Deliberation 2019-081 of June 20, 2019Commission Nationale de l'Informatique et des LibertésNature of the deliberation: OpinionLegal status: In force Date of publication on Légifrance: Tuesday August 04, 2020NOR: CNIX1927433XDeliberation n° 2019-081 of June 20, 2019 providing an opinion on a draft decree authorizing the creation of a processing of personal data called "management of judicial controls" (GECOJ) (request for opinion no. from within a request for an opinion on a draft decree authorizing the creation of a personal data processing operation called management of judicial controls (GECOJ); Having regard to Convention No. 108 of the Council of Europe for the protection of individuals with regard to the automatic processing of personal data; Having regard to Directive 2016/680 of the European Parliament and of the Council of 27 April 2016 relating to the protection of individuals physical obligations with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offenses or the execution of criminal penalties, and to the free circulation of these data and repealing Council Framework Decision 2008/977/JHA; Having regard to the Code of Criminal Procedure and in particular its Articles 138 and R. 17-2; Having regard to Law No. 78-17 of January 6, 1978 as amended relating to data processing, files and freedoms; Having regard to ordinance n° 45-174 of February 2, 1945 relating to delinquent childhood; Having regard to decree n° 2019-536 of May 29, 2019 taken for the application of the law n° 78-17 of January 6, 1978 relating to data processing, files and freedoms; Having regard to the decree of August 22, 2012 authorizing the creation of processing of personal data referred to as judicial control; Having regard to deliberation n° 2012- 059 of March 8, 2012 issuing an opinion on a draft order authorizing the creation of processing ents of personal data known as judicial control; After having heard Mrs. Sophie LAMBREMON, commissioner in her report, and Mrs. Nacima BELKACEM, government commissioner, in her observations, Issues the following opinion: The Commission has been asked for an opinion by the Minister of the Interior of a draft decree authorizing the creation of a processing of personal data called management of judicial controls (GECOJ). The planned processing aims to centralize within a single system, all the judicial controls pronounced in matters of terrorism implying, for the data subject, an obligation to report regularly to a police or gendarmerie service, in accordance with the Article 138 of the Code of Criminal Procedure. This processing is also intended to centralize the judicial controls pronounced by the Paris courts in matters of common law. The Commission notes that it has already ruled on a draft decree authorizing the creation of processing of personal data called judicial review . The decree of August 22, 2012 referred to above, which governs the implementation of this processing, also constitutes a single regulatory act within the meaning of Article 31-IV of the amended law of January 6, 1978. The Commission notes that In the long term,

the GECOJ system is intended to cover all the judicial control measures pronounced in matters of common law and terrorism, and this, throughout the national territory, thus replacing in part the system currently framed by the decree of August 22, 2012 mentioned above. In the meantime, it notes that the purposes as well as the conditions of implementation of the processing submitted to it differ from those provided for in this same decree, which justifies that it be the subject of a separate regulatory act. .It notes in this respect that if, in the long term, it is envisaged to integrate all of these measures into the GECOJ processing, the judicial controls of ordinary law are not intended to be integrated into the national supervision system, the methods management of these measures remaining implemented at territorial level. If the timetable for the development of this development could not be communicated, the Commission recalls that it must be notified of any modification relating to the essential characteristics of the processing which would result from the changes made to the system, under the conditions provided for in Article 33 of the amended law of January 6, 1978. Insofar as the Commission considers that the GECOJ processing is implemented mainly for the purpose of prosecuting criminal offences, it considers that it falls within the scope of Directive (EU) 2016/680 of 27 April 2016 referred to above (hereafter the directive) and that it must be examined with regard to the provisions of articles 87 and following of the modified law of January 6, 1978. In view of these elements, and insofar as no sensitive data, within the meaning of article 6 of the law of January 6, 1978 as amended, is intended to be collected in the processing, this must be subject to an order issued after a reasoned and published opinion from the Commission, in accordance with the provisions of article 89 of the aforementioned law of January 6, 1978. On the purposes of the processing Article 1 of the draft order provides that the GECOJ processing has for purposes: to ensure the implementation and monitoring at local level and, where appropriate, at national level, of compliance by persons subject to judicial review by an investigating judge or any other jurisdiction of the obligation to report periodically to a national police service or a national gendarmerie unit provided for in 5° of article 138 of the code of criminal procedure; to verify and determine the methods of execution of these measures, for the purposes of investigations criminal proceedings before the services national police forces and national gendarmerie units as well as for the needs of the missions of prevention of terrorism and prevention of organized crime and delinquency for which they are responsible. contrary to what is currently provided for in the single regulatory act governing processing relating to judicial controls, aims to allow the intelligence services to be recipients of the data recorded in the processing for the purposes of verification and determination of the methods of execution of the measures and this, for the needs of their missions. The Commission considers, with regard to the justifications provided by the Ministry, that the missions

