

Deliberation 2023-027 of March 16, 2023 Commission Nationale de l'Informatique et des Libertés Nature of the deliberation:

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2023-027 of March 16, 2023 providing an opinion on a draft decree implementing articles L. 242-1 and following of the internal security code and relating to the implementation of image processing by means of capture devices installed on aircraft by the national police services, of the national gendarmerie, customs as well as the soldiers of the armies deployed on the national territory within the framework of the requisitions provided for in article L. 1321-1 of the code of defense (request for opinion n° 22015146) RU n° 72 The National Commission for Computing and Liberties,

Seizure by the Minister of the Interior and Overseas Territories, the Minister of the Economy, Finance and Industrial and Digital Sovereignty and the Minister for the Armed Forces of a request for an opinion concerning a draft decree implementing the articles L. 242-1 and following of the internal security code and relating to the implementation of image processing by means of capture devices installed on aircraft by the national police, national gendarmerie, customs as well as by the soldiers of the armed forces deployed on the national territory within the framework of the requisitions provided for in article L. 1321-1 of the defense code;

Considering the modified law n° 78-17 of January 6, 1978 relating to data processing, files and freedoms, in particular its title III; After having heard the report of Mrs. Sophie LAMBREMON, commissioner, and the observations of Mr. Benjamin TOUZANNE, Government Commissioner, Issues the following opinion: economy, finance and industrial and digital sovereignty and the Ministry of the Armed Forces of a draft decree implementing Articles L. 242-1 et seq. of the Internal Security Code (CSI) and relating to the implementation image processing by means of capture devices installed on aircraft by the national police, national gendarmerie, customs services as well as by the soldiers of the armies deployed on the national territory within the framework of the requisitions provided for in Article L. 1321-1 of the Defense Code. Articles L. 242-1 and following of the CSI were created by Article 47 of Law No. 2021-646 of May 25, 2021 for overall security preserving the freedoms and amended by article 15 of law n° 2022-52 of January 24, 2022 relating to criminal liability and internal security. These provisions, on which the CNIL has had the opportunity to issue several opinions, determine the conditions under which the services concerned can proceed, by means of cameras installed on aircraft, to the capture, recording and transmission of pictures.

Article L. 242-8 of the CSI provides that the terms of application of the aforementioned provisions and use of the data collected

must be specified by a Conseil d'Etat decree, issued after a reasoned and published opinion from the Commission. the purposes and the applicable legal regime: Firstly, with regard to the processing implemented by the national police, the national gendarmerie, and the soldiers of the armies deployed on the national territory within the framework of the requisitions provided for in Article L. 1321-1 of the Defense Code, the purposes of the processing are mentioned in I of draft article R. 242-8 of the CSI, which are a repeat of those mentioned in article L. 242- 5 of the CSI.

The Government considers that the legal regime applicable to this processing is that of Directive (EU) 2016/680 of April 27, 2016, transposed in Title III of the law of January 6, 1978 as amended. If the purposes mentioned from 1° to 5° fall under the aforementioned directive, the same is not necessarily true with regard to the purpose relating to the rescue of persons (6°). Questioned on this point, the Government indicated that the purpose of rescuing people is exercised in conjunction with another public security mission (for example, the search for missing persons or the rescue at sea of migrants within the framework of a border control operation). The Commission therefore considers that the processing carried out by the national police and gendarmerie services, and the armed forces personnel deployed on national territory fall under the regime of the aforementioned directive. secondly, with regard to the processing implemented by customs officers, II of draft article R. 242-8 of the CSI mentions that their purpose is to prevent the cross-border movement of prohibited goods. This purpose is a repeat of that mentioned in article L. 242-5 of the CSI.

The Commission considers that this purpose falls within the regime of the aforementioned directive. On the status of single regulatory act:

The draft decree will constitute a single regulatory act within the meaning of IV of article 31 of the amended law of January 6, 1978. The implementation of processing is thus subject to the prior sending to the Commission of a compliance commitment by the general management of the national police, the general management of the national gendarmerie, the police headquarters, the general management of customs and Indirect Rights (DGDDI) and the Ministry of the Armed Forces for the services attached to them. Insofar as the planned processing is likely to create a high risk for the rights and freedoms of natural persons, in particular because they are likely to relate to sensitive data, the ministries carried out an impact assessment relating to the protection of personal data (DPIA), which was sent to the Commission with the request for an opinion. The Commission notes that, if the "police-justice" directive does not explicitly provide that one and the same DPIA can relate to a set of similar processing operations which present similar high risks, the performance of such an impact analysis, in

the case present, is likely to constitute an additional guarantee for the protection of the rights and freedoms of the persons concerned with regard to the planned processing. Indeed, it considers that this "framework" DPIA is intended to constitute the reference base of the minimum guarantees to be implemented by all data controllers, with regard to the risks identified in the context of the use of these systems. . This framework DPIA may, where appropriate, be supplemented by a DPIA of the particular characteristics of each of the processing operations implemented which do not appear in the framework DPIA. On the general conditions for implementing the systems: Firstly , the ministries concerned have planned to draw up an employment doctrine specific to each of the institutions concerned (national police, national gendarmerie, military and customs). This doctrine will recall the legal framework of airborne cameras, will specify certain cases of use, the conditions of use and the conduct to be followed, in particular with regard to informing people and restrictions on capturing and recording places. private.

