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No. a draft decree implementing Article L. 241-2 of the Internal Security Code and relating to the implementation of the processing of personal data from the individual cameras of municipal police officers

(Request No. AV 18018811)

(Opinion RU-065)The National Commission for Computing and Liberties,Seizure by the Minister of the Interior of a request for an opinion concerning a draft decree implementing Article L. 241-2 of the Code internal security and relating to the implementation of the processing of personal data from the individual cameras of municipal police officers; 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 (EU) 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 the competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offenses or the execution of criminal penalties, and the free movement of such data, and repealing Framework Decision 2008/977/JHA of Advice ; Having regard to the internal security code, in particular its article L. 241-2; Having regard to law n° 78-17 of January 6, 1978 as amended relating to data processing, files and freedoms, in particular its article 8, II and IV of its article 26 and its chapter XIII; Having regard to law n° 2016-731 of June 3, 2016 strengthening the fight against organized crime, terrorism and their financing, and improving the efficiency and guarantees of criminal procedure, in particular its article 114; Having regard to law n° 2018-697 of August 3, 2018 relating to the harmonization of the use of mobile cameras by public security authorities, in particular its article 3; Having regard to decree n° 2005-1309 of 20 October 2005 amended taken for the application of law n ° 78-17 of January 6, 1978 relating to data processing, files and freedoms; Having regard to decree n ° 2016-1861 of December 23, 2016 relating to the conditions of the experimentation with the use of individual cameras by municipal police officers in the context of their interventions ;Having regard to deliberation no. 2016-386 of December 8, 2016 providing an opinion on a draft decree by the Council of State relating to the conditions for the experimentation of individual cameras by municipal police officers within the framework of their interventions;After having heard Mr Jean-François CARREZ, commissioner, in his report and Mrs Nacima BELKACEM, government commissioner, in her observations, Issues the following opinion: decree implementing Article L. 241-2 of the Internal Security Code (CSI) and relating to the implementation of the processing of personal data from the

individual cameras of municipal police officers. It recalls that the law of June 3, 2016 referred to above opened the possibility, on an experimental basis, to municipal police officers to carry out the audiovisual recording of their interventions by means of individual cameras. The conditions for carrying out this experiment, lasting two years, were set by decree of the Council of State, issued after a reasoned and published opinion from the CNIL. In accordance with the Commission's request, a report on this experiment was sent to it. Following this experiment, the above-mentioned law of 3 August 2018 made permanent the possibility for municipal police officers to carry out the audiovisual recording of their interventions by creating an article L. 241-2 within the CSI. This article provides that the methods of application and use of the data collected are specified by a decree in Council of State, taken after reasoned and published opinion of the CNIL. Moreover, article L. 241-2 of the CSI provides that municipal police officers may use individual cameras in the exercise of their missions of prevention of breaches of public order and protection of the security of property and persons as well as their missions of judicial police. The audiovisual recordings thus made are intended to prevent incidents during the interventions of municipal police officers, to report offenses and to prosecute their perpetrators through the collection of evidence as well as the training and education of officers. during both the purposes mainly pursued by the devices and the missions entrusted to municipal police officers, that the planned processing falls under the provisions of Directive (EU) 2016/680 of 27 April 2016 referred to above as transposed in Articles 70-1 et seq. of the amended law of January 6, 1978. The draft decree provides that the data recorded in the processing is likely to reveal, directly or indirectly, sensitive data within the meaning of I of article 8 of the aforementioned law. Therefore, in accordance with the provisions of article 70-3 of the amended law of January 6, 1978, the planned processing must be authorized under the conditions provided for in II of article 26, either by decree in Council of State taken after reasoned and published opinion of the Commission. The draft decree is also intended to constitute a single regulatory act, within the meaning of article 26-IV of the law of January 6, 1978 as amended. A compliance commitment must therefore be sent to the Commission by the mayor or, where applicable, all the mayors of the municipalities concerned when the processing is implemented by a public establishment for inter-municipal cooperation (EPCI). Article L. 241-2 of the CSI, the use of individual cameras by municipal police officers must also be authorized by the representative of the State in the department. In this regard, the draft decree provides that the mayor, or all the mayors of the communes concerned, present to the prefect of the department a request for authorization concerning the use of such devices by municipal police officers, which is in particular accompanied by a technical file presenting the processing envisaged as well as the compliance commitment intended for the CNIL and specifying the

