

Deliberation 2020-114 of November 26, 2020Commission Nationale de l'Informatique et des LibertésNature of the deliberation:

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n° 2020-114 of November 26, 2020 providing an opinion on a draft decree laying down various provisions relating to the automated processing of personal data called PARAFE (request for opinion no. 20010013)The National Commission for Computing and Liberties,

Seizure by the Minister of the Interior of a request for an opinion concerning a draft decree containing various provisions relating to the automated processing of personal data called PARAFE;

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) 2016/399 of the European Parliament and of the Council of 9 March 2016 concerning a Union code relating to the regime for the crossing of borders by persons (Schengen Borders Code);

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;

Having regard to Council Decision (EU) 2020/135 of 30 January 2020 on the conclusion of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Community atomic energy;

Having regard to the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community approved by Council Decision (EU) 2020/135 of 30 January 2020;

Having regard to the internal security code, in particular its articles R.232-6 to R.232-11-2;

Considering the law n° 78-17 of January 6, 1978 modified relating to data processing, files and freedoms, in particular its articles 32 and 33;

Having regard to decree n° 2019-536 of May 29, 2019 as amended, taken for the application of law n° 78-17 of January 6, 1978 relating to data processing, files and freedoms;

Having regard to deliberation no. 2007-094 of 3 May 2007 giving an opinion on a draft decree creating an automated

processing of personal data relating to passengers at French airports crossing the external borders of the States parties to the Convention signed at Schengen on June 19, 1990;

Having regard to deliberation no. 2010-105 of April 15, 2010 providing an opinion on a draft decree amending decree no. 2007-1182 of August 3, 2007 creating an automated processing of personal data relating to passengers at French airports crossing the external borders of the States parties to the convention signed in Schengen on 19 June 1990;

Having regard to deliberation no. 2016-012 of January 28, 2016 providing an opinion on a draft decree amending an automated processing of personal data called PARAFE;

Having regard to deliberation no. 2019-027 of March 14, 2019 providing an opinion on a draft decree containing various provisions relating to the automated processing of personal data called Rapid Automated Passage to External Borders (PARAFE);

Having regard to deliberation no. 2019-028 of March 14, 2019 providing an opinion on a draft decree extending the automated processing of personal data called PARAFE to British nationals;

After hearing Mr. Bertrand du MARAIS, commissioner, in his report, and Mr. Benjamin TOUZANNE government commissioner, in his observations, Issues the following opinion: The Commission has been asked for an opinion by the Minister of the Interior of a draft decree in Council of State containing various provisions relating to the automated processing of personal data called Rapid Automated Passage to External Borders (PARAFE).

The PARAFE system, implemented by the Ministry of the Interior and governed by Articles R. 232-6 to R. 232-11-2 of the Internal Security Code (CSI), is intended to improve and facilitate controls police at the external borders. Air, sea and rail travellers, eligible for the scheme and having a travel document containing biometric data, can voluntarily borrow a PARAFE airlock. Border control is then carried out by means of biometric authentication of the traveler via the processing of his fingerprints or his facial image.

The Commission considers that PARAFE processing, the purpose of which is to streamline police checks at the external borders, falls within the scope of Regulation (EU) 2016/679 of 27 April 2016 referred to above (hereinafter GDPR). Insofar as it is implemented on behalf of the State, acting in the exercise of its prerogatives of public power, and that it relates to biometric data necessary for the authentication or the control of the identity persons, its modification must be the subject of a decree in Council of State, taken after reasoned and published opinion of the Commission, in accordance with articles 32 and 33 of the

law of January 6, 1978 modified.

The Commission notes that the modifications envisaged by this draft decree are intended to modify Articles R. 232-6 to R. 232-8 of the CSI in order in particular to:- abolish the registration process for the PARAFE program by means of a prior registration of travelers and their fingerprints in a centralized database and therefore eliminate the use of such a centralized database;

- expand the public eligible for the PARAFE airlock system;

- introduce the possibility for the Minister of the Interior to suspend, in the event of a threat to public order or State security, the implementation of processing with regard to one or more of the nationalities eligible.