of these services can justify that they have communication of the information recorded in the GECOJ processing. However, it remains reserved as to the addition of such a purpose with regard to the nature of the processing, which constitutes a tool for managing and monitoring the clocking obligations of persons subject to a judicial control measure. This general reservation formulated, the Article 1 of the draft decree calls for the following observations. With regard to the first purpose, the Commission takes note of the clarifications provided by the Ministry according to which it is mainly a question of strengthening and improving the follow-up of judicial controls by the supervision of scores and thus allow the services concerned to guarantee operational responsiveness in the event of a deficiency on the one hand, and to inform the judicial authority as soon as possible of the execution of the measure on the other hand. with regard to the second purpose, it takes note of the justifications provided according to which the processing, as such, is intended to make available to the judicial police services and intelligence services information relating to the methods of execution of judicial control measures, this data may, for example, prove necessary for evidentiary purposes, when the measure has ended. It also notes that GECOJ processing cannot under any circumstances be consulted in the context of carrying out administrative inquiries. The Commission notes that Article 1 of the draft decree provides that the purpose of the processing is in particular to verify to determine the methods of execution of the measures of judicial control. This provision is intended to contribute to the pursuit of criminal investigations on the one hand, and to terrorism prevention missions on the other. Insofar as it is not for these services to assess the conditions for implementing these measures, a competence which falls within the jurisdiction of the judicial authority, the Commission notes that, at its request, Article 1 of the draft of decree will be amended so as not to include the determination of the methods of execution of the measures in respect of the purposes pursued. at least to the judicial authority, to have communication of the information recorded in the processing. It also recalls that the data thus referred to are also collected within other processing operations, which are made available to investigators on simple request. In this context, it considers that the purpose of verification provided for by the draft decree does not appear sufficiently justified. On the data collected The Commission first recalls that the GECOJ system, which is intended to deal with judicial control measures relating to to attendance obligations only, minors aged 13 to 18 who cannot be subject to this type of measure will not be affected by the system, in accordance with article 10-2 of the aforementioned order of February 2, 1945. further notes that the information recorded in the processing is that which appears in a judicial control order (directly transmitted by the mandating magistrate), or that provided by the person concerned. It notes that, in the event that a person refuses to communicate to the competent

services additional information not appearing in the prescription, this data will not be entered in the processing. Finally, it underlines that in the event of unavailability of application or when the person responsible for collecting the score is unable to use it, registration is deferred and registration in paper format is carried out. In this case, the identity of the person, his signature, as well as the date and time of the presentation to the service are recorded in paper format for their registration in the GECOJ processing. Without calling into question the justifications given by the Ministry, namely that the integration of the data thus collected in the processing is carried out as soon as possible, the Commission considers that specific guarantees will have to be implemented in order to limit the negative consequences for the persons concerned resulting in particular from the delay or absence of registration of the score in the GECOJ processing. These general elements recalled, article 2 of the draft decree calls for the following observations. Firstly, article 2 of the draft decree states that the data collected relating to the person subject to judicial review are the name, first name, alias, date and place of birth, nationality, addresses (home and place of work), profession, telephone number, and e-mail address. In addition, data relating to the personnel responsible for monitoring the measure may be collected (surname, first name, quality, administrative registration number and assignment department). Although the collection of this data does not call for any particular observation, the Commission nevertheless takes note that the person's contact information (telephone number and e-mail address) should only allow them to be reached in the event of a deficiency in the execution of the judicial control measure. Secondly, the draft decree states that the categories of data that can be collected concerning the measure are as follows: the GECOJ file number; information relating to the mandating judicial authority (name , first name, quality, jurisdiction, prosecution or investigation number); the offense with which the person prosecuted is charged and/or NATINF code; the date of the decision ordering the judicial review; the start, maintenance and end dates of measurement; the date of the hearing; the procedures for carrying out the obligations whose control or implementation are entrusted to the national police service or the national gendarmerie unit, in particular the identity and address of the person hosting the person subject to the control. The Commission notes that the data relating to the mandating judicial authority relate more precisely to the magistrate who decided on the measure, as mentioned in the judicial control order, and that the sole purpose of this collection is to send him the elements relating to compliance with the obligation to which the person is subject. prescribed. The Commission, which considers that the collection of this data appears proportionate with regard to the purposes pursued by the GECOJ processing, takes note of the ministry's commitment to modify the draft decree so that it is specified in this sense. Finally, the Commission notes that the collection of the identity and

