

Deliberation 2021-153 of December 16, 2021 Commission Nationale de l'Informatique et des Libertés Nature of the

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CNIX2214638X Deliberation n° 2021-153 of December 16, 2021 providing an opinion on a draft order establishing the

processing of personal data relating to the reporting and monitoring of aircraft traveling without anyone on board, called the

"Drone reporting system" (SSD) (request for opinion no. 21011814) The Commission National Computing and Liberties, Seizure

by the Minister of the Interior of a request for an opinion concerning a draft decree creating a processing of personal data

relating to the identification of aircraft circulating without person on board, referred to as the "Drone Reporting System" (SSD);

Having regard to Law No. 78-17 of 6 January 1978 as amended relating to data processing, files and freedoms, in particular its

a Articles 31-IV and 89-I; Having heard the report of Mrs Marie-Laure DENIS, President, and the observations of Mr Benjamin

TOUZANNE, Government Commissioner, Issues the following opinion: The National Commission for Computing and of

freedoms (hereinafter "the Commission" or the "CNIL") was seized by the Ministry of the Interior of a draft order establishing

the processing of personal data relating to the reporting and monitoring of aircraft circulating without anyone on board, referred

to as the "Drone Signaling System" (SSD). The Commission notes that this processing is part of the overall electronic reporting

detection project called "State Information System (SIE)". As an extension of Law No. 2016-1428 of October 24, 2016 on

strengthening the security of the use of civilian drones, this project includes two entities: "Infodrones" processing, under the

responsibility of the Ministry of the Interior and implemented at national level, of which the Commission has also been seized,

which is linked to the SSDs and the processing called "AlphaTango" of the Directorate of Civil Aviation (DGAC) relating to the

recording of aircraft circulating with no one on board. This last processing is a web portal made available to users of remotely

piloted aircraft which allows in particular to register aircraft of which they are the owners in accordance with the

aforementioned law of October 24, 2016; SSDs, which are local detection systems without direct link with the processing of the

DGAC. They provide access to the flight data of an aircraft traveling without anyone on board detected in a specific

geographical area and to its unique identifier number. The responsibility for this processing lies with each ministry

implementing them for particularly sensitive sites and placed under their responsibility (ministries for ecological transition,

economy, finance and recovery, armies, interior, overseas territories and justice). Although the Commission notes that all the

data collected in "Infodrones" does not directly identify the owner of the aircraft, certain data indirectly identify natural persons

and therefore constitute personal data, as recalled by the recital 21 of Directive 2016/680 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 by competent authorities for the purposes of the prevention and detection of crime criminal proceedings, investigations and prosecutions in this area or the execution of criminal penalties, and on the free movement of such data, which provides that "to determine whether a natural person is identifiable, it is necessary to take into consideration all means reasonably likely to be used by the controller or any other person to identify the physical person directly or indirectly". The Commission notes that, at European level, two acts have been adopted by the European Commission: Commission Implementing Regulation (EU) 2019/947 of 24 May 2019 on the rules and procedures applicable to the operation of aircraft unmanned on board; Commission Delegated Regulation (EU) 2019/945 of 12 March 2019 on unmanned aircraft systems and third-country operators of unmanned aircraft systems. Pending the harmonization and application of European texts relating to the electronic reporting of aircraft, the Ministry has thus developed a project intended to set up a risk management solution. implementation of the system

Firstly, the Commission notes that SSD processing will be authorized by a single regulatory act pursuant to IV of Article 31 of the law of 6 January 1978 as amended. It takes note of the clarifications provided by the Ministry according to which the use of a single regulatory act would aim to guarantee uniformity for each of the SSDs by requiring each data controller (in this case, the ministries concerned) to comply with the legal provisions thus referred to. This uniformity is made necessary by the operation of the general system of the SIE which requires the interconnection of SSD processing with "Infodrones" processing. The Commission also notes that the data protection impact assessment (DPIA) transmitted concerns SSD processing implemented by the Ministry of the Interior. It notes that the DPIAs of the other ministries will be transmitted with the transmission of the compliance commitment to the Commission in accordance with IV of article 31 of the law of January 6, 1978 as amended. The CNIL recalls that, in accordance with paragraph 2 of article 90 of the amended law of January 6, 1978, "if the processing is implemented on behalf of the State, [the] impact analysis is sent to the National Commission for Computing and freedoms with the request for an opinion provided for in Article 33". The compulsory transmission of the AIPD to the CNIL from the stage of the request for an opinion on the regulatory act authorizing the processing constitutes a guarantee, for the processing operations covered by Title III of the "Informatique et Libertés" law, likely to allow a full review by the Commission of the rules governing the processing and the conditions for its implementation. When the Commission receives a request for an opinion relating to a "single regulatory act" which, pursuant to IV of Article 31 of the law of 6 January 1978 as amended, does not authorize specific processing but the implementation of processing operations which "respond to the same purpose, relate to