These changes call for the following observations. On the abolition of the registration process The Commission takes note of the abolition of the registration process and thus welcomes the fact that the corresponding central database containing the fingerprints was completely purged at the date of April 2, 2020. Indeed, as the Commission has recalled in numerous deliberations and in particular its previous opinions on the conditions for implementing this processing as well as on the substantial guarantees that must surround the PARAFE system in order to ensure a high level of data protection of data subjects, the processing of biometric data such as fingerprints, in an automated and centralized form, generates more risks from the point of view of the protection of personal data, taking into account both the characteristics of the physical identification element retained, the possible uses of this processing and the risks of serious harm to privacy and the resulting individual freedoms.

However, it notes that the abolition of the registration process now renders third-country nationals who hold a residence permit for a family member of a European Union citizen (EU ) provided for by Directive 2004/38/EC. Indeed, according to the ministry, the abolition of the registration process entails the need to check their residence documents, a check which was previously carried out during their registration. On the categories of data Firstly, article 2 of the draft decree plans to rewrite article R. 232-7 of the CSI which lists the different categories of personal data processed for biometric authentication purposes as well as article R.232-11 of the same code relating to data collected so that holders of a travel document containing biometric data can benefit from the system without prior registration.

On the one hand, under the terms of the new wording of article R. 232-7, for EU citizens, nationals of another State party to the agreement on the European Economic Area, of the Swiss Confederation and Monegasque, Andorran or San Marino nationals, the data processed are as follows:- the minutiae of the fingerprints of two fingers placed flat on the holder of the travel

document or the digitized image of the face of the holder of the travel document trip taken during passage through the airlock;

- the surname, first name, date of birth and nationality of the person concerned, the number and the validity limit of the travel document. South Koreans, Japanese, New Zealanders and Singaporeans, as well as, where applicable, British, whose data processed are the following:- the digitized image of the face of the bearer of the travel document taken during the passage through the airlock;

- the surname, first name, date of birth and nationality of the person concerned, the number and the validity limit of the travel document. Secondly, article 2 of the draft decree provides for the modification of article R 232-7 to indicate that the passage through the airlock is subject to a video surveillance device. The images captured inside the airlock via an overhead camera positioned above the airlock are transmitted in real time to the control station.

The Commission points out that this video-surveillance processing already exists and allows border guards, who supervise several airlocks at the same time, to carry out their border control mission in good conditions, by ensuring the proper functioning of the airlocks, the compliance with the rules for their use, the uniqueness of crossing the border and, where appropriate, by detecting any suspicious behavior such as evading border checks.

The Commission considers that, insofar as this is a direct video stream between the control airlock and the supervision center aimed at allowing better visibility of the airlock in real time for border guards, it complements PARAFE processing and is part of the purpose of improving and facilitating police checks at the external borders pursued by the latter.

Furthermore, the Commission takes note of the fact that the surveillance perimeter of this tool is strictly limited to the airlock in question and that these images are not kept at any time. It recalls the importance of providing the persons concerned with complete information on the general conditions for implementing the system, including the video surveillance flow. It notes that the page dedicated to the PARAFE system on the website of the Ministry of the Interior will be modified in order to mention this video stream. On the data retention periods Article 3 of the draft decree provides for the modification of Article R. 232 -8 of the CSI in order to indicate that the personal data mentioned in I of article R. 232-7 of the same code are processed for the sole purpose of allowing biometric authentication of the traveler and the consultation provided for in article R. 232-9, namely the consultation of the file of wanted persons, the Schengen information system and the file of stolen and lost travel documents of Interpol, in order to allow border control.