number of cameras that the device has. The Commission considers that the purpose of the prefectural authorization thus issued is distinct of that pursued by this single regulatory act, since said authorization is not intended to ensure compliance with the rules relating to the protection of personal data. In this respect, it recalls that it is, in any case, up to the data controller to make a commitment to comply with this single regulatory act prior to the implementation of the planned processing and even if a prefectural authorization would have been issued. Finally, insofar as the planned processing is likely to create a high risk for the rights and freedoms of natural persons, in particular because it relates to sensitive data, the Ministry of the Interior has carried out an analysis of impact relating to the protection of personal data (AIPD), which was sent to the Commission with the request for an opinion in accordance with Article 70-4 of the Data Protection Act. The Commission notes that, if the aforementioned directive does not explicitly provide that one and the same DPIA may relate to a set of similar processing operations which present similar high risks, the carrying out of such a The impact analysis, in this case, 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 AIPD is intended to constitute the reference base of the minimum guarantees to be implemented by all the municipalities whose municipal police officers will be equipped with individual cameras, with regard to the risks identified within the framework of the use of these devices. Moreover, the Commission considers that, with regard to the uniqueness of national law, which expressly provides that processing operations covered by the aforementioned Police-Justice Directive may be authorized by a framework act on the basis of Article 26-IV of the law of January 6, 1978 as amended when they meet identical purposes and methods of implementation, it seems appropriate that these same processing operations be the subject of a single elaborate DPIA, like the draft decree, by the Ministry of the Interior. With regard to the objectives pursued by this DPIA, the Commission considers that the minimum guarantees to be respected in the context of the use of these individual cameras should be annexed to this decree and also published. On the purposes of the processing The Commission notes that, from In general, the deployment of individual camera devices is intended to meet a need for physical and legal security for municipal police officers in the context of their interventions. Article 1 of the draft decree thus provides that, in accordance with the provisions of Article L. 241-2 of the CSI, the processing of personal data from individual cameras has the following purposes: the prevention of incidents during the interventions of municipal police officers; the reporting of offenses and the prosecution of their perpetrators by the collection of evidence; the training and education of municipal police officers. The Commission notes that, cont Rarely to what was provided for by the letter of the texts framing the

initial experimentation of individual camera devices by municipal police officers, the texts relating to the sustainability of these devices no longer limit the purpose of noting offenses and prosecuting their perpetrators by collecting evidence for legal proceedings only. This makes it possible for municipal police officers to use the audiovisual recordings from individual cameras also in the context of administrative or disciplinary procedures. The Commission considers that the purposes pursued by the planned processing are determined, explicit and legitimate, in accordance in article 6-2° of the law of January 6, 1978 amended. On the scope of the devices and the nature of the data processed As a preliminary point, the Commission notes that it will be possible, through the use of individual cameras, to capture sensitive data within the meaning of I of the 8 of the aforementioned law as well as private conversations. The implementation of personal data processing from these devices therefore implies providing for strict guarantees. As regards the scope of implementation of individual camera devices, the draft decree expressly provides that only the cameras provided to municipal police officers as personal equipment are authorized, which excludes the use of any other device allowing the capture of visual and sound elements, and in particular personal cameras. which the agents are authorized to trigger the recording, article L. 241-2 of the CSI provides that the recording is not permanent and that the individual cameras can be used when an incident occurs or is likely to occur , having regard to the circumstances of the intervention or the behavior of the persons concerned. These legislative provisions reproduce in extenso the provisions initially adopted within the framework of the aforementioned law of June 3, 2016 with a view to experimenting with individual cameras by municipal police officers. On the occasion of the examination of the draft decree relating to the conditions of this experiment, the Commission had formulated observations so that the conditions of use of the individual cameras be specified in the decree and thus to avoid any disproportionate collection of personal data. In the absence of modifications on this point within the framework of this draft decree, the Commission can only reiterate the reservations formulated within the framework of the aforementioned deliberation. In particular, it considers it essential to establish a doctrine of use which, without drawing up an exhaustive list of the circumstances likely to justify the triggering of the cameras, would define objective criteria governing the use of the devices. This doctrine of use appears all the more necessary since it appears from the information brought to the attention of the Commission that law enforcement agents encounter difficulties with regard to the conditions in which they can use the cameras. In this context, the establishment of a doctrine of use would be likely to inform them and guide them in the implementation of individual cameras, in order to avoid certain practices likely to lead to a disproportionate collection of data of a staff. She observes that this doctrine would be all the more

