand either the conditions for implementing the processing or its scope. State in its decision of April 13, 2021 that the observations made in this deliberation as to the conditions for the general implementation of processing operations implementing interconnection, linking or reconciliation operations, the Commission considers that the planned modifications of the purposes of LRPGN processing do not call for any particular comments. On the categories of data processed Article 7 of the draft decree supplements it with an appendix which lists the data which may be processed in the drafting software. The appendix distinguishes the categories of data relating to the persons in question, as well as to the persons who are victims, for legal proceedings and administrative proceedings. As a preliminary point, the Commission notes that these changes aim in particular to take account of the observations made in its aforementioned deliberation of 1 October. Firstly, the Commission notes that, in addition to a series of precisely designated data (name, address, family situation, driver's licence, etc.), the appendix provides for a category likely to

cover a wide variety of personal data: elements resulting from findings and investigations strictly necessary for the conduct and resolution of legal proceedings . While such a category of data is in principle too imprecise to provide a satisfactory framework for processing governed by a regulatory act, the Commission is aware of the particular difficulty associated with listing all types of personal data that can be processed within the framework of a software intended to allow the drafting of acts relating to the most diverse facts, in connection with all the procedures in which the gendarmerie participates. For this reason and in this very particular case, it accepts the wording proposed on this point in the appendix. On the other hand, secondly, the appendix also provides that in respect of the elements recorded in the context of a judicial procedure or an administrative procedure, may include the data and information necessary for the conduct of the investigations, resulting from the consultation of the processing of data concerning the judicial and administrative procedures implemented by the gendarmerie units or by the police services. The Commission understands from these provisions that this category of data may make it possible in practice to record within the LRPGN processing any data resulting from the consultation of other files held by the police and the gendarmerie, without the nature and purpose of these are precisely indicated, and without it being required that this data correspond to one of the other categories of data listed in the appendix. Although the Commission does not question the absence of an obligation to mention the interconnections, reconciliations and other connections within the draft decree, in accordance with Article 35 of the amended law of 6 January 1978, it considers that the formula used in the draft appendix does not appear to comply with the principles set out below. Importing data from other files consulted by the gendarmerie or the police is only possible if the data in question falls under one of the other categories of the appendix, and in compliance with the regulatory acts governing this processing. Unless the ministry intends to list these processing operations in the draft decree or precisely describe their purposes, the Commission therefore invites the ministry to modify this formula. As underlined in its deliberation of October 1, 2020, the Commission considers that these provisions do not make it possible to understand the nature or scope of the information covered by this category of data. In general, it considers that the data resulting from other processing operations can allow data to be fed into the categories of data listed by the regulatory act (such as information relating to driving licenses or weapons), provided that the latter are sufficiently precise and make it possible to limit the collection of information to what is strictly necessary with regard to the purposes of the processing. When the registration or not of a person in a processing operation constitutes information in itself, the processing may then include the mention of his registration (for example, person known to the processing of criminal records (TAJ) ). In these two cases, the Commission

considers that the decree must be sufficiently precise to enable the information likely to be recorded to be clearly identified. Finally, in the case of drafting software, certain categories of data may, in view of the particular nature of the processing, be defined less precisely. . It invites the Ministry either to delete it, if the other categories already listed (and in particular the category of elements resulting from findings and investigations strictly necessary for the conduct and resolution of the procedure) appear sufficient for the purposes of the processing, or to complete the appendix with additional categories of data, if possible precisely defined. In this respect, it takes note of the ministry's commitment to remove this category of data from the draft decree. Thirdly, the annex to the draft decree, which frames the data likely to be collected, provides for the recording of photographs of victims. In this regard, the Commission notes that, with regard to photographs of victims, the collection of this data is only provided for in the context of legal proceedings and insofar as they can, according to the ministry, be necessary for the investigation, whether in the context of attacks on persons (for example traces of blows), or to allow the identification of a deceased or missing person. If the Commission does not question the relevance of the collection of this data, it nevertheless considers that the hypotheses of its collection being limited only to attacks on persons, the draft decree could be clarified in order to limit their recording to these cases of use and t thus be limited to what is strictly necessary for the conduct of legal proceedings. Finally, the annex to the draft decree provides, with regard to victims, for the collection of information relating to weapons. In this respect, the Commission notes that the collection of this information is necessary in the event of a judicial inquiry revealing the use of a weapon (victim using a weapon to defend himself, or inventory of stolen objects, for example) . With regard to the security and traceability of actionsIn general, the Commission notes that the retention period for the traces indicated in the DPIA does not seem to comply with that indicated in the draft decree. It therefore invites the Ministry to proceed with an update of the APID before the effective implementation of the processing, in order to fully fulfill its legal obligations. Article 6 of the draft decree provides that the operations of collection, consultation , modification, communication and erasure of processing data and information are subject to recording including the identification of the author, the date, time and nature of the operation. The Commission notes that in accordance with what is permitted by Article 37 of Law No. 2018-493 of 20 June 2018, the Ministry intends to postpone the implementation of part of these measures, in this case the registration of the reason for the consultation or communication, by 31 December 2022 at the latest, as provided for in the draft decree.While it does not call into question the mobilization of this possibility, the Commission nevertheless recalls the importance of the implementation such measures making it possible to ensure the security of the processing. of reconciliations

within LRPGN processing. The Commission also recalls the need to provide for measures for the automatic analysis of traceability data in order to guarantee that any misuse of processing is detected as early as possible. possible.The PresidentMarie-Laure DENIS