The draft article R. 232-8 of the CSI specifies that these data are not kept at the end of the processing. According to the

ministry, the retention period for this data, depending on the terms of use of the airlock, is generally less than a minute. The Commission considers this period to be adequate but, for greater clarity, invites the Ministry to modify the wording of the decree to explicitly indicate that the data are not kept after the traveler has left the airlock. It takes note of the ministry's commitment to modify the draft decree on this point. On the rights of the persons concerned Under the terms of article R. 232-10 of the CSI in force, the rights of information, access, rectification, limitation and opposition provided for in Articles 13, 15, 16, 18 and 21 of the GDPR can be exercised with the head of the border police or customs department of the airports, seaports and railway stations concerned either in writing, either directly at the registration desk. As an extension of the abolition of the registration process, article 5 of the draft decree provides for the modification of this article in order to delete the precision according to which such rights are exercised either in writing or directly at the registration station. .

With regard more specifically to information rights, the Commission notes that people have three main sources of information on the PARAFE system: on-site postings, at the manager's expense and validated by the ministry, the responsible for guiding travelers as well as the ministry's website. Firstly, with regard to the page dedicated to the PARAFE system on the ministry's website, the Commission notes that an English version is planned in the long term. Furthermore, it takes note of the ministry's commitments to continue to increase the visibility of the PARAFE system, in particular through the online publication of a specific PARAFE sheet on the service-public.fr site, the integration of information on the system to other sheets and the possibility of putting a short presentation film online. Secondly, concerning the languages in which passenger information is provided, and in accordance with the position adopted by the work of Article 29 (G29) and taken up by the European Data Protection Board (EDPB) in the context of its guidelines on transparency within the meaning of Regulation (EU) 2016/679 the Commission considers that, in view- given the planned expansion of the nationalities eligible for the PARAFE scheme, the information delivered to travelers should be offered in other languages. and note that all sites equipped with airlocks have at least signage concerning the minimum age of 12 years required to use the airlocks at the arrivals. It notes that infrastructure managers are encouraged by the ministry to produce specific communications for minors, validated by the latter. It also notes that the Ministry is currently carrying out work aimed at providing all of these managers with a presentation video setting out the eligibility conditions.

The Commission recalls that recital 38 of the GDPR clarifies that children deserve specific protection with regard to their personal data, as they may be less aware of the risks and their rights related to the processing of personal data. It also

recommends that the Ministry provide for specific measures with regard to minors, between 12 and 18 years old, in order to provide them with information according to appropriate methods, in particular with regard to the sensitivity of biometric recognition devices. implemented. It takes note of the Ministry's commitment to provide specific information measures adapted to minors between the ages of 12 and 18, in addition to existing systems. On the other conditions for implementing processing On the possibility of using airlocks fingerprints without prior registrationIn parallel with the abolition of the registration process providing for the prior registration of travelers and their fingerprints in a centralized database, the use of facial recognition airlocks has replaced that of fingerprint lock.

If, in fact, fingerprint locks without prior registration are no longer used today, the ministry wishes to retain the possibility of using them. In doing so, the ministry wishes to leave the choice to infrastructure managers to use facial technology or digital technology.

The Commission notes that these fingerprint locks without prior registration could then only be used by what the Ministry describes as the former eligible public, namely adults or minors aged twelve or over, EU citizens or nationals from another State party to the Agreement on the European Economic Area or from the Swiss Confederation or Monegasque or Andorran or San Marino nationals.

In the absence of prior registration, the new eligible audience, made up of nationals of Australia, Canada, South Korea, the United States, Japan, New Zealand, the United Kingdom and Singapore will only be able to use facial recognition airlocks.

The Commission takes note of the Ministry's explanations, according to which the limited nature of the public likely to be able to use the fingerprint locks without prior registration is explained by the fact that access to fingerprints without enrollment is currently authorized by a connection to the IS system managed by the ANTS which currently only contains 5 EU countries (Germany, Belgium, France, Luxembourg and the Netherlands). According to the ministry, there are no plans to connect countries outside the EU to it.