useful since article L. 241-2 of the CSI authorizes the implementation of individual cameras in all places, and in particular in the homes of individuals. The Commission considers that the Ministry should lay down specific rules when these are used within residential premises, such as restricting the possibility of doing so to certain circumstances and guaranteeing systematic individual information of the person concerned, where necessary the outcome of the intervention. It requests that the criteria likely to define these circumstances be specified in the aforementioned employment doctrine. With regard to the data processed, the draft article R. 241-10 lists the categories of personal data and information recorded the processing implemented, namely the images and sounds captured by the individual cameras, the day and time slots of recording, the identification of the agent carrying the camera when recording the data, as well as the place where the data is collected. If the use of sound recording systems coupled with video devices can pose difficulties with regard to the requirement of proportionality resulting from the texts relating to the protection of personal data, the collection of data sound nevertheless appears relevant in this case and given the purposes pursued by these devices. The draft decree provides that the data recorded in the processing s are likely to reveal, directly or indirectly, sensitive data. However, I of article 8 of the amended law of January 6, 1978 establishes the principle of a ban on the processing of such data. However, IV of this same article provides that processing, whether automated or not, justified by the public interest and authorized under the conditions provided for in II of Article 26, is not subject to the prohibition provided for in I, which is the subject of this draft decree. In addition, Article 70-2 of the law provides that the processing of such data is possible insofar as it has been authorized by legislative and regulatory provisions, which is the case here. The processing should then offer appropriate safeguards for the rights and freedoms of the data subject. In this respect, the Commission points out that it will be prohibited to select a particular category of persons in the processing operations on the basis of these data alone. As regards the use of audiovisual recordings for educational and training purposes, of decree provides that they are anonymized. In this regard, the Commission recalls that anonymization implies preventing any individual re-identification of the persons concerned by the recordings. It acknowledges that the anonymization will relate to the visual (blurring) and sound (distortion or deletion, in particular of ambient conversations) elements of these recordings. In any event, it recalls that this must in particular concern any physical characteristic as well as any element relating to the individual situation of the persons concerned or to the particular context of the intervention. Under these conditions, the Commission considers that the data processed are adequate, relevant and not excessive with regard to the purposes pursued, in accordance with the provisions of article 6-3° of the amended law of January 6, 1978. On the data

retention period Article L. 241-2 of the CSI provides that audiovisual recordings are erased after six months, except where they are used in the context of legal, administrative or disciplinary proceedings. The draft decree specifies the starting point of this retention period, namely six months from the date of their registration. video surveillance devices, must make it possible to take into account the average processing times for legal, administrative or disciplinary proceedings. In this regard, the Commission points out that the storage period is a fixed period and not a maximum period. Thus, the data processed cannot be deleted before the end of this period, at the risk of depriving the persons concerned of the possibility of accessing the data which concern them and therefore of asserting them, if necessary, within the framework of a procedure. The draft decree specifies that at the end of this period the recordings are subject to an automatic purge, and that when the data have been extracted and transmitted for the purposes of a procedure, they are kept according to the rules specific to each type of procedure. The Commission considers that the data collected are kept for a period that does not exceed the period necessary taking into account the purposes for which they are collected and processed, in accordance with Article 6-5° of the aforementioned law. On the recipients of the data May be recipients of all or part of the data and information recorded in the processing, each within the limits of their respective attributions and under r Reserve of the need to know in the context of a judicial, administrative or disciplinary procedure, as well as a training action: the officers and agents of the judicial police of the national police and gendarmerie, the agents of the services of general state inspectorate, the mayor and the president of the public establishment for inter-municipal cooperation and the agents in charge of staff training. These recipients do not call for any particular observation. Moreover, are authorized to access the data, within the limits of their respective powers, the head of the municipal police department, on the one hand, and the municipal police officers individually designated and authorized by the service manager, on the other hand. Only these same people are authorized to extract data and information, within a specific legal framework (judicial, disciplinary or open administrative procedure) or for the purposes of a training or educational action for agents. The Commission considers that this access must, in the same way as that provided for recipients, be subject to strict compliance with the need to know. In this regard, it takes note of the ministry's commitment to supplement the draft decree in this regard. On the information and rights of the persons concerned With regard to the information of the persons concerned, article L. 241- 2 of the CSI provides that the cameras are worn visibly by the officers and that a specific visual signal indicates whether the camera is recording. It also provides that the triggering of the recording is the subject of information of the persons filmed, unless the circumstances prohibit it. In this respect, the Ministry of the Interior considers that