identical categories of data and have the same recipients or categories of recipients", the DPIA must not relate to one or more specific processing operations envisaged at the time of the referral but assess the risks and determine the categories of measures likely to control them for all the processing authorized by the project and likely to be implemented after its entry into force, each processing then only being subject to sending a "conformity undertaking" to the Commission. This overall AIPD or "framework" (cf. CE, sect. de l'int., 8 January 2019, no. 396340) may, if necessary, be supplemented by AIPD relating to specific processing operations which may have been carried out at the date of the referral. In the present case, the Commission notes that the Ministry provided a DPIA corresponding to the processing envisaged specifically for the Ministry of the Interior, but did not provide a "framework" DPIA. However, it notes that all of the processing that is likely to be implemented on the basis of the draft single regulatory act will necessarily present a high degree of uniformity, since the operation of the general system of the state information system (SIE), as provided for by the draft decree, requires the interconnection of SSD processing with "Infodrones" processing. In this case, the DPIA provided by the Ministry therefore sufficiently describes the characteristics common to all processing, the risks they present and the measures to control them. The Commission therefore considers, in this case, that this DPIA can take the place of a framework DPIA, provided that the future processing operations implemented in the other ministries are in line with the DPIA provided. It invites the ministries concerned to send it their DPIA when transmitting the compliance commitment provided for in IV of Article 31. For these specific reasons, the Commission considers that the condition of lawfulness relating to the transmission of the DPIA provided for by Article 90 of the amended law of 6 January 1978 is, in this case, fulfilled. that the SIE project is intended to apply: in areas which are subject to an overflight restriction or ban provided for by Articles L. 6211-4 and L. 6211-5 of the Transport Code, articles L. 131-3 and R. 131-4 of the civil aviation code and article 4 of the decree of December 3, 2020 relating to the use of airspace by unmanned aircraft on board ;in the areas prohibited from aerial photography, which are provided for in Article D. 133-10 of the Civil Aviation Code;the areas s the overflight of which is likely to jeopardize public security. that flying over these areas may pose a risk to public safety and the safety of persons. It also acknowledges that these areas cannot be listed exhaustively in the texts insofar as these events may concern various places and take place on an ad hoc and unpredictable basis (for example, gatherings of people, the place of a railway disaster or the routes of sensitive convoys). Thirdly, the Commission notes that the "Infodrones" processing is interconnected with the local "SSD" processing. Thus, each local SSD processing will transmit to "Infodrones" the position and identifier of the aircraft traveling without anyone on board and "Infodrones" will respond to the

SSD processing concerned by transmitting the status of the aircraft in question. On the purposes and the applicable legal regime Article 1 of the draft decree provides that the purposes of SSD processing are: to ensure the surveillance of aircraft traveling without anyone on board in areas that are subject to a restriction or prohibition; to allow, by the exploitation of the description of aircraft circulating without anyone on board, the identification of their status, owner and user, in order to ensure that these aircraft are not likely to harm public security. The Commission takes note of the clarifications provided by the Ministry according to which the purposes of "SSD" processing are part of the overall system of the SIE and are exclusively linked to area surveillance s the overflight of which is prohibited or restricted (and therefore constitutes a criminal offence) or the overflight of which could jeopardize public safety. Indeed, a six-month prison sentence and a fine of fifteen thousand euros is imposed on the fact that a remote pilot causes an aircraft flying without anyone on board to overfly, through clumsiness or negligence, an area of French territory in violation of a ban imposed for military or public security reasons (first paragraph of article L. 6211-4 of the transport code). In addition, a one-year prison term and a fine of forty-five thousand euros is imposed on the act of a remote pilot engaging or maintaining an aircraft circulating without anyone on board above an area defined by the aforementioned article L. 6211-4 and not to comply with the requirements of article L. 6211-5 of the same code (for example, the aircraft which enters a prohibited area is required to land at the nearest aerodrome outside the prohibited area). With regard to the criterion of competent authority within the meaning of Article 87 of the law of 6 January 1978 as amended, the Commission notes that this criterion appears to be satisfied with regard to the ministries of the interior, of ecological transition, of the armies and justice. It notes that, for these ministries, the legal regime is that of the aforementioned Directive (EU) 2016/680. On the other hand, it regrets not having had more details on the assessment of this criterion with regard to the Ministry of the Economy, Finance and Recovery and invites the data controller to document its status as competent authority. as part of its compliance. The Commission recalls that this quality implies the exercise of prerogatives of public power in the context of the processing of data or the actions for which it is carried out. In the event that the quality of competent authority could not be demonstrated for the Ministry of the Economy, Finance and Recovery, the processing that it intends to implement could not be framed by this regulatory act. unique because they would fall under the legal regime of the General Data Protection Regulation (GDPR), and the draft decree should be amended accordingly. On the data collected Article 2 of the draft decree provides for the categories of data of a personal nature and information which may be recorded in the processing. Firstly, the Ministry indicates, with regard to the categories of data relating to the status of the aircraft circulating without