Although the Commission notes that the diversity of operational situations with which the security forces are confronted does not allow the definition in the draft decree of objective criteria governing the capture, recording and transmission of images, it considers that such details must be included in the employment doctrine which must be transmitted to it. Secondly, article L. 242-5 of the CSI provides that the national police and national gendarmerie services, the military and customs officers may be authorized to capture, record and transmit images using airborne cameras. With regard to the capture and recording of images, the draft decree does not indicate criteria making it possible to distinguish, on the one hand, the situations where a simple capture of images with visualization of the live images is sufficient, and on the other hand the situations where the capture is accompanied by a video recording.

In this respect, the ministries have indicated that the recording will be triggered in the event that it brings added value compared to simple viewing in order to materialize objective facts, and that this is a case-by-case assessment. case. In addition, the recording may be submitted if necessary to the competent authorities for the purposes of legal, administrative or disciplinary proceedings.

The ministries indicated that the doctrines of use will specify, without being exhaustive, recommendations on the subject. to the command post of the service concerned and to the personnel involved in the conduct and execution of the intervention, who can view them in real time or deferred for the duration strictly necessary for the intervention". The draft decree does not specify of criteria controlling the real-time or delayed transmission of images. The AIPD indicates that the transmission of images to

the command center can be triggered when the command center needs to better understand the situation in progress, to have an overall view of the intervention to adapt its instructions live, or to carry out a deferred analysis for the time strictly necessary for the intervention. The images captured can also be transmitted to the personnel involved in the conduct and execution of the intervention, in the field, so that they can be aware of the progress of operations and take the appropriate decisions for their conduct. In this respect, the ministries concerned have indicated that the employment doctrines will specify the cases of use (not exhaustive) that may lead to this transmission. Thirdly, with regard to the places concerned, article L. 242-5 of the CSI indicates that "airborne devices are used in such a way that they are not intended to collect images inside homes nor, specifically, those of their entrances. When the use of these devices leads to visualizing these places, the recording is immediately interrupted. However, when such an interruption could not take place taking into account the circumstances of the intervention, the recorded images are deleted within 48 hours from the end of the deployment of the device, except transmission within this period within the framework of a report to the judicial authority, on the basis of article 40 of the code of criminal procedure". These provisions which result from the law are included in II of draft article R. 242-11 of the CSI.S

Regarding the operational reasons that may prevent the recordings from being stopped, the ministries indicated as examples imperatives linked to the mission or areas with high residential density. the Commission considers that it is necessary to specify the circumstances of the intervention preventing the interruption of recordings in the aforementioned places. While it notes that the diversity of the operational situations with which the security forces are confronted does not allow define exhaustively in the draft decree the circumstances preventing such an interruption, it considers that such details should be listed in the employment doctrine. The latter must also be regularly reviewed so that the cases described strictly correspond to a situation in which it was effectively not possible to interrupt the recording. On the data collected: The personal data collected are mentioned in draft article R. 242-9 of the CSI. The draft decree excludes sound recording, which is in accordance with article L. 242-4 of the CSI. L. 242-4 of the CSI, airborne devices cannot include automated facial recognition processing, and the regulations in force do not authorize any "enhanced" video device on images captured by cameras installed on aircraft. The Commission considers that the data processed is adequate, relevant and not excessive in relation to the purposes pursued. On accessors and recipients:

Accessors and recipients of data are mentioned in draft article R. 242-10 of the CSI. of the police, the commander of the gendarmerie unit or the head of the customs service". For purposes of clarity, the Commission considers that the draft decree

should specify that it is a question of the "national police" in order to avoid any confusion with the municipal police services which cannot, as things stand the regulations in force, implement image processing by means of airborne camera devices. The Commission takes note of the ministry's commitment to amend the draft decree in the direction recommended. As regards the recipients, the Commission considers that the draft decree should be supplemented in order to specify which are the "staff responsible for training personnel" so as to ensure that they belong to one of the categories of persons mentioned in draft article R. 242-10 of the CSI. On retention periods:

II of draft article R. 242-11 of the CSI indicates that "at the end of the intervention and at the latest within forty-eight hours from the end of it, the personnel mentioned in 2° and 3° of I of article R. 242-10 delete the images of the interior of homes and specifically their entrances when the interruption of the recording could not take place taking into account of the circumstances of the intervention, except transmission within this period of a report to the judicial authority, on the basis of article 40 of the code of criminal procedure".

III of the draft article R. 242-11 of the CSI mentions that the data not having been the subject of the deletion concerning the images of the interior and the entrances to the homes "shall be kept for a maximum period of seven days from the end of the deployment of the device, without anyone being able to have access to it, except transmission within this period of a report to the judicial authority, on the basis of article 40 of the code of criminal procedure ".