the criterion laid down by article L 241-2 of the CSI appears sufficiently strict to limit the cases in which the recording is made without the person concerned having been informed, arguing that other guarantees are also provided for by the text (camera carried in a visible manner and specific visual signal). The Commission notes that, under these conditions, recording cannot be made without the knowledge of the person concerned. However, it considers that, if certain circumstances prohibit the immediate notification of the persons concerned of the initiation of recording, the aforementioned provisions do not exempt the agents from issuing this information on a deferred basis, as soon as these circumstances have ceased and, at the latest, at the end of the intervention. The Commission considers that such information should enable data subjects to exercise their rights. Article L 241-2 of the CSI also provides that general information for the public on the use of individual cameras is organized by the Minister of the Interior. The draft decree specifies that this information is issued on the municipality's website or, failing that, by posting it at the town hall. The draft decree provides that the persons concerned may exercise their rights to information, access and erasure directly with the mayor, or all the mayors of the municipalities concerned when the processing is implemented by a public establishment for inter-municipal cooperation. In this respect, the Commission notes that the wording adopted is not intended to impose on the person wishing to exercise his rights, in the event of processing implemented by an EPCI, to contact each mayor individually of all the municipalities concerned. Indeed, such a requirement would significantly complicate the process involved in exercising rights, producing a dissuasive effect for the persons concerned. In addition, it would not be such as to facilitate the taking into account within two months of the right exercised with an EPCI composed of a large number of municipalities. Thus, the person who wishes to exercise his rights can do so with each of the mayors of the communes of the EPCI. The draft decree provides that in order to avoid interfering with investigations, research and administrative or judicial procedures, and to avoid harming the prevention or detection of criminal offences, investigations or prosecutions in this area, restrictions on the exercise of the rights of access and erasure are possible and this, under the conditions of the 2° and 3° of II and III of article 70-21 of the law of 6 January 1978 as amended. In this case, these rights are exercised indirectly with the CNIL under the conditions provided for in Article 70-22 of the aforementioned law. In general, the Commission notes that the generic scope of these restrictions, which resumes in extenso the aforementioned provisions, appears particularly broad, without sufficient details having been provided on the possibility, in this case, of mobilizing these provisions. It recalls, in any case, that the restrictions to the rights provided for by the acts establishing the processing, if they are necessary, must be precisely justified with regard to the purposes pursued by each

processing. The Commission also notes that the draft decree does not indicate the conditions under which the processing will be limited, in the hypotheses provided for in III of article 70-20 of the Data Protection Act. It considers that the draft decree could be supplemented in this sense. Finally, the draft decree specifies that in application of article 38 of the law of January 6, 1978 as amended, the right to object is not intended to apply to planned processing. The Commission recalls that, if the provisions of Directive 2016/680 of the