address of the person hosting the person subject to the control will only be possible in the event that the individual subject to the measure is domiciled with a person designated by the magistrate. Subject to the observations made above, the Commission considers that the collection of the aforementioned data complies with the provisions of Article 4-3° of the amended law of 6 January 1978. On the link with the processing of antecedents (TAJ) Article 2 of the draft decree provides that the photograph of the person subject to judicial review may be collected and further specifies that the processing does not include any disp facial recognition system from the digitized image of the photograph. As such, the Ministry intends to link the GECOJ processing with the processing of criminal records (TAJ) and this, for the purpose of integrating the photograph of the person concerned into the planned system. Firstly, the Commission takes note details provided that this supply should facilitate the human verification carried out by the agents responsible for validating the score, in a context of reception of the large public within the police services and gendarmerie units concerned. It notes that no data resulting from the GECOJ processing is intended to be recorded in the TAJ. If it emphasizes that this linking will have the sole purpose of extracting the photograph from the TAJ when it is available, in the only situations where the photograph of the person would be necessary to ensure the proper verification of the execution of the judicial control and to the exclusion of any other data, it considers however that its recording does not appear sufficiently justified by the ministry with regard to the purposes processing in order to assess, at this stage, its proportionality.Secondly, it notes that the collection of the photograph must be carried out manually, the agent having to extract it from the TAJ, save it on his post of work, transmit it to the application server and save it in the GECOJ processing in order to add it to the file of the person concerned. It is then up to the agent to remove the photo from his workstation. photography, difficulties in updating the data collected in this way or the possibility of keeping them for an unlimited period. In view of the foregoing, it is moreover reserved on the methods of collecting the photograph. draft order be amended to expressly mention it and that specific measures be taken to limit the risks and possible negative consequences for the persons concerned, resulting in particular from the unlawful retention of their data. In this respect, it considers that measures allowing the secure and systematic erasure of the files concerned on the workstations of the agents carrying out the extraction, should at least be implemented. On retention periods Article 3 of the draft decree provides that the categories of personal data and information recorded in the processing are kept for two years from the end of the judicial review and that in this case, the data can only be consulted within the framework of a judicial police procedure . If the Commission considers that the retention period provided for by the draft decree is proportionate with regard to the purposes of the processing, it recommends that clear