The Commission considers that the data are kept for a period not exceeding that necessary for the purposes for which they are processed, in accordance with article 4-5° of the law of January 6, 1978 as amended. On the rights of individuals concerned:

With regard to the right to information, Article L. 242-3 of the CSI provides that "the public is informed by any appropriate means of the use of airborne image capture devices and of the authority responsible for their implementation, except when circumstances prohibit it or when this information would conflict with the objectives pursued. General information for the public on the use of airborne image capture devices is organized by the Ministry of the Interior "As regards the methods of implementing the information of the persons filmed, the Commission considers that the first sentence of I of draft article R. 242-13 of the CSI should be modified in order to refer to "the 'information of people likely to be filmed' and not to 'information of the public'. It considers that the information of the people likely to be filmed must be done at the place of the operation during which the airborne cameras will be used. In this respect, the AIPD provides that the information may be provided at the place of the operation, for example via sound devices to warn the public that an action is in progress and that it is likely to give rise to

a recording, or physical devices (such as barriers) materializing the different areas of the perimeter likely to be filmed. In the specific case of the use of airborne cameras to ensure the safety of gatherings of people on the public highway or in places open to the public, the procedures for informing the people filmed could also be specified in the decision authorizing the appeal. to drones, to film the gathering. The Commission considers that the employment guidelines should specify the procedures to be implemented to inform the people filmed in a concise, transparent, comprehensible and easily accessible manner.

Furthermore, with regard to the procedures for implementing general public information, the AIPD provides for public information on the use of airborne devices on the website of the Ministry of the Interior and the DGDDI. With regard to the airborne cameras implemented by the military coming under the Ministry of the Armed Forces, the Commission considers that information of the public on the use of these devices could also be carried out on the website of the Ministry of the Armed Forces. The Commission recalls that the information provided to the public must be effective, comprehensible and complete, taking into account the specific features of the systems in question.

With regard to the circumstances prohibiting the information of persons, the Commission notes that Article L. 242-3 of the CSI provides for information of persons "except when the circumstances prohibit it or when this information would conflict with the objectives pursued ". The draft article R. 242-13 on the one hand, also refers to "urgency" or "conditions of the operation", and on the other hand, it limits this possibility to the sole purposes mentioned in 1° (the safety of property and people in places particularly exposed to the risk of aggression, theft or trafficking of arms, human beings or narcotics, as well as the protection of public buildings and installations and their immediate surroundings when they are particularly exposed to risks of intrusion or degradation), 3° (the prevention of acts of terrorism) and 5° of I and II of Article R. 242-8 (border surveillance by Customs). In this respect, the ministries have indicated that the determination of the (non-exhaustive) cases relating to urgency or the conditions under which, due to the circumstances of the operation, the information is not produced, will be specified in the job doctrines. The Commission nevertheless invites the ministries to determine objective criteria making it possible to assess the circumstances referred to in the draft decree and which could be specified in the employment doctrines, in particular with regard to the purpose mentioned in 1° of the draft decree. Article R. 242-13 of the CSI, the wording of which is particularly broad.

The other rights of data subjects do not call for any particular observation. On security measures:

The Commission points out that, in order to meet the obligation to guarantee the integrity and security of recordings until they are deleted, it is essential to implement a set of technical measures concerning cameras and upload terminals. As such, it is necessary to:- encrypt and sign the recordings directly at the level of the cameras, with algorithms compliant with appendix B1 of the general security reference system;

- technically limit any operation of uploading and deleting recorded images to identified workstations for which the operations are logged;

- include timestamps in video streams as well as the addition, during extraction, of a "digital watermark" of the video to discourage any modification of the content. The Commission takes good note of the organizational measures aimed at participating in this integrity. With regard to the storage of data, the Commission considers that their nature requires that they be subject to encryption measures in accordance with appendix B1 of the general security reference system both at the level of the databases and backups, including for the DGDDI. The Commission takes due note of the performance of backups, as well as the performance of restoration tests for these backups once a year. With regard to logging, and with regard to its recommendation no. 122 of 14 October 2021 adopting a recommendation on logging, the Commission considers that the chosen logging period of three years appears excessive due to its disproportion with the maximum data retention period of seven days. Indeed, if the logging allows, by its dissuasive aspect to participate in the security of the processing, the duration of this must be assessed according to the specific risks of abuse, and in particular the duration of conservation of the processing data. In particular, keeping personal data from the main processing in the logs for a period much longer than that provided for this data should be avoided. In addition, if the procedures for implementing logging are satisfactory, the Commission considers it necessary for an analysis of the logging data to be planned. On this point, it recommends the implementation of a proactive mechanism for the automatic control of logging data which contributes to the security of the processing by the automatic generation of alerts.

Finally, concerning the use of images for educational and training purposes after anonymisation, the Commission recalls that anonymisation must be effective. The data controller must therefore carry out an analysis to demonstrate that its anonymization processes comply with the three criteria defined by the opinion of the group of article 29 n° 05/2014. Otherwise, if these three criteria cannot be met, a study of the risks of re-identification must be carried out. The President,

M. L. Denis