27 April 2016 referred to above as transposed into domestic law do not mention the possibility for data subjects to object to the processing carried out, the Member States retain, in any event, the possibility of providing more extensive guarantees than those established in said Directive for the protection of the rights and freedoms of data subjects with regard to the processing of personal data by the competent authorities. In this context, it considers that the aforementioned Article 38, which has not been repealed by the law relating to the protection of personal data and whose application to processing covered by the aforementioned directive is not further excluded by the provisions of articles 70-1 and following of the Data Protection Act, is also intended to apply to processing falling within the scope of this directive. It notes in this respect that Article 38 provides for the possibility of disregarding the right of opposition when the processing meets a legal obligation or when an express provision of the regulatory act authorizing the processing excludes it. , the Commission considers that the exclusion of the right to object as provided for by the draft decree is proportionate with regard to the purposes pursued by the planned processing. In view of the foregoing, it considers that the limitation imposed on the exercise of the right to object falls within the framework of the provisions of national law relating to the protection of personal data and is not likely to excessively interfere with the rights and freedoms of the persons concerned. On security measures Article L. 241-2 of the CSI provides that the personnel to whom the individual cameras are provided cannot have direct access to the recordings they make. The draft decree specifies that the data recorded by the individual cameras are transferred to a secure computer medium as soon as the agents return to service. He adds that the recordings can only be consulted at the end of the intervention and after their transfer to the secure computer medium. No transmission system allowing the images to be viewed remotely in real time can be implemented. The Commission considers that these prohibitions in principle must be accompanied by technical measures such as to guarantee that the recordings are not consulted by the agents. In addition, operational measures could be envisaged to ensure that the recordings, once transferred to a dedicated server, are only viewed within a specific legal framework (judicial, disciplinary or open administrative procedure). Concerning data access controls , the Commission recalls that the authentication of persons



authorized to access the data processed must comply with its doctrine, specified in deliberation no. 2017-012 of 19 January 2017 adopting a recommendation relating to passwords. It recommends also that the management of user and processing administrator authorizations be the subject of a formalized procedure, validated by the processing manager and brought to the attention of users. The draft decree provides that each consultation, extraction and deletion of data is subject to recording in the processing or, failing that, to a consignment of in a register specially opened for this purpose which includes the number, surname, first name and rank of the agent carrying out the operation, the date and time of the operation, as well as the legal, administrative, disciplinary or educational reason , the service or unit receiving the data and the identification of the audiovisual recordings extracted and the cameras from which they came. In the absence of any clarification on this point, the Commission recalls that the register must be kept in conditions such as to guarantee the integrity of the data and which cannot be left at the disposal of the officials concerned. In any event , it recommends that automatic logging be integrated into the recording management software and that the traces be analyzed regularly. In the absence of details concerning the logging architecture, the Commission can only recall that it is appropriate to centralize locally time-stamped event logs based on a reliable time source and exported in a secure manner, and to ensure the security of logging equipment and logged information. The draft decree provides that the traces are kept for three years . In this respect, the Commission wonders about the relevance of keeping the traces of the consultation, extraction and deletion operations for such a period even though the data which are the subject of these operations are themselves deleted. after six months, except where they are used in the context of legal, administrative or disciplinary proceedings. The Commission notes that different types of equipment exist which do not systematically provide for the encryption of data stored on the memory in the camera, which could allow viewing of the video sequences by a third party, in the event of theft of the equipment. Therefore, the Commission considers that data controllers should favor the use of cameras with an irremovable memory, subject to real encryption and not simple obfuscation, and access to which is reserved for the recording management software. In addition, an integrated solution should be implemented to ensure the security of the recordings from the unloading of the camera to their use in the context of legal, administrative or disciplinary proceedings. In particular, the recordings should be kept individually encrypted, signed and time-stamped on the storage server, and the latter should be subject to safeguard measures. on the occasion of the fulfillment of their commitment to comply with the single regulatory act provided for by this draft decree. In this respect, the Commission considers that such a file makes it possible to document the compliance of processing on a case-by-case basis by specifying the technical measures

adopted according to the type of device chosen, thus falling within the logic of accountability carried by the Package European Data Protection. This being so, it considers that it is not necessary for this technical file to be sent to it on the occasion of the compliance commitment and that it could simply be made available to it by each data controller. from the previous observations, the security measures described by the Ministry of the Interior for the devices implemented by the municipalities for the benefit of the municipal police officers seem to comply with the security requirement provided for by article 70-13 of the law of January 6, 1978 as amended. The Commission recalls, however, that this obligation involves updating the impact assessment, as well as security measures with regard to the regular reassessment of risks. The President.

FALQUE-PIERROTIN