directives be sent to the personnel referred to in Article 4, in order to recall the prohibition of access the data outside of any legal framework, once the measure has ended. Without calling into question the retention period as provided for by the draft decree, the Commission notes that in the event that a person recorded in the processing would be the subject of a final judicial decision of dismissal, release or acquittal, only information by the judicial authority of the managing service is likely to lead the services to erase, in such a way manually, the data recorded in the processing. day, and to keep them for a period not exceeding that necessary for the purposes for which they are processed. Subject to the comments made above, the Commission considers that the retention period of two years, from the end of the control judicial procedure, provided for in article 4 of the draft order, complies with the provisions of article 4-5° of the amended law of 6 January 1978. Finally, the draft order specifies that the operations of collection, modification, consultation, communication, interconnection and deletion of personal data and information are subject to recording including the identification of the author, the date, time and nature of the operation. This information is kept for six years. In this respect, the Commission recalls that, unless there is specific justification, the recommended retention period for traces is six months. Although it takes note of the elements provided by the ministry, it considers that a period of less than six years could have been adopted with regard to the conservation of these logs. It also considers that such a period does not seem justified since the traceability data will not make it possible to determine the data to which it will have been precisely accessed having actually been consulted beyond the two years during which this data will be kept. .On the recipients Article 4 of the draft decree provides that only have access to all or part of the data and information mentioned in article 2, by reason of their attributions and within the limit of the need to know: personnel assigned to the national police services or national gendarmerie units responsible for the implementation and monitoring of measures at local level on the one hand, or the supervision of measures on the other. Commission stresses that the judicial controls pronounced in matters of terrorism and common law do not come under the same jurisdiction, and are not supervised by the same services. Therefore, it notes that access to the data recorded in the processing will be partitioned for each service accessing with regard to its competence. Under these conditions, such access does not call for any particular observation. to know of the progress of the execution of the measures; the personnel of the national police and the national gendarmerie for the needs of a criminal procedure; the personnel of the services of the Ministry of the Interior mentioned in articles L. 811-2 and L. 811-4 of the Internal Security Code (CSI) for the purposes mentioned in 4° and 6° of Article L. 811-3 of the same code, upon express request addressed to the departments mentioned in 2° of I of this article.While the first category of persons,

namely magistrates and personnel of the Ministry of Justice, does not call for any particular comment, the Commission recalls the reservation previously expressed as to the purposes for which the s personnel of the national police and gendarmerie, as well as the services referred to in articles L. 811-2 and L. 811-4 of the CSI may have communication of the data recorded in the GECOJ processing. On the rights of the persons concerned Article 6 of the draft decree specifies that the right of opposition provided for in article 110 of the law of January 6, 1978 referred to above does not apply to this processing. The aforementioned article also specifies that in accordance with articles 104 to 106 of the same law, the rights of information, access, rectification and erasure of the data mentioned in article 2 are exercised directly with the Ministry of the interior. The Commission considers that the exercise of all of these rights, for which the Ministry does not intend to apply any specific restrictions, does not call for comment. However, while it notes that people will be informed via the publication of the regulatory act as well as through the website of the Ministry of the Interior, it regrets that such information cannot also be provided directly to people concerned, in particular when checking in with the police services or gendarmerie units. In this respect, it takes note of the reflection carried out by the ministry as to the possibility of giving a form to the persons concerned during their first check-in. this will be carried out by the agent card systematically for the national gendarmerie, and preferentially for the national police. In cases where authentication will be carried out by means of a password, the Commission notes that this will not always be carried out in accordance with its usual recommendations, and therefore invites the Ministry to implement additional measures to ensure that all the means of authentication are sufficiently secure. As regards the software components used, the Commission notes that the Ministry indicated that it had been using obsolete operating systems and software for several years, and without presenting a schedule of changes in the data protection impact assessment (DPIA) submitted. It considers that such practices do not comply with the state of the art, insofar as they are likely to facilitate the compromise of the systems concerned. In any case, it invites the ministry to ensure the regular updating of the software used in accordance with the guide to good computer practices published by the National Agency for the Security of Information Systems (ANSSI) . With regard to the security objectives determined by the Ministry in the DPIA carried out, although the Commission notes that the Ministry considers that the need for data integrity is maximal, it nevertheless questions the estimate made concerning the availability and data privacy. Indeed, the nature of the processing and the data collected are likely to pose risks for the persons concerned in the event of a breach of confidentiality, which would justify a major need in terms of security. Moreover, given the risks for people in the event of the loss of scores in paper format, it does not seem possible to consider that a total

unavailability of the application has no effect on the people concerned. Subject to these reservations, the Commission considers that the security measures described by the data controller comply with the security requirements provided for by article 99 of the law of January 6, 1978 as amended. However, it recalls that this obligation requires the updating of security measures with regard to the regular reassessment of risks. In this regard, she recalls that specific attention should be paid to the reassessment of security measures as part of the update of the impact assessment. The President M-L.DENIS