The Commission draws the Ministry's attention to the need to provide clear and appropriate information in order to better inform travelers about their eligibility or ineligibility for the two types of airlocks. main security measures implemented for this processing are not modified and remain consistent in view of the reassessment of the risks raised by the updated processing. Authorization profiles are provided to manage access to data as needed. Access permissions are removed for any user who is no longer authorized. However, the Commission recalls the importance of an overall review of the authorizations granted being

carried out regularly, for example annually.

The Commission notes that due to the fact that no data is ultimately retained, the encryption of disks that may contain data, initially planned for 2020, has not been implemented.

Audits are part of the measures allowing the regular updating of the risks and the measures implemented. In this context, the Commission notes that regular audits have taken place since the creation of the system and that, although the health crisis has negatively impacted the planned schedule, a new series of audits is underway. It recalls the need to update the DPIA and its measures according to the conclusions of these.

Regarding logging, the processing includes different types of traces. The system logs intended to detect unexpected events at the airlock are kept for 1 month, the supervision traces making it possible, with the traceability data from CHEOPS (Hierarchical Circulation of Secured Police Operational Records), to log the actions of the agents are kept for 2 years, finally, the traces at the PARAFE central level corresponding to the actions related to the passage and their result are kept for 2 years.

The Commission recalls that the main purpose of the processing of supervision traces is to detect and prevent illegitimate operations on the main data. Thus, a priori, in this case, a retention period for the logs of six months should be sufficient to exploit this information, since automatic or semi-automatic proactive trace analysis mechanisms, as well as certain organizational measures, would make it possible to identify most illegal behavior.

Finally, concerning the traces at the PARAFE central level, the Commission notes that the Ministry has taken care to minimize the data collected. These are not kept for security purposes but for technical traces for the purpose of evaluating and improving the device or, for anonymized functional traces, for statistical purposes.

Subject to the previous observations, the security measures described by the data controller seem to comply with the security requirement provided for in Articles 5.1.f and 32 of the GDPR. On the possibility for the Minister of the Interior to suspend the use of PARAFE airlocks with regard to one or more nationalities use of PARAFE airlocks with regard to one or more of the nationalities mentioned in article R.232-6 of the same code, in the event of a threat to public order or State security.

According to the ministry, such a suspension can only be carried out in the context of special circumstances, such as a health crisis, requiring additional checks by a border guard, or even in the event of deterioration of economic relations and diplomatic or increased migratory, infectious and security risks.

The Commission takes note of the various measures planned by the Ministry to ensure that the travelers concerned are informed: in the event of a suspension targeting one or more eligible nationalities, the Ministry plans to update the list of eligible nationalities on the page dedicated to the PARAFE system from its website. In addition, it provides signage by means of posters positioned upstream of the airlocks. Finally, attentive agents, trained and informed, will be present upstream of the airlocks in order to ensure the orientation of travellers. The Commission notes that the information will be provided in French, as well as, as far as possible, in English.

In the event of the crossing, or an attempt to cross, of an airlock by a traveler concerned by such a suspension measure, the Commission notes that the latter's travel document, considered incompatible, does not trigger the the doors open and the voyeur is redirected to a booth. The Commission notes that no screening of alert databases is carried out and that no data is collected, with the exception, for statistical purposes, of that relating to the fact that an ineligible travel document, without any other information specific to this document, has been presented. On buyers and recipients Article 4 of the draft decree provides for the modification of Article R. 232-9 of the CSI in order to add that police officers to borders and customs authorities, individually designated and specially authorized by their department head, for the purposes of the checks for which they are responsible in the airports, seaports and railway stations concerned may view the images transmitted in accordance with II of article R. 232 -7, namely CCTV video stream. This amendment to Article R. 232-9 of the CSI does not call for any comments from the Commission. The President,

M. L. Denis