anyone on board and to the status of the area overflown, that the data related to the aircraft circulating without anyone on board are "necessary to assess the attitude of the aircraft according to the position and the route followed (dangerousness, hostility, etc.) and to take action appropriate prevention and alert measures". The Commission takes note of the fact that the dangerous attitude of an aircraft circulating without anyone on board is determined by the agent based on the elements available to him in the SSD processing to which he is accessing (for example, the status of the drone, its position, its trajectory, or the status of the area concerned). It also acknowledges that no other automated processing is implemented to qualify the attitude of the aircraft. She considers that the Ministry should specify whether or not the data used for this purpose constitutes personal data. On this point, it notes that the Ministry considers that all the data referred to do not constitute personal data, in particular those used to determine the attitude of the drone, but that the choice was made to register them. in the draft decree for the sake of transparency. Secondly, with regard to the recording of "data relating to aircraft traveling without anyone on board" the Commission notes that, in accordance with the provisions of the decree of December 27, 2019 defining the technical characteristics of the electronic and luminous signaling devices of these aircraft, the identification number is recorded. It can consist of: either a unique identifier coded on 30 bytes and made up of three fields (the manufacturer's trigram, the model of the aircraft or the model of the signaling device and the serial number of the aircraft); or a unique identifier in accordance with the ANSI/CTA/2063 standard (physical serial number). The Commission thus notes that the aircraft identification number will not contain personal data relating to the owner of the aircraft traveling without anyone on board. of the Commission. Under these conditions, the Commission considers that the data processed are adequate, relevant and not excessive in relation to the purposes pursued. On users and recipients The list of users and recipients is given in Article 4 of the draft d order. As regards the category of first-time buyers relating to agents reporting to the ministers mentioned in Article 1 and responsible for the security of the areas mentioned in 1° of the same article, individually designated, the Commission notes that this category includes the "functional processing manager" who is an air transport gendarmerie officer. Furthermore, if all national police and gendarmerie officers are likely to be accessing and receiving, the Commission notes that access remains subject to a reasoned individual authorization and the need to know. Under these conditions, it considers the framework sufficient. On retention periods Article 3 of the draft decree provides that the data and information recorded in SSD processing are kept for one hour from their recording, which does not call for no comment on its part. On the rights of data subjects Firstly, with regard to the information of data subjects, the Commission considers that the wording of the draft decree on the right to

information is ambiguous and deserves to be specified insofar as, under article 104-I of the amended law of 6 January 1978, it is the responsibility of the data controller to make the listed information available to the data subject and not to the data subject. to request communication of this information. It takes note of the ministry's commitment to modify the draft decree on this point. (i.e. within a radius that may extend to more than 5 km from the site). As for the hypothesis of a panel at the level of the site itself, the ministry considers that it is of no use because it would not be readable by the remote pilot (via his drone) before being already at the level of the area. prohibited and therefore identified as a potential threat. The Commission considers, however, that such a display could be useful in addition to the cartography available online (www.geoportail.gouv.fr), for areas where the location is fixed (for example , nuclear power plants or sensitive military sites) and for which the reading would certainly be done near the zone, but not in it. The fact that the aircraft is already identified as a threat is irrelevant insofar as, on the one hand, the position of all aircraft in flight is known at all times and, on the other hand, those present near a prohibited area are, by definition, not entered into this area. Secondly, the Commission notes that the draft decree provides that the rights of access, rectification, erasure and limitation of data may object of restriction pursuant to 2° and 3° of II and III of article 107 of the law of January 6, 1978 as amended and that the right of opposition provided for in article 110 of the aforementioned law does not does not apply, which does not call for comment. On security measures The Commission observes that access to processing is carried out through SSO Proxyma (GN) or Cheops NG (PN) for authorized agents, therefore corresponding to strong authentication and has no comments to make on this point. understands from the elements transmitted that the overall system works as follows: aircraft traveling without anyone on board emit a signal whose characteristics are defined by the European Commission, i.e. an unencrypted Wi-Fi frame on the 2400 – 2483.5 band MHz, so that it can "be picked up directly by existing mobile devices located in the broadcasting area". As soon as the aircraft is within a radius of one kilometer from a terminal, the latter picks up the signal, transmits it to the local SSD which transfers it to the "Infodrones" system. The Commission notes that from the antenna to the SSD processing, then from the SSD processing to the "Infodrones" processing, the flows are encrypted and has no comments to make on this point. The Commission points out however, although the Ministry does not does not have control of these elements insofar as the specifications come from the European Commission, that from the aircraft to the antenna, the flow circulates in the clear, therefore exposing the data. The Commission notes that the processing puts implement a logging system, for a period of three years. This logging concerns user identifiers, "date-time group" information (date, time, time zone), the actions carried out (collection, consultation,

interconnection and deletion), the reasons for consultation and communication and, where applicable , the recipients of the data. During exchanges with the Commission, it was confirmed that "the traceability data logically include the identifier of the drones, in order to be able to identify the agents who carried out a search on this aircraft" . If the Commission takes note that the number of people having access to these traces is limited to the staff of the general inspectorates in charge of the use of the files, which corresponds for example to three staff of the general inspectorate of the national gendarmerie , it nevertheless wonders about such a long retention period, knowing that the data collected during SSD processing is only kept for one hour. The Commission encourages the Ministry to drastically reduce this period and takes note of its commitment to reduce for one year the conservation of these data. The President Marie-Laure DENIS